

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 6, 2025)

GEORGE G. JACKSON

Appellant,

v.

CITY OF WOONSOCKET ZONING
BOARD OF REVIEW

Appellee.

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C.A. No. PC-2017-1379

DECISION

LANPHEAR, J. Before this Court is George G. Jackson’s appeal of the City of Woonsocket Zoning Board of Review’s decision denying his application for a dimensional variance. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, this Court affirms the Board’s denial of Mr. Jackson’s application for a dimensional variance.

I

Facts and Travel

Mr. Jackson brings this action challenging the Board’s decision to deny his request for a dimensional variance to construct a fence around his property, exceeding the height requirements set in Section 6.2 of the Woonsocket Zoning Code. *See* Certified R. (R.) at 30. Mr. Jackson owns property located in a residential R-3 zoning district at 170 Spring Street, Woonsocket, Rhode Island (the Property). *Id.*

Section 6.2-1 of the Woonsocket Zoning Code states that

“[f]ences [are] [p]ermitted in . . . R-3 . . . Districts. Fences located in front yards shall not exceed three (3) feet in height.

Fences located in side yards shall not exceed four (4) feet in height. Fences located in rear yards shall not exceed six (6) feet in height.” Woonsocket Code of Ordinances, § 6.2-1.

On January 17, 2017, Mr. Jackson filed an application seeking a dimensional variance to erect a five-and-one-half-foot fence in his front yard and a four-and-one-half-foot fence in the side yard.¹ R. at 6. On February 13, 2017, a public hearing was held before the Board. At the time of the hearing, both fences were partially installed. *Id.* at 6, 30. Carol Montayne, acting as Mr. Jackson’s Power of Attorney, appeared at the hearing and testified on Mr. Jackson’s behalf. *Id.* at 31. The Board voted unanimously to deny the application. *Id.* at 27.

On February 28, 2017, the Board issued its decision. The Board stated that it was denying the application, finding (1) “[Mr. Jackson’s] desire to fence in his shepherd dogs is a personal hardship and not a hardship that emanates from the land and is not unique to other properties found in the area,” (2) “[t]he requested fence height, especially in addition to the two feet height of the wall, would . . . transform the fence into a fortress-like barrier,” (3) “the current allowed height of the fence will allow [Mr. Jackson] a sufficient barrier to allow the shepherd dogs to run, and provides sufficient protection to the public,” and (4) not granting the variance “will amount to no inconvenience at all since the current allowable height limits will suffice to satisfy [Mr. Jackson]’s privacy issues.” R. at 36-40.

On March 28, 2017, Mr. Jackson filed the instant appeal in the Superior Court, as a memorandum in support of his appeal, asking this Court to reverse the Board’s decision.

¹ Mr. Jackson previously applied for a dimensional variance that was denied by the Board and subsequently appealed it. *Jackson v. City of Woonsocket Zoning Board of Review*, No. PC-2014-6102, 2016 WL 6833203 (R.I. Super. Nov. 15, 2016). The Superior Court issued a decision affirming the denial of Mr. Jackson’s prior application.

See Compl. at 4.² This case sat dormant without any action from the City of Woonsocket until the creation of the Land Use Calendar in 2024 pursuant to G.L. 1956 § 8-2-40. On January 30, 2024 and July 30, 2024, this Court issued Scheduling Orders.

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) (internal quotation omitted). This Court must consider “the entire record to determine whether ‘substantial’ evidence exists to support the board’s

² As Mr. Jackson’s only memorandum is his complaint, the Court cites that document as “Jackson Mem.” herein.

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

At the time³ Mr. Jackson filed for the dimensional variance, § 45-24-41(d) stated that

“[i]n granting a variance, the zoning board of review requires that evidence to the satisfaction of the following standards is entered into the record of the proceedings:

“(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(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 In reviewing a decision by a local board, this Court must apply the law “[as it existed] when the applicant-developer submitted its application[,]” absent a clear expression of retroactive application. *East Bay Community Development Corp. v. Zoning Board of Review of the Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006).

“(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).

In addition to the requirements stated in § 45-24-41(d), “evidence [must be] entered into the record of the proceedings showing that . . . in granting a dimensional variance . . . the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.” Section 45-24-41(e)(2).

A

Uniqueness of Property and Hardship Suffered

Mr. Jackson argues that the Property is “clearly one of the most unique properties in the neighborhood for a number of reasons as the pictures [submitted with the application] show.” (Jackson Mem. 9.) In the application, Mr. Jackson states that the Property is unique because the “previous use as church property included people [who] could walk through the property, take short cuts to and from school, sit on the lawn for personal and public use as if [it was] a park to drink and watch fireworks.” (R. at 10.) Mr. Jackson also states that the Property is unique because “[t]here is a church and school building” next to the home, and “[t]he current occupants of the church, since 2010, have been using [Mr. Jackson’s] parking lot and yards . . . [and] [q]uite often children are left playing unsupervised on [the Property].” *Id.* He further claims “[the] two foot wall in the front [of the Property] makes it even more of a hardship and unique feature of the land[,]” because “[t]here are very few [properties] that have [a] two foot curbed wall in the front.” (Jackson Mem. 10-11.) Mr. Jackson claims his request for a dimensional variance is “necessary to provide a safe place

for [his three-foot-tall Shepherd] dogs to run and for the public walking by.” (R. at 11.) Mr. Jackson asserts “[h]aving public use in [his] back yard without privacy and full beneficial use in the front create[s] a hardship[.]” (Jackson Mem. 12.)

Based on the evidence, the Board found those issues “are no different than issues that affect other properties surrounding the school and the church.” (R. at 35.) It found “the Property in question does not contain any unique characteristics.” *Id.* at 36. The Board held “[Mr. Jackson’s] desire to fence in his shepherd dogs is a personal hardship and not a hardship that emanates from the land and is not unique to other properties found in the area.” *Id.* The Board concluded “these issues do not meet [Mr. Jackson’s] hardship burden of proof since [they] are not unique to [Mr. Jackson], nor to the physical characteristics of the subject land or structure, but are common issues characteristic of the surrounding residential neighborhood.” *Id.* at 34.

There is sufficient evidence on the record to support the Board’s finding of a personal hardship, not a hardship emanating from the land. This Court will not substitute the Board’s judgment.

B

Alteration of the General Character of Surrounding Area

Mr. Jackson claims his request complies with the general characteristics of the area.

The Board concluded, “allowing the construction of a five foot six inch (5 ½) fence in the front yard and a six foot six inch (6 ½) fence in the side yard would essentially mean that the fence barrier would project seven feet six inches (7 ½) above the curbing in the front yard and eight feet six inches (8 ½) . . . above the curbing in the side yard which would in effect transform the fence into a fortress-like barrier that would in part make it

more difficult for drivers to negotiate their vehicles around the property.” (R. at 37.) The Board also found the character of the surrounding neighborhood to be residential.

Mr. Jackson did not provide sufficient evidence to establish preservation of the area’s general characteristics. The Board was within its prerogative to conclude the application would alter the general character of the surrounding area.

C

Relief Granted is the Least Relief Necessary

The application alleges the request for a dimensional variance is “the [least] relief necessary to provide a safe place for [his three-foot-tall] dogs to run and for the public walking by.” (R. at 11.) Mr. Jackson asserted he has no backyard.

The Board reasoned Mr. Jackson would have barriers of over five feet under the present provisions. Hence, the Board found Mr. Jackson “failed to demonstrate that the relief to be granted is the least relief necessary.” (R. at 38.) The record supports the Board’s finding.

D

Hardship Suffered Amounting to More than a Mere Inconvenience

Mr. Jackson proffers “[h]aving a public easement in the back and no privacy or place to grill or hang out . . . are more than mere inconveniences.”⁴ (Jackson Mem. 12.) He alleges he has been unable to complete landscaping or fully use the yards.

The Board found the current height sufficient for privacy issues and under the current provisions Mr. Jackson could “complete the landscaping and fully use the front and

⁴ Mr. Jackson maintains that there is a public easement in his backyard but fails to provide supporting evidence.

side yards of the property.” R. at 40. The Board concluded Mr. Jackson “has not presented competent evidence to support a finding that the hardship of not obtaining the Variance amounts to more than a mere inconvenience.” *Id.* This Court finds sufficient evidence on the record to support the Board’s findings and will not substitute its judgment for that of the Board.

E

Claims of Conflict of Interest and Discrimination

Finally, Mr. Jackson claims “[t]he board discriminates with extreme prejudice and premeditation with no plans of granting the variance,” alleging that the Board “discriminated and was contradictory in granting the ten other variances for the same reason, it denied [Mr. Jackson]’s request for a variance.” (Jackson Mem. 2-3.) Mr. Jackson further claims that the Board violated “the separation of church and state and conflicts of interest simply because of the profile of the property and the previous use in a small town.” *Id.* at 3. In the application, Mr. Jackson claims that he questions the impartiality of the Board because “many people grew up in the church, attended school and talk among themselves,” and his “original application for a fence permit was denied and appealed repeatedly . . . [and] . . . discussed . . . for four years.” (R. at 12.)

Mr. Jackson does not provide any evidence, aside from mere assertions, demonstrating how the Board has discriminated against him, how there is a violation of the Establishment Clause, or any conflict of interest.

Without sufficient evidence to support Mr. Jackson’s claims, there is sufficient evidence on the record to support the Board’s decision and the Court does not substitute its judgment for that of the Board.

IV

Conclusion

For the foregoing reasons, Mr. Jackson's appeal is denied. The Board's decision denying Mr. Jackson's request for a dimensional variance is therefore affirmed.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: George G. Jackson v. City of Woonsocket
Zoning Board of Review

CASE NO: PC-2017-1379

COURT: Providence County Superior Court

DATE DECISION FILED: August 6, 2025

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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