

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: November 18, 2025)

HARBOUR REALTY, LLC, TOMORL, LLC, :
20 WEST EXTENSION, LLC, WAITES :
WHARF REALTY ASSOCIATES, LLC, :
and THOMAS B. ABRUZESE :

Appellants, :

v. :

C.A. No. NC-2024-0139

SAMUEL GOLDBLATT, BART GRIMES, :
WICK RUDD, RUSSELL JOHNSON, and :
DAVID RILEY, in their Official Capacity as :
Members of the ZONING BOARD OF REVIEW: :
OF THE CITY OF NEWPORT. :

Appellees. :

DECISION

LANPHEAR, J. Before the Court is an appeal of a decision of the Zoning Board of Review of the City of Newport to deny a special use permit and dimensional variance for the construction of a hotel, restaurant, and banquet facility on Waites Wharf in the City of Newport. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the matter is remanded to the Zoning Board of Review so that it may make appropriate findings of fact.

I

Facts and Travel

Appellants are the owners of six lots that straddle the western end of Waites Wharf in Newport’s Waterfront Business Zone. Appellants seek to develop by combining these six lots into two for the construction of a hotel, restaurant, banquet facility, and parking spaces; presently

located on the Project Site are a restaurant, nightclub, and marina. Adjacent to the Project Site is property owned by the Intervenor, Coddington Wharf Condominiums.

Harbour Realty filed its Combined Application on June 26, 2019, initially proposing to demolish the existing structures on the Project Site and develop an upscale 150-room hotel complex. As originally proposed, the project would have required a special use permit for the construction of the hotel, a density variance to permit 150 rooms where 91 would be allowed under Newport's density formula, and variances relating to commercial parking standards.

As the proposal wended its way through the approval process it underwent significant revisions; the proposed hotel's buildings were redesigned, its room count reduced from 150 to 118, and the parking and traffic circulation plan was changed such that the need for parking variances was eliminated. *See* Certified R., Part 10, NEI Engineering Plans (stamped Sep. 21, 2023). Harbour Realty also agreed to a reduction in the occupancy capacity for the proposed restaurant and banquet facilities as well as the construction of public sidewalks and the granting of easements to ensure the public's access. As a result, the project then required only a special use permit for the construction of the hotel and a density variance to allow its 118 rooms.

By the time the Board voted on Harbour Realty's Combined Application on December 18, 2023, it had received over twelve hours of testimony from more than forty witnesses, including abutters from the surrounding neighborhood and other members of the public. The Board received numerous exhibits comprising hundreds of pages, consisting of plans, specifications, photographs, expert reports, and other materials.

The Board's Chairman framed the vote by reading the following motion into the record:

"It is our particular practice to frame the discussion in the context of a motion, granting the relief requested, and provided there is a second to that motion, then we will proceed with our discussion or deliberation, proposed findings of fact and conclusions. So I will to

adopt, as the Board's findings of fact, the information in the record of this proceeding, including, without limitation, the staff report application and supporting documents, reports, plans, exhibits and written public comment; the testimony of the witnesses called by the Applicant, those called by the Objector, Coddington Landing and Condominium Association and the interested and aggrieved persons and members of the public, together with the findings and comments spread on the record by the Board members. And I further move to adopt as the Board's findings and conclusions, the Applicant has met its burden of proof under Section 17.108.020 Sub-paragraph G, and Section 17.108.010 Sub-paragraph C of the Newport Zoning Code for the requested special use permit under Section 17.56.020 Sub-paragraph B of the Newport ordinances entitled "use regulations" to demolish the existing structures and construct a 118 room transient guest facility, and for a variance under Section 17.100.050.C entitled "transient guest facilities" to exceed the allowable number of transient guest rooms permitted, 118 requested, 91 permitted by lot size, and further move that the petition be granted on the conditions listed in the Applicant's Exhibit 1, a letter dated October 16, 2023 entitled, Waites Wharf Hotel proposed – proposal, proposed conditions of approval, from the attorney for the Applicant addressed to the Newport Zoning Board of Review, and on the further conditions the project be started and substantially completed within 24 months of recording the written decision, and that all outstanding invoices related to the cost of abutters notices be paid in full before and as a condition of recording the written decision." (Certified R. Part 7, Tr. 4:11-6:6, Dec. 18, 2023.)

This motion was seconded, but in the end the *nays* carried the day, and the hearing concluded in a 3-to-2 vote denying the Combined Application. *Id.* at 59:15-60:1. The Board memorialized this vote in a twenty-six-page written decision titled "Findings and Decision" (the Decision) on March 11, 2024.

On April 4, 2024, Harbour Realty and the other Appellants filed this instant appeal pursuant to § 45-24-69, asking this Court to reverse the Board's Decision.

II

Standard of Review

Section 45-24-69 governs the Superior 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) (internal quotation omitted).

Although this Court must consider “the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings,” *see Salve Regina College v. Zoning Board of Review of City of Newport*, 594 A.2d 878, 880 (R.I. 1991) (internal quotation omitted), “the [C]ourt will not search the record for supporting evidence or decide for itself what is proper in the

circumstances.” *Irish Partnership v. Rommel*, 518 A.2d 356, 359 (R.I. 1986). “[A] board’s failure either to make the prerequisite findings of fact or to give a valid ground for its conclusion are infirmities which cannot be overlooked and make it impossible for [the Court] either to approve or to disapprove what has been done.” *Carter Corp. v. Zoning Board of Review of Town of Cumberland*, 103 R.I. 515, 517, 238 A.2d 745, 747 (1968).

III

Analysis

Appellants put forth several arguments on appeal, but the Court is persuaded that the dispositive issue is advanced in Section IV of Appellants’ brief; to wit, that the Board’s Decision contains insufficient findings of fact and conclusions of law to allow meaningful review. Because that issue is controlling, the Court will address Appellants’ other arguments only to the extent that doing so is necessary or will be beneficial to subsequent proceedings.

A

The Board’s Decision Lacks Specific Findings of Fact

The Rhode Island Supreme Court has held that

“the 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) (citing *May-Day Realty Corp. v. Board of Appeals of Pawtucket*, 107 R.I. 235, 239, 267 A.2d 400, 403 (1970)).

“[U]nless these minimal requirements are satisfied, judicial review of a board’s work is impossible.” *Id.*

Here, the Board’s twenty-six-page Decision briefly reviews the travel of the proceedings and then summarizes the “discussion, deliberation, tentative findings, and conclusions” of each Board member individually. *See* Decision, at 5-24. The Decision notes, sensibly, that it would be “impossible . . . to recount in full the over twelve (12) hours of testimony heard by the Board, the substance of the many exhibits, or the many comments of the Board Members during their deliberations[.]” *Id.* at 2. The reader is instructed that the Decision “must . . . therefore be reviewed in the context of the . . . proceedings that precede it,” *id.*, and that the “Board’s decision is based on the totality of the record . . . all of which information is incorporated in this written Decision[.]” *Id.* at 5.

By drafting the Decision in this way, the Board has deprived the Court of the specific findings of fact necessary for appellate review. Although the Court is empowered to review the entire record in making its determination, it will not “search the record for supporting evidence or decide for itself what is proper in the circumstances.” *Irish Partnership*, 518 A.2d at 359. To do so would usurp the Board of its statutory authority—and obligation—to make such findings itself. It is the Board’s right alone to determine which witnesses are credible, what testimony to believe, and what facts to conclude.

The Court acknowledges that this matter has already absorbed a significant amount of the Board’s time and energy. *See* Hr’g Tr. 3:16-20, Dec. 18, 2023 (noting that the Board had dedicated a quarter of its annual work to this matter). Although the Court must remand for specific findings of fact, the Board need not accept new evidence unless it finds it should do so. Nor does the revised decision need to be a complete recounting of all the testimony, evidence, and

deliberations.¹ As the Board correctly observed, that would be impossible, but such exhaustive documentation is not required—the law only requires that the Board make specific findings sufficient for the Court to determine whether those findings are supported by “substantial evidence,” which evidence amounts to “more than a scintilla but less than a preponderance.” *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 508, 388 A.2d 821, 824-25 (1978)) (superseded by statute on other grounds). It may be, as Harbour Realty contends, that the Board’s Decision lacks specificity as a result of the over-broad language of the motion on which it voted. Moving forward, the Board should determine which facts it finds persuasive, and then weigh the issues according to the separate standards setting forth the burdens for special use permits and variances.

In finding such facts, the Board should do so as a whole, and in writing. Although the discussions of the individual board members is often helpful on appeal, the Board should explicitly enumerate which facts it has found to exist, e.g. whether the proposal is consistent with the current uses in the neighborhood and whether any conditions set forth in the law have been met. These are issues of fact which must be decided at the local board level after the hearing before the Board, considering the testimony and credibility of the witnesses and the admitted evidence.

To be clear, the Court makes no determination about the *merits* of the Board’s Decision or Harbour Realty’s appeal. Once the Board has issued a revised decision describing its specific findings of fact and conclusions of law, Harbour Realty is reserved its opportunity to request a fresh review if appropriate.²

¹ A recitation of all proceedings is not required in the decision as the transcript and record will remain available.

² It is helpful if the Board attempts to determine the facts and then votes on the decision consistent with the findings which have been found.

B

Preemption of Zoning Ordinance

Although the present appeal is resolved by the need to remand, a remaining issue may limit the Board’s ability to issue its decision on remand: to wit, Harbour Realty argues that Newport Zoning Ordinance § 17.112.040—pursuant to which the Board issued its Decision—is preempted by § 45-24-57 as it was in effect when Harbour Realty filed its Combined Application.

Newport Zoning Ordinance § 17.112.040 provides, in pertinent part:

“B. The zoning board of review shall be required to vote as follows *for petitions filed prior to January 1, 2023*:

“ . . .

“3. The concurring vote of *four of the five members* of the zoning board of review sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the zoning board of review upon which it is required to pass under the zoning code, including variances and special use permits.

“C. The zoning board of review shall be required to vote as follows *for petitions filed after January 1, 2023*:

“ . . .

“ 3. The concurring *vote of a majority of members* of the zoning board of review sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the zoning board of review upon which it is required to pass under the zoning code, including variances and special use permits.” Newport Zoning Ordinance § 17.112.040(B)-(C) (emphasis added).

At the state level, the powers and duties of a zoning board of review are set forth in § 45-24-57, which was amended in 2022. *See* P.L. 2022, ch. 208, § 2. Therefore, effective January 1, 2023, this section also provides that “[t]he concurring vote of a *majority* of members of the zoning board of review . . . is required to decide in favor of an applicant . . . including [for] variances and special-use permits.” *See* § 45-24-57(2)(iii) (emphasis added). Like Newport’s Zoning Ordinance,

the “majority” vote necessary to approve a variance or special use permit took effect on January 1, 2023. *See* P.L. 2022, ch. 208, § 4 (“This act shall take effect on January 1, 2023, and shall be prospective only and not applicable to any current zoning or planning hearing or appeal.”).

The Court is charged to apply the law in effect at the time the applicant submitted its application to the Zoning Board. *Watch Hill Fire District v. Westerly Zoning Board of Review*, 338 A.3d 326, 327 n.1 (R.I. 2025). Thus, under both Rhode Island’s General Laws and the Newport Zoning Ordinance in effect in 2019, Harbour Realty would have required an affirmative vote of four out of five members for its application to be approved.

IV

Conclusion

For the foregoing reasons, this matter is remanded to the Newport Zoning Board of Review to make findings of fact and conclusions of law and a revised decision based thereon. The Zoning Board is not required to hold any additional evidentiary hearings and may render its decision on the existing record.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Harbour Realty, LLC, et al. v. Samuel Goldblatt, et al.

CASE NO: NC-2024-0139

COURT: Newport County Superior Court

DATE DECISION FILED: November 18, 2025

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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For Defendant: Girard Galvin, Esq.

For Intervenor: Christopher J. O'Connor, Esq.