

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: April 9, 2025)

BONNE, LLC, and TODD C. BONNE

Appellants,

v.

CITY OF NEWPORT ZONING

BOARD, by and through its members

named in their official capacity, SAMUEL

GOLDBLATT, DAVID RILEY, RUSSELL

JOHNSON, WICK RUDD, and BART

GRIMES, 95 BROADWAY, LLC,

CALLAHAN REALTY, and

INVESTMENTS, LLC

Appellees.

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C.A. No. NC-2024-0004

DECISION

LANPHEAR, J. Before this Court is Bonne, LLC and Todd C. Bonne’s (the Bonnes) appeal of the City of Newport Zoning Board’s approval of a special-use permit sought by 95 Broadway, LLC and Callahan Realty and Investments, LLC (collectively, Appellees). Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the Bonnes’ appeal is denied.

I

Facts and Travel

The Bonnes bring this action challenging the Board’s decision to grant the Appellees’ special-use permit application to establish a fast-food restaurant. The Bonnes own property located in a residential R-10 zoning district that directly abuts 95 Broadway Street, located in a General Business zone in Newport, Rhode Island. Callahan Realty owns a commercial building located at 95 Broadway Street, which it leases to 95 Broadway, LLC.

On November 8, 2023, Appellees filed an application for a special-use permit for the

purpose of operating a “market, with sales of groceries, meats, . . . coffee[;] [s]ome sales will be of prepared foods.” (Certified R. (R.) at 3.) On November 30, 2023, an abutter notice letter was sent to abutters, including the Bonnes, owning property within 200 feet of the Appellees’ property. On December 14, 2023, Zoning Officer Nicholas Armour generated a Staff Report which concluded that “[t]he [Appellees’] application appears to be in accord with the public convenience and welfare,” and that because the goods sold at Appellees’ market could be taken out and consumed without further preparation by the customer, along with the fact that there is no sit-down component, it is classified as a fast-food restaurant. (R. at 11-12.)

The Board held a public hearing on December 18, 2023. The Bonnes aver that they were not represented by counsel at the time. Although the Bonnes have not provided the Court with a written transcript or placed a recording on the record, the Bonnes claim the Board asked for a show of hands if there was “anyone here this evening in opposition to this petition.” (Bonnes’ Mem. Supp. of Appeal, 5.) No objections were raised at the hearing, nor had the Board received written letters of opposition. However, the Board received several letters of support. At the hearing, Board members asked three questions about the establishment’s hours of operations, the types of items sold, and whether food would be prepared on site. The entire proceeding lasted only a few minutes. The Board unanimously voted to grant Appellees’ application.

On December 19, 2023, the Board issued its decision, finding that Appellees

“met [their] burden of proof on each element of the Newport Zoning Code required for the requested special use permit, the request is consistent with the public convenience and welfare, in harmony with the surrounding area, will not have an adverse impact on abutting properties, and is consistent with the Newport Comprehensive Plan.” (R. at 15.)

In making its determination, the Board “adopted as its findings of fact . . . other information in the [Appellees’] application, exhibits, and Staff report, together with the testimony of the

witness(es) and/or the representations of counsel and the findings spread on the record by the Board Members[.]” *Id.*

On January 2, 2024, the Bonnes, now represented by counsel, filed the instant appeal pursuant to § 45-24-69, asking this Court to reverse the Board’s decision. *See* Compl. at 4. Now before the Court is their appeal.

II

Standard of Review

Section 45-24-69 governs this Court’s review of a zoning board decision. Subsection (d) provides that

“[t]he 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) [i]n violation of constitutional, statutory, or ordinance provisions;

“(2) [i]n excess of the authority granted to the zoning board of review by statute or ordinance;

“(3) [m]ade upon unlawful procedure;

“(4) [a]ffected by other error of law;

“(5) [c]learly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

“(6) [a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 45-24-69(d).

This Court “reviews the decisions of a . . . board of review under the ‘traditional judicial review’ standard applicable to administrative agency actions.” *Restivo v. Lynch*, 707 A.2d 663, 665 (R.I. 1998). This Court must consider “the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings.” *Salve Regina College v. Zoning Board of Review of City*

of *Newport*, 594 A.2d 878, 880 (R.I. 1991) (internal quotation omitted). “Substantial evidence is defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.” *New Castle Realty Company v. Dreczko*, 248 A.3d 638, 643 (R.I. 2021) (internal quotation omitted).

The Court “gives deference to the findings of a local zoning board of review” because it “‘is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance.’” *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008) (quoting *Monforte v. Zoning Board of Review of City of East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962)).

III

Analysis

“[T]he minimal requirements for a decision of a zoning board of review would be the making of findings of fact and the application of legal principles in such a manner that a judicial body might review a decision with a reasonable understanding of the manner in which evidentiary conflicts have been resolved and the provisions of the zoning ordinance applied.” *Thorpe v. Zoning Board of Review of Town of North Kingstown*, 492 A.2d 1236, 1237 (R.I. 1985). “Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany.” *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (internal quotation omitted). According to § 17.108.020.G of the Newport Municipal Code, “[special-use] permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

- “1. [t]he nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
- “2. [t]he resulting traffic patterns and adequacy of proposed off-street parking and loading;
- “3. [t]he nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
- “4. [t]he proximity of dwellings, churches, schools, public buildings and other places of public gathering;
- “5. [t]he fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
- “6. [a]ll standards contained in this zoning code; [and]
- “7. [t]he comprehensive plan for the city.” Newport Code of Ordinances, § 17.108.020.G (Oct. 23, 2023).

These standards are “conditions precedent to the board’s exercise of its authority to act affirmatively on an application for a special-use permit.” *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1086 (R.I. 2013).

In challenging the Board’s decision, the Bonnes first argue that the Board’s use of “conclusory language” in its decision contravenes § 17.108.020.G of the Newport Code of Ordinances, in that it does not address the seven standards listed in § 17.108.020.G. (Bonnes’ Mem. at 4.) In particular, the Bonnes argue that Appellees failed to demonstrate the use of the property would be “in harmony with the surrounding area.” *Id.* The Bonnes claim odors and noise are emitting from the property, causing what they contend is “an intolerable nuisance.” *Id.* at 8; *see also* § 17.108.020.G.3 of the Newport Code of Ordinances. Here, the Board relied on the Staff Report when it concluded that the application was “in accord with the public convenience and welfare,” and there was no evidence before the Board to the contrary. (R. at 11.) The Board need not read each element into the record when there is no objection to the application. The Board’s findings took into account the standards listed in § 17.108.020.G of the Newport Code of Ordinances when it found that the requested special-use permit is “consistent

with the public convenience and welfare, in harmony with the surrounding area, will not have an adverse impact on abutting properties, and is consistent with the Newport Comprehensive Plan.” (R. at 15-16.) Thus, the Board’s findings of fact are not conclusory and comport with the minimal requirements established in both *Thorpe* and *Bernuth*. Put another way, the Board was left without any evidentiary issues to resolve.

The Bonnes next suggest the Board’s “[a]bbreviated [s]ummary” process at the December 18, 2023 hearing was not consistent with § 45-24-42(b)(4), because “a fair-minded person watching the video of the December 18, 2023, proceedings . . . could not conclude that all persons have been heard who should have been heard,” when “[t]he only invitation for public participation was a request for a show of hands from anyone in *opposition*.” (Bonnes’ Mem. at 6 (emphasis in original).)

A zoning ordinance allowing the issuance of special-use permits approved by the zoning board of review shall “[p]rovide for public hearings and notification of the date, time, place, and purpose of those hearings to interested parties.” Section 45-24-42(b)(4). A zoning board is required to “adhere to the basic requisites of fairness in matters where a statute mandates a public hearing and not only invites the public to attend but gives it an opportunity to be heard[.]” *Golden Gate Corp. v. Town of Narragansett*, 116 R.I. 552, 562, 359 A.2d 321, 326 (1976). The crucial question for determining whether a public hearing is conducted in a fair manner is “whether a fair-minded person in attendance at all of the meetings on a given issue, could, at the conclusion thereof, in good conscience say that everyone had been heard who, in all fairness, should have been heard[.]” *Id.*

The Board provided the required notice of the public hearing to abutters on November 30, 2023. The notice included the time, date, location, and purpose of the hearing. Abutters were

invited to contact the zoning officer before the hearing with any “comments or objections.” The Bonnes did not do so. The application received multiple letters in support and no objections. The application was completely uncontested at hearing. Although the Bonnes parse the language used at the hearing, they do not suggest they or anyone else would have objected had the oral invitation to be heard been worded differently. Without objection, and relying on the evidence provided in the record, the Board properly concluded that “the [Appellees] ha[ve] met [their] burden of proof on each element of the Newport Zoning Code[.]” (R. at 15.) There were no evidentiary conflicts to resolve.

IV

Conclusion

For the foregoing reasons, the Bonnes’ appeal is denied. The Zoning Board’s grant of a special-use permit is therefore affirmed.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Bonne, LLC and Todd C. Bonne v. City of Newport
Zoning Board, et al.**

CASE NO: **NC-2024-0004**

COURT: **Newport County Superior Court**

DATE DECISION FILED: **April 9, 2025**

JUSTICE/MAGISTRATE: **Lanphear, J.**

ATTORNEYS:

For Plaintiff: **Andrew M. Teitz, Esq.
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For Defendant: **Girard Galvin, Esq.**