STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 2, 2025)

RJC NP, LLC and CDC NP, LLC, ***Appellants,***	:	
v.	:	**C.A. No. PC-2023-00828**
THE TOWN OF NORTH PROVIDENCE ZONING BOARD; EDWARD CATONE, in his capacity as a Member of the North Providence Zoning Board; ANTHONY COSTELLO, in his capacity as a Member of the North Providence Zoning Board; BRIAN RICCI, in his capacity as a Member of the North Providence Zoning Board; JAMES RANIERI, in his capacity as a Member of the North Providence Zoning Board, JOSEPH SCORPIO, in his capacity as a Member of the North Providence Zoning Board, DEBBIE GONZALEZ-COBALLER, in her capacity as a Member of the North Providence Zoning Board; DAWN R. MARANO, in her capacity as a Member of the North Providence Zoning Board; SCRUB-A-DUB AUTO WASH CENTERS, INC. and RICHKESS, LLC, ***Appellees.***	:	

DECISION

LANPHEAR, J. Before the Court is Appellants RJC NP, LLC and CDC NP, LLC's (Appellants) appeal from the decision of the Town of North Providence Zoning Board. At issue is the Zoning Board's grant of a special-use permit and dimensional relief 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.

I

Facts and Travel

Scrub-A-Dub seeks to develop a car wash facility on property located at 1883 Mineral Spring Ave., North Providence, Rhode Island. The property previously was utilized as a Friendly's Ice Cream restaurant but has been vacant for several years. The property is mostly located within the Commercial General (CG) district, although a portion of the property is in a Residential General district (RG). The property directly abuts a seventy-six-unit apartment building located at 518 Smithfield Road, North Providence, Rhode Island, owned by Appellants. The property is also abutted by gas stations. A car wash, now closed, previously was adjacent to the property.

On September 26, 2022, Scrub-A-Dub submitted an application to the North Providence Zoning Board seeking relief so that Scrub-A-Dub could develop a car wash facility on the property. The application sought the following relief: (1) a special-use permit to expand the Commercial General Zone to the entire lot pursuant to Section 105(e) of the North Providence Zoning Ordinance; (2) a special-use permit to operate a car wash facility pursuant to Section 203 of the North Providence Zoning Ordinance; (3) a special-use permit to expand the permitted size of signs to 94.6 square feet pursuant to Section 611 of the North Providence Zoning Ordinance; (4) a nine-foot side yard variance pursuant to Section 204 of the North Providence Zoning Ordinance; (5) a fourteen-foot residential setback variance pursuant to Section 308 of the North Providence Zoning Ordinance; and (6) a three-space parking variance pursuant to Section 710 of the North Providence Zoning Ordinance's requirements for minimum off-street parking requirements for a drive-through commercial establishment. After a hearing on October 12, 2022, the North Providence Planning Board recommended that the Zoning Board approve the project, subject to certain conditions,

including installation of fencing to the satisfaction of abutting neighbors and the creation of a residential vegetative buffer.

On November 4, 2022, Appellants sent a letter to the Planning Board and Zoning Board expressing their opposition to the project. The letter noted that Scrub-A-Dub did not submit a noise study of the property with the application. Appellants contended the project would interfere with the quiet use and enjoyment of their property.

On November 17, 2022, the Zoning Board held a hearing on the application. Daniel Paisner, President of Scrub-A-Dub, testified that Appellants had made changes to the project, including reducing the amount of a parking variance needed and reducing the number of lights per structure from three to two. Scrub-A-Dub presented four expert witnesses whose relevant testimony is set forth below.

Christopher Cabral, a professional engineer from Crossman Engineering, testified that the project would require relief due to the unique shape of the property. Following Mr. Cabral's testimony, Elizabeth McChesney from Crossman Engineering, a traffic engineer who was qualified by the Zoning Board as a traffic expert, testified. Ms. McChesney testified there were no issues with traffic and that twenty-four cars could be queued on the property at a time. She noted that, despite being able to handle up to twenty-four vehicles, the project expected a maximum of fourteen vehicles at once.

Thomas O. Sweeney, a real estate appraiser, testified that the proposed use would be consistent with the surrounding properties and the Town's Comprehensive Plan and would not have an adverse impact on surrounding properties.

Marc Wallace, a sound expert who has been certified in his field since 2003, testified that he conducted a sound study for a Scrub-A-Dub facility in Brighton, Massachusetts, which utilized

the same design as the proposed project and that the noise accurately represented the expected noise conditions at the project site. Based on the results from the Brighton study, Mr. Wallace testified that sound would be within normal levels. Mr. Wallace also noted that Scrub-A-Dub was taking measures to reduce the noise level.[1]

Appellants' counsel read into the record a report written by William Coyle, a Certified General Real Estate Appraiser and real estate broker, regarding his opinion on the value of the property. In the report, Mr. Coyle noted that Appellants' seventy-six-unit residential apartment building "would be within mere feet of the driving and traffic, the noise of the machines, including the washing equipment and vacuuming equipment, the lights of the facility as well as the headlights of the vehicles." Appellants' Mem. in Supp. of Appeal, Ex. E at 2. He testified the project would contribute to an increase in traffic around the primary access point for the apartments in an already congested intersection. He concluded that the increased traffic and noise would have a detrimental effect on the apartment building's rental capabilities and diminish the valuations of nearby residential properties.

The Zoning Board unanimously voted to approve the application for the requested relief. On February 2, 2023, the Zoning Board issued its written decision containing seventeen detailed findings of fact. Of relevance here, the Zoning Board found that the proposed use was consistent with other surrounding uses and that the project as proposed would comply with the comprehensive plan.

The Zoning Board concluded that Scrub-A-Dub satisfied the requirements for a special-use permit and extended the CG Zone to the entire lot, noting Mineral Spring Avenue includes

[1] These measures include the use of mufflers on the vacuums, the reduction in the number of vacuums, and a solid fence around certain portions of the property.

similar commercial uses, and that Scrub-A-Dub sufficiently established that noise levels would not impact surrounding properties. The Zoning Board pointed to Scrub-A-Dub's usage of vacuum mufflers, solid fencing, and reduction in light as efforts made to further decrease the impact on surrounding properties. The Zoning Board accepted Mr. Sweeney's testimony that the use would not impact the values of the surrounding properties.

The Zoning Board found the project similar in size and scale to surrounding uses, which was supported by the fact that a car wash operated immediately adjacent to the property for many years. The Zoning Board concluded that the relief sought was the least relief necessary to provide shelter to customers using kiosks and to provide necessary employee and customer parking. Finally, the Zoning Board found that if it did not grant the requested relief, Scrub-A-Dub would not be able to enjoy the fully functional use of their property.

On February 21, 2023, Appellants appealed the Zoning Board's decision to this Court.

II

Standard of Review

General Laws 1956 § 45-24-69(a) grants the Superior Court jurisdiction to review decisions from 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 appellant 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).

Our Supreme Court has opined that "[i]t 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) (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 Co. 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)). Further, "the trial justice may not 'substitute [his or her] judgment for that of the zoning board if [he or she] can conscientiously find that the board's decision was supported by substantial evidence in the whole record.'" *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978)). Unless the board specifically states in a decision that it is acting upon its own knowledge, "there must be in the record competent evidence to support its findings[;] otherwise[,] its action will be deemed an abuse of the discretion vested in it by the ordinance." *Melucci v. Zoning Board of Review of City of Pawtucket*, 101 R.I. 649, 652, 226 A.2d 416, 418 (1967).

A zoning board is required to make findings of fact and conclusions of law in support of its decisions. *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001).

III

Analysis

On appeal, Appellants challenge both the Zoning Board's issuance of the special-use permit and the dimensional variance.[2]

A

Special-Use Permit

The Zoning Enabling Act, § 45-24-42(a), requires local zoning ordinances to provide for special-use permits subject to approval by the zoning board of review. A special use is a regulated use which is permitted pursuant to the special-use permit issued by a local zoning board.

In order to receive a special-use permit, three requirements must be met. First, there must be a provision in the zoning ordinances allowing the requested use of the property to be conditionally granted by the town. Section 45-24-42(b)(1). Second, the ordinance must describe the conditions and procedures for the permits to be issued. Section 45-24-42(b)(2). Finally, the applicant must meet the criteria for the permit in conformance with the purpose and intent of the comprehensive plan and zoning ordinance. Section 45-24-42(b)(3).

The Town of North Providence Zoning Ordinance Art. V § 505 describes required findings which must be made before granting a special-use permit. The ordinance provides the following:

> "The Zoning Board of Review may not grant a special use permit unless it finds the following:
>
> "A. That the use will comply with all applicable requirements as set forth in Article V and Article II or elsewhere in this Ordinance,

[2] Appellants also argue that Scrub-A-Dub did not provide notice of "last-minute amendments and/or revisions to the plan." (Appellants' Mem. 3-4.) A review of the record at the Zoning Board's hearing on the matter shows that the changes Scrub-A-Dub made *reduced* the amount of relief they were requesting, by reducing the parking to three spaces. Because the modification reduced the amount of relief requested, the Court concludes that additional notice was not required.

> except, if a dimensional variance is granted simultaneously with said special use permit. However, Dimensional relief shall not be granted for number of dwelling units in conjunction with a special use permit.
> "B. That the use will be in harmony with the general purpose and intent of this Ordinance and the Comprehensive Plan of the Town of North Providence.
> "C. That the granting of the special use permit will substantially serve the public convenience and welfare.
> "D. That the use will not result in or create conditions inimical to the public health, safety, morals, and general welfare.
> "E. That it will not substantially or permanently injure the appropriate use of surrounding property." Town of North Providence Zoning Ordinance Art. V § 505.

1

Noise Pollution

Appellants claim the Zoning Board's approval of the application despite Scrub-A-Dub's failure to include a sound study specific to the property renders the Zoning Board's decision conclusional. Specifically, Appellants allege the failure to conduct a noise impact study at the property, and basing the impact from a study at a different location, is insufficient to establish that the project will not cause noise pollution.

Even though Scrub-A-Dub did not conduct a sound study at the property, they introduced expert testimony regarding a sound study at a comparable operation. Mr. Wallace testified that the facility at which the sound study was conducted was the same design as the one being proposed. He further opined that the study would accurately represent what would happen at the facility and that opinion was not contradicted at hearing.

While the Zoning Board could have requested a sound study for the project, it was not required to do so. Instead, the Zoning Board properly relied on Mr. Wallace's testimony. In so doing, the Zoning Board credited his finding that the noise levels from the development would not impact the surrounding neighborhood. Reasonably, conducting a sound study where the same

equipment is already in use is more logical than conducting a sound study on the unoccupied property. As the Zoning Board is charged with finding facts and assessing the credibility of witnesses, such findings were within its purview.

This Court concludes that there was substantial evidence in the record to support the Zoning Board's decision on the issue of noise pollution.

2

Impact on Surrounding Property

Appellants contend the Zoning Board erred by determining that the proposed development would not substantially or permanently injure the use of surrounding property. They argue that Scrub-A-Dub failed to establish the project would not injure Appellants' property. Appellants point to the Coyle Report, where Mr. Coyle opined that the added noise and traffic from the carwash would detrimentally impact their multi-unit residential apartment building. Appellants' Mem., Ex. E at 2-3.

Here, the Zoning Board had the opportunity to review the Coyle Report and could observe Mr. Wallace's live testimony. As discussed above, substantial evidence supported the Zoning Board's reliance on Mr. Wallace's testimony. In its decision, the Zoning Board noted that Mr. Wallace's noise study and testimony support its finding that the car wash will not "unreasonably disturb the peace, quiet, and comfort of any person in the neighborhood." Zoning Board Decision at 2. As the finder of fact, the Zoning Board was entitled to determine the credibility of the witnesses and exhibits before it, weigh conflicting evidence, and draw reasonable conclusions accordingly. The Court defers to the Zoning Board when, as here, there is substantial evidence in the record to support the Zoning Board's finding that granting the requested relief would not cause substantial or permanent injury to surrounding properties.

B

Dimensional Variance

In granting a variance, a zoning board of review shall require that evidence to the satisfaction of the following standards[3] 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) 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).

Additionally, there are certain enumerated standards that are specific to dimensional variances:

> "(e) The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that:
> " . . .
> "(2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission has the power to grant dimensional variances where the use is

[3] Section 45-24-46.4 was repealed by P.L. 2023, ch. 308, § 2 and P.L. 2023, ch. 309, § 2, effective January 1, 2024. The appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *See East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). Hence, § 45-24-41 is applicable.

> permitted by special-use permit if provided for in the special use permit sections of the zoning ordinance." Section 45-24-41(e).

When seeking a dimensional variance, an applicant must establish that there are no reasonable alternatives that allow the applicant to enjoy a legally permitted beneficial use of their property. *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 693 (R.I. 2003).

1

Hardship

Appellants suggest Scrub-A-Dub sought the variance in order to realize a greater financial gain rather than due to the unique characteristics of the land. Specifically, Appellants argue that Scrub-A-Dub did not need relief because they could have renovated the premises to be a restaurant. Appellants also argue that the fact that there was an alternative use means Scrub-A-Dub is seeking dimensional relief to realize greater financial gains.

The Zoning Board concluded that Scrub-A-Dub sought relief from hardship due to the unique characteristics of the subject land. Zoning Board Decision at 4. Specifically, it noted that the angle of the eastern property line causes the area to the east of the building to diminish as the lot proceeds northward. The Zoning Board also determined the side setback was necessary due to the open-air awning to shelter customers while using kiosks. Further, the Zoning Board reasoned that the parking variance was necessary because a car wash facility does not need as many parking spaces. The Zoning Board determined that the hardship was the result of the original measurements of the property, not any prior action of Scrub-A-Dub.

Although a restaurant once operated on the premises, the property had been vacant for several years before Scrub-A-Dub's acquisition of the property. The established national chain restaurant was no longer in business. While Scrub-A-Dub could have renovated the property to be a restaurant, it is not fatal to their position. There was no evidence presented indicating that a

restaurant would thrive. The Zoning Board, in considering this case, found the relief requested to be the least relief necessary, it does not alter the general character of the surrounding neighborhood, and is not self-created harm. In light of these well supported findings, Appellants' contention that relief was requested primarily due to a desire to realize greater financial gain remains unconvincing. There is sufficient evidence in the record to support the Zoning Board's conclusion regarding the unique characteristics of the property.

2

Altering the Characteristics of the Surrounding Area

Appellants next suggest that the relief sought will alter the characteristics of the surrounding neighborhood with increased traffic congestion and noise pollution. They assert this will affect Appellants' property in ways it would not affect properties further away from the project. The Zoning Board determined that the proposed use is similar in size and scale to surrounding uses, Mineral Spring Avenue is already a busy street, and the project would not alter the character of the surrounding area. The Zoning Board reasoned that the historical existence of another car wash immediately adjacent to the property supported a finding that the project would not alter the general character of the surrounding area. This determination is in line with the evidence before the Zoning Board as well as its adoption of Mr. Sweeney's testimony that the project was in harmony with other uses in the area. This Court is satisfied that there was sufficient evidence in the record to support the Zoning Board's finding.

3

Adverse Possession

Appellants suggest the grant of the dimensional variance was improper because Scrub-A-Dub did not sufficiently demonstrate that they had "control over the [p]roperty." (Appellants'

Mem. 13.) Appellants aver they have claim to the property via common law adverse possession and/or the doctrine of acquiescence. The claim itself is based on Appellants' erection of a fence between Appellants' property and the subject property approximately fifteen years prior to the Zoning Board's hearing on the matter. The documents before the Zoning Board show a fence near the boundary of the two properties, away from the proposed car wash or parking. There is no evidence of Appellants' use of Scrub-A-Dub's property.

The Zoning Board correctly noted that the issue of adverse possession was not for the Zoning Board to decide. *Archetto v. The Zoning Board of Review of the Town of Jamestown et al.*, No. NC-2015-0377, 2018 WL 2324126 (R.I. Super. May 16, 2018). Scrub-A-Dub has not filed a demand or complaint for adverse possession in a separate case, nor have they introduced an affidavit or any form of proof.

Appellants have failed to make any credible showing that Scrub-A-Dub is not the owner of the property. The Zoning Board did not err in rejecting this issue.

4

Submission Requirements

The final argument advanced by Appellants is that Scrub-A-Dub failed to meet the submission requirements for special-use permits and dimensional variances. Specifically, Appellants allege that the site plan submitted by Scrub-A-Dub did not satisfy the Class I Survey submission requirement. Appellants say that the survey was not stamped and signed by a licensed civil engineer and does not accurately describe Scrub-A-Dub's property. However, contrary to Appellants' contention, the Zoning Board verified on the record that there was a signed and stamped site plan. (Certified R. Part 2 at 236, Hr'g Tr. 3:17-25, Nov. 17, 2022.)

IV

Conclusion

For the foregoing reasons, the appeal is denied, and the Court affirms the decision of the Zoning Board.

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:	**January 2, 2025**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Michael Resnick, Esq.**
For Defendant:	**Kelley Morris Salvatore, Esq.** **Brian S. Grossman, Esq.** **Nicole J. Cocozza, Esq.** **Katie L. Howayeck, Esq.**