STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 11, 2025)

RJC NP, LLC and CDC NP, LLC	:	
Appellants,	:	
	:	
v.	:	**C.A. No. PC-2023-01635**
	:	
THE TOWN OF NORTH PROVIDENCE ZONING BOARD OF APPEALS; JOSEPH SCORPIO, in their capacity as a Member of the North Providence Zoning Board of Appeals; DAWN MARANO, in their capacity as a Member of the North Providence Zoning Board of Appeals; BRIAN RICCI, in their capacity as a Member of the North Providence Zoning Board of Appeals; DEBORAH GONZALEZ CABALLER, in their capacity as a Member of the North Providence Zoning Board of Appeals; JAMES RANIERI, in their capacity as a Member of the North Providence Zoning Board of Appeals; EDWARD CATONE, in their capacity as a Member of the North Providence Zoning Board of Appeals; ANTHONY COSTELLO, in their official capacity as a Member of the North Providence Zoning Board of Appeals; SCRUB-A-DUB AUTO WASH CENTERS, INC.; and RICHKESS, LLC	:	
***Appellees*.**	:	

DECISION

LANPHEAR, J. Before the Court is RJC NP, LLC and CDC NP, LLC's (Appellants) appeal from the decision of the Town of North Providence Planning Board. At issue is the Planning Board's grant of a combined master plan and preliminary plan approval requested by Scrub-A-Dub Auto Wash Centers, Inc. and Richkess, LLC (collectively, Scrub-A-Dub). Jurisdiction is

pursuant to G.L. 1956 § 45-23-71. For the reasons set forth herein, Appellants' appeal is denied, and the Planning Board's decision is affirmed.

I

Facts and Travel

Scrub-A-Dub seeks to develop a car wash facility on property located at 1883 Mineral Spring Avenue, North Providence, Rhode Island. The property has been vacant for several years and directly abuts a seventy-six-unit apartment building located at 528 Smithfield Road, North Providence, Rhode Island, owned by Appellants.

On September 12, 2022, Scrub-A-Dub submitted a combined master plan and preliminary plan application to the Planning Board.

On October 12, 2022, the Planning Board held a hearing on the application during which the Planning Board heard testimony about the application from Scrub-A-Dub President Danny Paisner, an engineer from Crossman Engineering Company, Lisa McChesney, a registered traffic engineer from Crossman Engineering Company, as well as other individuals. The Planning Board voted unanimously 5-0 to grant the application.

On November 4, 2022, the Planning Board issued its written decision granting Scrub-A-Dub's request for a combined master plan and preliminary plan approval. The Town of North Providence Zoning Board of Appeals issued its written decision affirming the Planning Board decision on March 20, 2023. Appellants appealed.

II

Standard of Review

General Laws 1956 § 45-24-69(a) grants the Superior Court jurisdiction to review decisions of local zoning boards. Such review 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 [Appellants] 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;
> "(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 other words, this Court "reviews the decisions of a plan commission or 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). The Court is "limited to a search of the record to determine if there is *any competent evidence* upon which the agency's decision rests. If there is such evidence, the decision will stand." *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285-86, 373 A.2d 496, 501 (1977) (emphasis added). The Court may not substitute its judgment for that of the zoning board's with respect to the weight of the evidence, questions of fact, or credibility of the witnesses. *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986). However, this Court conducts a *de novo* review of questions of law. *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 791 (R.I. 2005).

The 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) (quoting *DeStefano v. Zoning Board of Review of City of Warwick*, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)).

III

Analysis

A

Unlawful Procedure

Appellants claim the Planning Board did not follow proper procedure because they did not receive notice of the Planning Board hearing, there was an issue with the abutter's notice, and the Planning Board's hearing notice to the public did not meet G.L. 1956 § 42-46-1 requirements.

1

Notice

Under § 45-23-42(b),[1] "[n]otice shall be sent to the applicant and to each owner within the notice area, by certified mail, return receipt requested, of the time and place of the hearing not less than ten (10) days prior to the date of the hearing." Scrub-A-Dub was required to send notice of the hearing. Though Appellants claim they did not receive notice of the hearing, this Court finds that notice was sufficient and established by Scrub-A-Dub. Scrub-A-Dub provided copies of the certified mail receipts showing notice was sent to property owners by certified mail on September 27, 2022, including to Appellants. This notice was sent more than ten days prior to the hearing on October 12, 2022.

Additionally, Attorney Lisa affirmed that he mailed notice from the Town of North Providence to Appellants on September 27, 2022, and Brent Wiegand, Director of Planning and Zoning for North Providence, acknowledged receipt of "the original Stamped White Certified

[1] The statute has since been updated and § 45-23-42(b) no longer exists. Section 45-23-42 (updated by P.L. 2023, ch. 316, § 2 and P.L. 2023, ch. 317, § 3, eff. June 23, 2023).

Mail Receipts relative to the September 27, 2022 mailing to the Abutters enclosing the Town of North Providence Planning Board Notice." (Certified R. Part 1 at 18.)

The statute requires that notice be sent, not that it be received.[2] The Court finds the evidence sufficient that Appellants received notice of the hearing as prescribed by statute, and the Court declines to address any further arguments that stem from lack of notice.

Appellants next assert that the notice failed to meet statutory requirements and did not provide sufficient notice identifying the action before the October 12, 2022 hearing. Appellants contend the Planning Board's meeting agenda was not in accord with the Open Meetings Act as it was insufficient under § 42-46-6. The Open Meetings Act provides explicit remedies in § 42-46-8, and overturning a governmental action is not an enumerated remedy. Complaints are filed with the Attorney General, who may initiate a court action. Here, the alleged violation was for a failure to provide proper notice, not for its review of the appeal or deciding the appeal. Therefore, the Court declines to make findings or award relief for the alleged violation.

Specifically, the public notice stated the following:

> "Application for masterplan review with request and potential vote to combine masterplan and Preliminary Plan stages of review for a car wash and recommendation to the Zoning Board regarding a request for a Special Use permit under section 608 Size of Permitted Signs by Zone for 94.6 square feet of sign, under the 40% excess permitted under Section 611 with a special use permit., a Special Use Permit under section 105(e) Zone Boundaries to expand the Commercial General Zone to the entire lot, a special use permit under section 203 District Use Regulations for a vehicle washing shop, a 9 foot side yard variance under section 204 District Dimensional Regulations, a 14 foot residential setback variance under section 308 Commercial Districts Abutting Residential Districts, and a 5 space parking variance under section 710 Minimum Off Street Parking Requirements for a drive thru

[2] Requiring proof of mailing, the notice seems logical as the addressees could refuse the certified mail to delay the hearing or be otherwise undeliverable.

commercial establishment." (Certified R. Part 1 at 17.)

The Court finds that public notice was sufficient as the date, time, and place of the meeting was noted, as well as a statement of the business to be acted upon.[3]

While the notice was legally sufficient, the Court notes that notice could have been drafted much better. Public notices are intended to inform the public about what may happen so they may participate and observe. While the Planning Board included sufficient information notices should not be a struggle to read. Cramming all information possible into one long run-on sentence was not the best way to maintain transparency in civic engagement. Public officials are urged to make their notices readily understandable by laypeople and explain in plain English the topics of hearings.

Arguments by Appellants that the Planning Board did not properly follow notice requirements fail.

2

Planning Board's Application Approval

Appellants argue that the Planning Board approved the application in error based on requirements set forth in § 45-23-62(a)(1) and (a)(2) as well as requirements set forth in the Town of North Providence Planning Board of Review Requirements. Section 45-23-62 allows a board to grant a waiver for a development plan approval in limited circumstances based on certain requirements. Section 45-23-62.[4]

[3] The Court concerns itself with appropriate notice and leaves to the Attorney General the task of enforcing chapter 46 of title 42. Although § 42-46-6(b) requires the notice to indicate the date the notice was posted, the notice is deemed to have been appropriate for purposes of this appeal.
[4] The statute has since been updated. Section 45-23-62 (updated by P.L. 2023, ch. 308, § 2 and P.L. 2023, ch. 309, § 3, eff. Jan. 1, 2024).

First, though Appellants question the waiver grants, they do not identify specific waivers they challenge. There does not appear to be a waiver for the development plan approval in the Planning Board decision, but there is a conditional approval that Scrub-A-Dub must meet certain conditions and get various permits before final approval. This conditional approval is well within the Planning Board's prerogative to issue.

Appellants suggest Scrub-A-Dub did not meet all Planning Board review requirements because no "Class I Survey" was submitted with its application. The Certified Record establishes Scrub-A-Dub submitted a Class I Survey which accurately described the property and was stamped and signed by a licensed civil engineer. *See* Certified R. Part 4 at 125. Additionally, § 45-23-62 gives the Planning Board broad powers to grant waivers for requirements if desired. Therefore, there is no merit to Appellants' argument.

The Planning Board's decision was not made upon unlawful procedure.

B

Substantial Evidence

Appellants claim the Planning Board's decision was unsupported by legally competent evidence and the findings of fact were insufficient to enable judicial review. This Court "shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact." Section 45-23-71(c).[5] This Court "gives deference to the findings of fact of the local planning board." *See West v. McDonald*, 18 A.3d 526, 531 (R.I. 2011). A planning board's findings of fact "must be supported by legally competent evidence on the record which

[5] The statute has since been updated. Section 45-23-71(c) (updated by P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, eff. Jan. 1, 2024; P.L. 2023, ch. 309, § 1, eff. Jan. 1, 2024; P.L. 2024, ch. 403, art. 2, § 21, eff. June 26, 2024).

discloses the nature and character of the observations upon which the fact finders acted." Section 45-23-60(b).

Appellants rely on *Boon Street Presby, LLC v. Town of Narragansett Zoning and Platting Board of Review*, No. WC-2018-0489, 2021 WL 408948, at *16 (R.I. Super. Feb. 1, 2021), for this argument. In *Boon Street Presby, LLC*, the trial justice remanded the planning board's decision to the planning board based largely on the written decision being factually incorrect and misstating what occurred at the planning board hearing. *Boon Street Presby, LLC*, 2021 WL 408948, at *18. The present action is not comparable to *Boon Street Presby, LLC* because, after a review of the Planning Board hearing transcript and the decision, no factual inaccuracies are present in the instant action as were in *Boon Street Presby, LLC*. Here, the Planning Board adopted the findings recommended in a memorandum prepared by the Town's Director of Planning, and the memorandum contained many specific findings of fact in all relevant areas. The Planning Board addressed its findings on each area as required under § 45-23-60. At hearing, the Planning Board heard from multiple members of the Scrub-A-Dub team, including its president, engineer, and traffic engineer. The Planning Board was engaged, asked questions, and remained critical of different elements of the project.[6] Additionally, the Planning Board conditioned the application's approval on seven specific conditions to ensure compliance with all Town requirements. Finally, the Court finds no misstatements or factual inaccuracies between the Planning Board findings at hearing and its written decision. There was legally competent evidence on the record to support the application approval.

[6] *See, e.g.* Certified R. Part 1 at 62, Tr. 18:22-25 (Board Member Parente asked "[W]as another location for the canopy considered where you wouldn't have to request so much relief?"); *see, e.g.* Certified R. Part 1 at 67-68, Tr. 23:25-24:4 ("[T]rash receptacles, what happen[s] to those people who are taking their car to the car wash oftentimes are going to clean out whatever trash is in their car at the same time, and I just want to make sure that you're proposing an adequate remedy to dispose of that trash.").

Next, Appellants claim the Planning Board's decision is not supported by legally competent evidence as the Planning Board was not presented with expert witness testimony about noise pollution. An expert witness is not required to be presented in a town proceeding. *See Restivo*, 707 A.2d at 671 ("[T]here is no talismanic significance to expert testimony. It may be accepted or rejected by the trier of fact . . .[,]" particularly when "[t]he subject matter [is] not so arcane that inferences from factual lay testimony could not be drawn by members of the council based, in part, on their own expertise.").

The Planning Board here considered sufficient evidence to address its concerns. Testimony was provided from Scrub-A-Dub President, Mr. Paisner, an engineer from Crossman Engineering Company, Ms. McChesney, a registered traffic engineer from Crossman Engineering Company, and others. Ms. McChesney, a traffic engineer with twenty-seven years of experience, testified regarding traffic impacts. The Planning Board even proactively asked about sound considerations. When the Planning Board asked about noise considerations related to vacuums on the site, Mr. Paisner testified that the vacuums at Scrub-A-Dub would be "lower in noise than the old style" vacuums. (Certified R. Part 1 at 69, Tr. 25:13-15.) The Planning Board members held discussions with an abutter and, though the abutter stated that planting evergreens would be a waste of time, Planning Board members asserted the "evergreen trees may assist with the absorption and sound coming off" the property. (Certified R. Part 1 at 91, Tr. 47:4-16.) Mr. Paisner did not hold himself out as a sound expert, he merely answered queries about the impact noise levels of vacuums, and a non-expert may answer such questions. *See Restivo*, 707 A.2d at 671.

The Planning Board conditioned the application approval on a "residential vegetative buffer [being] installed at a minimum height of 5 feet and be made up of evergreen shrubs and

that all fencing [be] installed to the satisfaction of the abutting neighbors[,]" in order to help protect abutting neighbors from sound pollution. *See* Certified R. Part 1 at 2.

Each of these examples demonstrate the Planning Board's engagement in concerns for the proposal. The Planning Board members were engaged, given sufficient evidence on record about the project, and responded thoughtfully to that evidence. The Planning Board's findings were based on competent evidence in the record. *See Prete v. Parshley*, 99 R.I. 172, 176, 206 A.2d 521, 523 (1965).

IV

Conclusion

Appellants' appeal is denied, and the Planning Board's decision is affirmed.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**RJC NP, LLC, et al. v. Town of North Providence Zoning Board, et al.**
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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 11, 2025**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Michael Resnick, Esq.**
For Defendant:	**Kelley Morris Salvatore, Esq.**