

I

Facts and Travel

In 1989, Ronald Koziol purchased property located at 877 High Street, Central Falls, Rhode Island. At the time of purchase, the Property was located in an M-2 (Heavy Industrial) Zoning District. Around 1990, Koziol Firearms began operating Broadway Transmission & Auto Repair, an auto transmission and repair shop on the property which is still in business today.

Koziol Firearms applied to expand the use of the Property to include a firearms sales and manufacturing operation. On May 23, 2022, the Building/Zoning Official for the City of Central Falls Department of Code Enforcement (Building Official) notified Koziol Firearms that, in order to operate General Business on the Property, in an R-3 (Multi-Household District) Zone, a use variance would be required. Therefore, on July 28, 2022, Koziol Firearms submitted its application to the Board, seeking two use variances to relieve it from the restrictions contained in Article III, Section 304, Table 1, Subsections 43 (Limited Business Services) and 44 (General Business Services) and allow it to operate a firearms sales and manufacturing business on the Property (the Application). (Application 1-2.)

The Board heard the Application on September 14, 2022. Koziol Firearms represented itself at the hearing, and Ronald Koziol, the Property owner and member of Koziol Firearms, testified. The other member of Koziol Firearms, Christopher Koziol also testified. At the hearing, Christopher Koziol testified that Koziol Firearms would continue operating Broadway Transmission during the day and the firearm manufacturing and sales would occur in the evening. He further added that, if the application were to be

denied, Koziol Firearms would continue solely with Broadway Transmission, although they “would like to do both.” (Tr. 26:7-12, Sept. 14, 2022.)

After hearing testimony, the Board read into the record the Department of Planning and Economic Development’s Staff Recommendation to the Zoning Board. The Staff Recommendation noted, as did the Board during the hearing, that although the Application and Building Official’s letter indicated that the Property is located in an R-3 zoning district, “the zoning map and property records indicate that the property is in an R-2 two-household district.” Staff Recommendation 2 n.1. The Staff Recommendation opined that the Application failed to meet the standards for relief. The Board voted to deny the Application and informed Koziol Firearms that the written decision was forthcoming.

The Board filed its written decision denying the application on November 16, 2022. (Certified Record, Jan. 27, 2023, Zoning Board of Review Decision.) In relying on the Staff Recommendation, the Board noted that the operation of Broadway Transmission is currently a legally nonconforming use which Koziol Firearms was seeking to expand and that it was Koziol Firearms’ intention to operate both the auto repair and firearms business out of the same building. As such, the Board concluded Koziol Firearms did not demonstrate that the hardship amounted to more than a mere inconvenience, was not due to the unique characteristics of the land, and the Property would continue to yield a beneficial use through the auto repair shop without a use variance. The Board also added that, although Koziol Firearms had no say in the zone change and thus the hardship is not from its prior action, the intent behind the application is primarily for greater financial gain. The Board also found the Application was not consistent with the Comprehensive

Community Plan or the intent of the Zoning Ordinance. Although there was confusion as to whether the Property was located in an R-3 Zone or an R-2 Zone, both the Staff Recommendation and the Board’s decision indicate that the proposed use would not be permitted in either zoning district without a variance. *Id.* at 3-4.

Koziol Firearms appealed the Board’s decision on December 5, 2022. Koziol Firearms amended its Complaint on July 19, 2023 and on March 14, 2024.¹ The operative Complaint contains a count for declaratory judgment and asks the Court to declare that the actions and vote on the 1992 re-zoning are null and void because sufficient notice of the zone change was not provided; that the Property is located in a M-2 Heavy Residential Zone; and that it has standing to contest the zoning classification.

II

Standard of Review

The Superior Court’s review of a zoning board decision is governed by § 45-24-69(d), which provides,

“The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- “(1) In violation of constitutional, statutory, or ordinance provisions;
- “(2) In excess of the authority granted to the zoning board of review by statute or ordinance;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;

¹ The Second Amended Complaint amended the wherefore clause so that it identified the zone as “M-2 Heavy Industrial Zone” after it mistakenly stated that the zone was “M-2 Heavy Residential Zone.” *See* Koziol Firearm’s Mot. to Am. Compl.

- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 45-24-69(d).

In reviewing a decision by a zoning board, the Superior Court “lacks [the] authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute [its] findings of fact for those made at the administrative level.” *Restivo v. Lynch*, 707 A.2d 663, 666 (R.I. 1998) (quoting *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986)). The Court may not “substitute its judgment for that of the zoning board if it can conscientiously find that the board’s decision was supported by substantial evidence in the whole record. *Apostolou v. Genovesi*, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978).

III

Analysis

Koziol Firearms both appeals the Board’s denial of its application for use variances and seeks declaratory relief. Each matter will be addressed in turn.

A

The Board’s Denial of the Application

A landowner must apply for and receive a use variance to use land in a way that is not permitted in that zoning district under the zoning ordinance. *See* G.L. 1956 § 45-24-31(66). In seeking a use variance from a zoning board, the applicant bears the burden of demonstrating that each of the following elements under § 45-24-41(d) are satisfied:

- “(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16);

“(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
“(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based; and
“(4) That the relief to be granted is the least relief necessary.” Section 45-24-41(d).²

Importantly, to obtain a use variance, “the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance.” Section 45-24-(e)(1). Thus, § 45-24-(e)(1) places such a high burden on the applicant that the only way to get a use variance would be to show that the denial of such variance would amount to a confiscation of the property. *Rozes v. Smith*, 120 R.I. 515, 518, 388 A.2d 816, 819 (1978).

Here, Koziol Firearms seeks two use variances for relief from Article III, Section 304, Table 1, Subsections 43-44 of the Central Falls Zoning Ordinances; one to manufacture firearms and a second to sell firearms. Central Falls Code of Ordinances (Ordinance) Art. III, § 304, Table I. This table sets out permitted, not permitted, and permitted upon approval uses in each specific zoning district. Specifically, subsections 43 and 44 state that “Limited Business Service” and “General Business Service” are not permitted in an R-2 or R-3 zoning district. Although there is no specific use which

² The Rhode Island Zoning Enabling Act, Title 45, Chapter 24 was amended and became effective on January 1, 2024. Because the appropriate standard to be applied to an appeal is the “the law in effect at the time when the applicant . . . submitted its application . . . ,” absent a “clear expression of retroactive application,” the statute as it was in July 2022 is applicable. *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006).

encompasses firearm manufacturing or selling, the Board determined that such a use fits best within subsection 43, “Limited Business Service” and subsection 44, “General Business Service.”³ *Id.* §§ 43-44. Neither a Limited Business Service nor a General Business Service is permitted in an R-2 or R-3 zoning district.⁴ *Id.*

Koziol Firearms asserts that the Board denied its application on the ground that the Property is located in a residential zone and suggests the issue of the Property’s designation as residential is unsettled. The Board did not err in denying the Application because there is substantial evidence in the record that Koziol Firearms did not meet its burden in proving all the elements required by § 45-24-41(d) and (e)(1).

Koziol Firearms then argued that it was entitled to a new hearing because the City Council failed to follow the appropriate notice procedures in rezoning the Property in 1992, thus rendering the rezoning unlawful, null and void. Koziol Firearms adds that the City Council has not provided adequate or sufficient evidence or proof that the 1992 zoning amendments were properly enacted, but it fails to appreciate that the burden is on it to prove such allegations. Further, Koziol Firearms had a limited amount of time to

³ A “Limited Business Service” includes “advertising agency; business office; credit reporting and collection service; interior designer; photocopy; duplication, mailing and stenographic service; private employment service; research and development of related activities; watch, clock and jewelry repair service.” Ordinance Art. X, § 1000, App. A, § 4.0. A “General Business Service” includes “printing and copying service; building maintenance service; car washing; catering service; cleaning establishment, including on premises dry cleaning; news syndicate service; pawn shop; radio, TV, electrical electronic and appliance repair service; re-upholstery and furniture repair service; trade school for the instruction of general business service; and wholesale merchandise broker, excluding wholesale storage.” *Id.*

⁴ An R-2 zoning district is “intended for medium density residential areas comprising single dwelling unit[s].” Ordinance Art. I, § 101.1. An R-3 zoning district is “intended for medium density residential areas comprised of structures containing single dwelling units, two-dwelling units and multiple-dwelling units located on lots with a minimum land area of 5,000 sq. ft. and a minimum land area of 2,000 sq. ft. per dwelling unit.” *Id.*

appeal the 1992 zoning amendments and never challenged the Building Official's finding that the Property was located in an R-2 zoning district. These arguments are without merit.

The Board made specific factual findings as to the elements required by § 45-24-41(d) and (e)(1) and made conclusions of law which this Court does not find erroneous. Specifically, the Board's conclusion that the proposed development is not consistent with the Comprehensive Plan is supported by its finding that the purpose of the Residential Zone in which the Property is located is to "promote the public health, safety and general welfare of residents" and "to provide separation and buffering between land uses that are incompatible."

The Board relied on substantial evidence—namely Ronald and Christopher Koziol's testimony—in noting that the application for the variance was primarily for economic gain and that, because an automotive repair shop will continue to operate on the Property, the Property will continue to yield a beneficial use without the use variances. Thus, the Board properly found that the Property already has a viable use without the granting of a variance. Moreover, the Board's finding that Koziol Firearms has not shown any harm is supported by the record, as Christopher and Ronald Koziol stated multiple times at the hearing that they would continue operating the auto repair shop on the Property. *See* Tr. 26:7-12.

Accordingly, because there is substantial record evidence that the Property already has a viable beneficial use, the Court finds that the Board did not err in denying the Application.

B

Declaratory Judgment

Finally, the Court must determine the fate of Koziol Firearms' declaratory judgment count in light of its decision to affirm the Board's decision and deny the appeal.

The purpose of the Uniform Declaratory Judgments Act is to "settle and to afford relief from uncertainty and insecurity with regard to rights, status, and other legal relations." G.L. 1956 § 9-30-12. Importantly, an "administrative appeal and a civil trial differ greatly with respect to governing procedural rules, burdens of proof, and standards of review." *Nickerson v. Reitsma*, 853 A.2d 1202, 1205 (R.I. 2004). For example, when passing on an appeal, "the Superior Court is limited to 'an examination of the certified record,'" yet when dealing with a declaratory judgment action, the Court may consider a broader array of evidence. *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000). Accordingly, "it is procedurally improper to bring claims for declaratory relief in a pending zoning appeal" *Dolock v. Avedisian*, Nos. WC-2010-0764, WC-2011-0052, WC-2011-0081, 2012 WL 3612317, at *21. (R.I. Super. Aug. 16, 2012) (Savage, J.).

Here, Koziol Firearms asks this Court to make declarations regarding the validity of the City of Central Falls City Council's 1992 amendments to the zoning ordinance and zoning map and notice procedures as well as the rights and status of the Property. Although these issues were briefly raised in the hearing on the Application and in the decision, the certified record is devoid of evidence the Court can use to declare such rights and status. Therefore, it is procedurally improper to decide the declaratory

judgment action in this current appeal. Accordingly, the Court dismisses the action for declaratory judgment without prejudice.

IV

Conclusion

For the reasons stated herein, the Court affirms the decision of the Board and dismisses Count II for declaratory judgment without prejudice.



TITLE OF CASE: Koziol Firearms, Inc. v. Zoning Board of Review
of the City of Central Falls, et al.

CASE NO: PC-2022-06796

COURT: Providence County Superior Court

DATE DECISION FILED: April 19, 2024

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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