

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: May 6, 2026)

LISA BLANCHARD, TRUSTEE, LOUIS :
NEILL GRAY AND GEORGE F. BAKER, IV, :
Appellants, :

v. :

C.A. No. NC-2025-0017

WICK RUDD, DAVID RILEY, BART GRIMES, :
RUSSELL JOHNSON, AND NICOLE :
SHEVORY, IN THEIR CAPACITIES AS :
MEMBERS OF THE NEWPORT ZONING :
BOARD OF REVIEW; AND ANDREW :
MCHUGH AND AVANI MCHUGH, :
Appellees. :

DECISION

LANPHEAR, J. Before the Court is an appeal of a decision of the Newport Zoning Board of Review granting a dimensional variance and special use permit for the demolition of an existing structure and the construction of a three-story, single-family dwelling at 2 Wheatland Court. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

Appellees Andrew and Avani McHugh (Applicants) are the owners of real property located at 2 Wheatland Court in Newport, Rhode Island. The property is a small, but legal, non-conforming lot of record containing 2,433 square feet. Construction was allowed for a one-and-one-half story residence with setback infringements on all sides of the Property; later, in 2021, the present Applicants were granted variances to construct a new, single-family dwelling covering 40 percent

of the lot. The 2021 grant of variances was challenged in Superior Court, and construction was halted.

In April of 2024, Applicants changed tack and sought relief to demolish the existing structure and construct a new three-story dwelling with exterior decks on each floor. Applicants then submitted an amended Application on May 16, 2024 for a nearly identical project with a smaller footprint (the Project). The May 2024 Application requests a greater amount of lot coverage than the 2021 proposal because of changes to Rhode Island's General Laws. The present appeal concerns Applicants' May 2024 Application for a special use permit pursuant to Newport Zoning Code § 17.72.030, Alteration to nonconforming development, for the construction of the three decks; and for a dimensional variance pursuant to Newport Zoning Code § 17.24.050, Lot coverage requirements, to permit a lot coverage of 43 percent where 35.13 percent is typically permitted.

The Newport Zoning Board of Review conducted a public hearing and received testimony and evidence from the Applicants, their counsel, and an expert witness. The Board also heard statements in opposition from counsel retained by Appellants, who are abutters opposed to the Project. In a written decision dated December 23, 2024, the Board voted to approve the May 2024 Application by a vote of 3–2.

Appellants initiated the present appeal on January 14, 2025, alleging the Board's decision was violative of § 45-24-69. In a brief filed on June 24, 2025,¹ Appellants argued that the Board

¹ General Laws 1956 § 8-2-40(d) provides: "All memoranda from all interested parties in an appeal assigned to the calendar shall be completed within sixty (60) days of the filing of the certified record. No continuances or postponements shall be granted except for good cause shown." Here, the Certified Record was filed on March 18, 2025, and the Appellants' brief was filed ninety-three days later, without good cause. This tardiness is both in violation of statute and unfair to the Appellees, who already have little time to respond and whose Project may be halted during these proceedings.

failed to consider “each respective special use criteria” found in § 17.109.020(F) of the Newport Zoning Code, as required by § 45-24-42(d). Appellants’ Mem. in Supp. of Appeal 7. In turn, Applicants contend that the record contains evidence sufficient to support a finding that each element of § 17.109 was satisfied.

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).

“It is the function of the Superior Court to ‘examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.’” *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*,

120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). ““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) (quoting *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013)). This Court “gives deference to the findings of a local zoning board” 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)). If the Court ““can conscientiously find that the board’s decision was supported by substantial evidence in the whole record,”” then it must uphold that decision. *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (quoting *Apostolou*, 120 R.I. at 509, 388 A.2d at 825).

III

Analysis

The gravamen of Appellants’ argument is that the Board failed to comply with the requirements set forth in § 45-24-42(d). That section provides, in pertinent part, that a local zoning ordinance shall

“provide that an applicant apply for, and be issued, a dimensional variance in conjunction with a special-use permit. If the special use could not exist without the dimensional variance, the zoning board of review . . . shall consider the special-use permit and the dimensional variance together to determine if granting the special use is appropriate based on each respective special use criteria and the dimensional variance evidentiary standards.”

The Newport Zoning Code sets forth the specific and objective criteria applicable to the present dispute in § 17.109.020(F), which concerns permits for “Category 6” special uses. That section provides:

“F. Category 6:

“A structure or land which is nonconforming by dimension, but the use of which is a use permitted by right in the district in which the land or structure is located, shall only be altered, changed, enlarged or subject to addition or intensification with respect to its nonconforming element(s) by obtaining a special use permit from the zoning board of review. Special use permits for alterations, changes, enlargements, or subject to addition or intensification with respect to its nonconforming element(s) must comply with the following:

“1. The alteration, change, enlargement, addition or intensification will not increase the dimensional nonconformity, or a variance shall be obtained from the zoning board of review, subject to the affirmative determination of the standards for variances under [Section] 17.108.020.C.

“2. Will not alter the character of the surrounding area within two hundred (200) feet of the property lines.

“3. No net increase in stormwater runoff from the site.

“4. All proposed lighting is Dark-Sky compliant.”

Appellants do not challenge the Board’s grant of variance, only its grant of the special use permit pursuant to § 17.109.020(F). The Court finds there is sufficient evidence in the record to support the Board’s decision that the Project was in compliance with this section.

First, the record contains a report prepared by the Applicants’ expert, Mr. James. A. Houle, who also testified before the Board. *See* Certified R. Part 10, James A. Houle & Associates Report of Findings (the Houle Report); *see also* Certified R. Part 1, Decision, at 3–4. The Houle Report contains an Aerial Map of the Property, which reveals a neighborhood of large houses crowded onto small lots. *See* Certified R. Part 10, Houle Report, at 6. Mr. Houle analyzed the Property in

relation to the other properties in the neighborhood, both within and beyond the 200-foot radius required by § 17.109.020(F)(2), and concluded Applicants' proposed home is consistent with and in proportion to the size, scale, and density of homes already in the neighborhood. Certified R. Part 1, Decision, at 3–4, ¶¶ a–g. Mr. Houle specifically testified that the Applicants' lot is the smallest in the neighborhood, and most of the surrounding lots exceeded the lot coverage permissible without a variance or special use permit. *See id.* ¶¶ f–g. The Court finds that this evidence and testimony is more than the scintilla needed to justify a decision that Newport Zoning Code § 17.109.020(F)(2) was satisfied.

Further, the Houle Report found the setbacks and height of the Applicants' proposed Project would be conforming, as well as its proposed use as a residential single-family dwelling. The Houle Report specifically noted that the “proposed changes will be part of an intensification of the dimensional non-conformity[,]” and “[t]he necessary variance ha[d] been applied for[.]” Certified R. Part 10, Houle Report, at 13. As noted, in 2021 the Applicants applied for, and were granted, a variance permitting lot coverage of 40 percent, and the present proposal seeks a variance permitting lot coverage of 43 percent. This information was specifically incorporated into the Board's decision and adequately satisfies the requirements of § 17.109.020(F)(1).

Finally, the Houle Report specifically provides that there will be no increase in stormwater runoff and any lighting installed on the Property will be Dark-Sky compliant, per the submitted plans. These conclusions satisfy the requirements of § 17.109.020(F)(3)–(4).

On cross-examination, Mr. Houle conceded that the Applicants' proposed decks were inconsistent with other properties in the neighborhood. This inconsistency was discussed by the Board; each of the Board members at the hearing discussed their views of the proposal; and the

Board ultimately concluded the Project could proceed if the number of decks was limited and the third floor was not used as living area.

The Board, as the finder of fact, is entitled to accept the testimony of an expert, and the Court may not substitute its judgment for that of the Board if it “can conscientiously find that the . . . decision was supported by substantial evidence in the whole record.” *See Mill Realty Associates*, 841 A.2d at 672 . Here, the record is sufficient for the Court to comfortably find that the Board’s decision was supported by substantial evidence.

IV

Conclusion

Accordingly, the Board’s decision is affirmed and the present appeal denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Lisa Blanchard, et al. v. Wick Rudd, et al.

CASE NO: NC-2025-0017

COURT: Newport County Superior Court

DATE DECISION FILED: May 6, 2026

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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For Defendant: Matthew J. Landry, Esq.
Girard Galvin, Esq.