STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 12, 2025)

PETER M. SCOTTI, ***Appellant,***	:	
v.	:	**C.A. No. PC-2024-00075**
THE CITY OF CRANSTON ZONING BOARD OF REVIEW; and CHRISTOPHER E. BUONANNO, JOY MONTANARO, PAULA McFARLAND, DEAN PERDIKAKIS, CRAIG NORCLIFFE, CARLOS ZAMBRANO, and FRANK CORRADO, III, in their capacities as members of the City of Cranston Zoning Board of Review; and BRIDGE GROUP, LLC ***Appellees*****.**	:	

DECISION

M. DARIGAN, J. Before this Court is an appeal from a decision of the City of Cranston Zoning Board of Review (the Board) granting a variance to Bridge Group, LLC (Bridge Group) to convert an existing industrial building to residential use with two dwelling units. (Compl. ¶¶ 1-2.) The appellant, Peter M. Scotti (Mr. Scotti), is seeking to reverse the Board's decision. *Id.* ¶ 1. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the matter is remanded to the Board for additional proceedings.[1]

[1] The parties have filed ample memoranda relative to the appeal, and having examined those submissions, this Court is satisfied that the parties' respective positions have been thoroughly presented and that oral argument would not aid the decisional process. Accordingly, the Court has decided the matter based upon the written submissions and relevant parts of the record.

I

Facts and Travel

Bridge Group owns property at 5 Aborn Street in Cranston, Rhode Island (the Property) which is designated as Lot No. 30 on Assessor's Plat No. 1. (The City of Cranston Zoning Board of Review Decision, December 13, 2023 (2023 Decision), 1.)[2] At issue are two separate zoning applications made by Bridge Group relative to the Property. First, in February 2021, Bridge Group filed an application (the 2021 application) seeking to convert the Property from an existing "two unit [industrial] building into a three unit residential" building. (The City of Cranston Zoning Board of Review Decision, March 9, 2022 (2022 Decision), 2 at Compl. Ex. B, 2.)[3] On March 9, 2022, the Board unanimously voted to deny Bridge Group's 2021 application finding "that the denial of the application would not amount to a loss of all beneficial use to the property as the property is zoned commercial and could be used for commercial purposes by right." *Id.*

Then, in September 2023, Bridge Group filed a second application (the 2023 application) to convert the Property from industrial to residential use, this time with two dwelling units. (2023 Decision, 1.) On December 13, 2023, the Board heard testimony from Anthony Albanese (Mr. Albanese), a member of Bridge Group. (Hr'g Tr. 3:22-15:16, Dec. 13, 2023.) Mr. Albanese testified that due to the Property's location in a flood zone, the existing first floor is not usable and experiences water infiltration. *Id.* at 6:25-7:8. Further, Mr. Albanese testified Bridge Group had trouble renting the Property for commercial use because of limited on-site parking. *Id.* at 11:4-9. A member of the Board, Paula McFarland, commented that the Board's "biggest concern [with the

[2] The official record is not Bates labelled, as a result, citations to the record will include the name of the document and the page number for that document.

[3] This Court does not have the administrative record for the 2021 application and therefore cites to exhibits in Mr. Scotti's Complaint for the 2022 Decision.

2021 application] was . . . parking[.]" *Id.* at 15:7-14. Mr. Albanese testified that the new application would create nine parking spaces to be shared by the two units. *Id.* at 15:3-6. No one other than Mr. Albanese appeared at the hearing to support or oppose the 2023 application.

After hearing testimony, the Board unanimously voted to approve Bridge Group's 2023 application. (2023 Decision, 1.) In its decision, the Board made findings of fact, including that the 2023 application "was different from the [2021 application] as the structures were lowered, parking was added[,] and one unit was eliminated[.]" *Id.* at 6-7. The Board also concluded

> "that the application involves a hardship that is not due to a physical or economic disability of the applicant, that the subject structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance, the hardship does not result primarily from the desire of the applicant to realize greater financial gain, will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the comprehensive plan, and is the least relief necessary." *Id.* at 7.

Mr. Scotti appealed the Board's decision to the Superior Court on January 3, 2024.

II

Standard of Review

Section 45-24-69(d) provides in pertinent part:

> "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).

Under § 45-24-69(d)(3), a court may reverse or modify a zoning board's decision if the substantial rights of an appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are "[m]ade upon unlawful procedure[.]" *Id.* Under § 45-24-69(d)(4), a court may reverse or modify a zoning board's decision if the substantial rights of an appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are "[a]ffected by other error of law[.]" *Id.*

Pertinent to these standards, "'Rhode Island [has] promulgated a doctrine of administrative finality.'" *Apex Oil Co., Inc. v. State of Rhode Island, by and through Division of Taxation*, 297 A.3d 96, 114 (R.I. 2023) (quoting *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 808 (R.I. 2000)). "'Under this doctrine, when an administrative agency receives an application for relief and denies it, a subsequent application for the same relief may not be granted absent a showing of a change in material circumstances during the time between the two applications.'" *Id.* (quoting *Johnston Ambulatory Surgical Associates, Ltd.* 755 A.2d at 808). "'This rule applies as long as the outcome sought in each application is substantially similar . . . even if the two applications each rely on different legal theories.'" *Id.* (quoting *Johnston Ambulatory Surgical Associates, Ltd.* 755 A.2d at 808).

When reviewing questions of law, this Court conducts a *de novo* review. *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 791 (R.I. 2005).

Under § 45-24-69(d)(5), a court may reverse or modify a zoning board's decision if the substantial rights of an appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are "[c]learly erroneous in view of the reliable, probative, and

substantial evidence of the whole record[.]" Section 45-24-69(d)(5). When evaluating a zoning board of review's factual findings, the court must "'examine the entire record to determine whether 'substantial' evidence exists to support the board's findings.'" *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (quoting *DeStefano v. Zoning Board of Review of Warwick*, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). The term "[s]ubstantial 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." *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 690 n.5 (R.I. 2003) (internal quotation omitted). If the court "'can conscientiously find that the board's decision was supported by substantial evidence in the whole record,'" it must uphold the decision. *Mill Realty Associates*, 841 A.2d at 672 (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978)).

III

Analysis

On appeal, Mr. Scotti alleges: (1) the doctrine of administrative finality bars the 2023 application from being heard by the Board, (2) the 2023 Decision was defective because the Board did not make findings of fact regarding the beneficial use of the Property if the application was denied, and (3) Bridge Group failed to provide competent evidence to support its variance application. (Appellant's Mem. in Supp. of Appeal (Appellant's Mem.) 3-10.) In response, Bridge Group argues: (1) the doctrine of administrative finality is not applicable because there was a material change in circumstances between the 2021 and 2023 applications and (2) Bridge Group provided adequate evidence to support its application, and the Board found sufficient competent

evidence in the record to support its decision. (Appellee Bridge Group's Mem. of Facts and Law in Opp'n of Appeal (Bridge Group's Mem.) 5-10.)[4]

A

Administrative Finality

Mr. Scotti alleges that Bridge Group's 2023 application is barred by the doctrine of administrative finality because it is substantially similar to its 2021 application which was denied by the Board. (Appellant's Mem. 4.) Specifically, Mr. Scotti alleges the 2023 application fails to address the underlying reason for the Board's decision to deny the 2021 application: that Bridge Group would not lose all beneficial use of the Property if the 2021 application was not approved. *Id.* Bridge Group counters that there were significant changes between its 2021 and 2023 applications, including reducing the proposed residential units from three to two, removing a "22' x 36' [proposed] addition . . . on the westerly end of the existing building[,]" "lowering of the height on the proposed elevation of the . . . building[,]" and the creation of additional off-street parking. (Bridge Group's Mem. 6-7.) It also argues that the Board properly found that Bridge Group's 2023 application had an internal material change in its zoning application. *Id.* at 8. Thus, Bridge Group argues that the doctrine of administrative finality does not apply. *Id.* at 7-8.

As noted, the doctrine of administrative finality establishes that "'when an administrative agency receives an application for relief and denies it, a subsequent application for the same relief may not be granted absent a showing of a change in material circumstances during the time between the two applications.'" *Apex Oil Co., Inc.*, 297 A.3d at 114 (quoting *Johnston Ambulatory Surgical Associates, Ltd.*, 755 A.2d at 808. "In sum, the doctrine 'prevents repetitive duplicative

[4] The Board, along with its individual members named in their official capacity, are also parties to this appeal. They did not present a separate legal memorandum and have adopted the arguments put forward by Bridge Group. *See* Mem. of Cranston Zoning Board of Review, 1.

applications for the same relief, thereby conserving the resources of the administrative agency and of interested third parties that may intervene.'" *Id.* (quoting *Johnston Ambulatory Surgical Associates, Ltd.* 755 A.2d at 810). '"The purpose of the doctrine is to promote consistency in administrative decision-making, such that if the circumstances underlying the original decision have not changed, the decision will not be revisited in a later application.'" *Id*. at 114-15 (quoting *Johnston Ambulatory Surgical Associates, Ltd.* 755 A.2d at 810).

An applicant has the burden of showing a substantial or material change in circumstances between the first and second applications. *See Johnston Ambulatory Surgical Associates, Ltd.*, 755 A.2d at 809. Notably,

> "[w]hat constitutes a material change will depend on the context of the particular administrative scheme and the relief sought by the applicant and should be determined with reference to the statutes, regulations, and case law that govern the specific field. The changed circumstances could be internal to the application, as when an applicant seeks the same relief but makes important changes in the application to address the concerns expressed in the denial of its earlier application. Or, external circumstances could have changed, as when an applicant for a zoning exception demonstrates that the essential nature of land use in the immediate vicinity has changed since the previous application. *Finally, there is a burden on the administrative decision-maker to articulate in its decision the specific materially changed circumstances that warrant reversal of an earlier denial of the relief sought.*" *Id.* at 811 (emphasis added).

Here, Bridge Group's 2021 and 2023 applications sought a variance to change the use of the Property from industrial to residential. Bridge Group's 2021 application was denied by the Board. The only evidence before this Court as to the Board's underlying reason for denying Bridge Group's 2021 application is the Board's 2022 Decision. *See* Compl. Ex. B at 2. The Board explained its decision in a three-sentence paragraph:

> "On a motion made by Mr. Perdikakis and seconded by Ms. Montanaro the Board voted unanimously to Deny this application as submitted to the Board. *In their denial, The [sic] Board found that*

> *the denial of the application would not amount to a loss of all beneficial use to the property as the property is zoned commercial and could be used for commercial purposes by right.* As such, the applicant did not meet the legal standard for the granting of a use variance." *Id.* (emphasis added).

The 2022 Decision makes no reference to parking or any other concerns underlying the Board's decision to deny Bridge Group's application. Beyond its conclusory statement finding that Bridge Group could make beneficial use of the Property absent the requested variance because it is zoned commercial and could be used as a commercial property, the Board does not provide any findings of fact that would explain why or how it came to this conclusion.

In contrast, the 2023 Decision has multiple findings of fact and supports the Board's conclusion that the 2023 application is materially different from the 2021 application. (2023 Decision, 6-7.) Specifically, the 2023 Decision cites the material differences as the lowered height of the proposed structure, additional parking, and removing a proposed unit. *Id.* Critically however, none of the factual findings address the Board's stated reason for denying Bridge Group's 2021 application; that is, whether denying the application would prevent the Property from having any beneficial use. As such, the Board's findings in the 2023 Decision are incomplete.

B

Adequacy of Written Decision

Our Supreme Court has long held that "a zoning board of review is required to make findings of fact . . . in support of its decisions in order that such decisions may be susceptible of judicial review." *Bernuth v. Zoning Board of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (internal quotation omitted). Judicial review of a board's decision is impossible "unless the board . . . ma[kes] factual determinations and applie[s] appropriate legal principles in such a way that a judicial body might reasonably discern the manner in which the board ha[s]

resolved evidentiary conflicts." *Cranston Print Works Co. v. City of Cranston*, 684 A.2d 689, 691 (R.I. 1996). This Court will "neither search the record for supporting evidence nor will [it] decide for [itself] what is proper in the circumstances." *Id.* at 692 (internal quotation omitted); *see also Berg v. Zoning Board of Review of City of Warwick*, 64 R.I. 290, 293, 12 A.2d 225, 226 (1940) ("even though there be a stenographic or otherwise substantial report of the testimony, we do not intend to speculate as to the grounds on which such a board bases its decision"). As observed by our Supreme Court,

> "'The issue here . . . is not one of form, but the content of the decision; and what . . . must [be] decide[d] is whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. *Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany*. These are minimal requirements. Unless they are satisfied, a judicial review of a board's work is impossible. . . .'" *Irish Partnership v. Rommel*, 518 A.2d 356, 358-59 (R.I. 1986) (quoting *Zammarelli v. Beattie*, 459 A.2d 951, 953 (R.I. 1983)) (emphasis added).

The Board's 2022 Decision denying Bridge Group's 2021 application does not state any findings of fact and only makes conclusory statements. *See* Compl. Ex. B. Further, the factual findings in the 2023 Decision do not identify how the 2023 application's differences amounted to changed circumstances that addressed the concerns underlying the 2022 Decision. *See* 2023 Decision. This Court is prohibited from "'search[ing] the record for supporting evidence or decid[ing] for itself what is proper in the[se] circumstances.'" *Bernuth*, 770 A.2d at 401 (quoting *Irish Partnership*, 518 A.2d at 359).

The deficiencies in the Board's 2023 Decision impede not only this Court's analysis of the application of the doctrine of administrative finality, but also, the Court's consideration of Mr. Scotti's contentions that Bridge Group failed to meet its burden for a use variance under the

Cranston Zoning Ordinance. The standard in effect in December 2023[5] specified that the Board require Bridge Group to demonstrate that (1) the hardship for which relief is sought is due to the unique characteristics of the Property; (2) the hardship is not the result of actions by Bridge Group nor primarily results from the desire by Bridge Group to realize greater financial gain; (3) the variance will not alter the general character of the area nor impair Cranston's zoning scheme and comprehensive plan; and (4) the variance is the least relief necessary. *See* Cranston Zoning Ordinance Section 17.92.010B(1)-(4)). Further, Bridge Group must show that the Property cannot yield any beneficial use if required to conform to its zoning designation. *See* Cranston Zoning Ordinance Section 17.92.010C(1). The findings of fact in the Board's 2023 Decision do not adequately address these standards, leaving this Court to guess what competent evidence Bridge Group presented in its 2023 application to satisfy the Cranston Zoning Ordinance.

In short, the failure to make proper findings of fact in its 2023 Decision means the Board has not provided enough information for this Court to determine whether the doctrine of administrative finality applies nor to resolve whether Bridge Group submitted sufficient competent evidence in support of its 2023 application.

IV

Conclusion

After a careful review of the record, this Court finds that the Board failed to make sufficient findings of fact in its 2023 Decision to support its conclusion that Bridge Group met the requirements for the requested variance. Therefore, this Court **REMANDS** this matter to the

[5] On December 21, 2023, the City of Cranston amended the standard of review for variance applications before the Zoning Board. *See* Ord. § 2023-27. The Board's decision in this case was dated December 19, 2023. As such, this Court will employ the standard used before the amendment to the ordinance.

Board for additional proceedings, specifically to make further findings of fact on whether the changes between Bridge Group's 2021 and 2023 applications constituted a material change in circumstances, either an internal change of circumstances or an external change in circumstances; whether the 2023 application addressed the basis for the Board's 2022 Decision denying the 2021 application; and whether Bridge Group's 2023 application presented sufficient competent evidence to meet the standards for a use variance under the Cranston Zoning Ordinance.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Scotti v. City of Cranston Zoning Board of Review, et al.**
CASE NO:	**PC-2024-00075**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 12, 2025**
JUSTICE/MAGISTRATE:	**M. Darigan, J.**
ATTORNEYS:	
For Plaintiff:	**John J. Garrahy, Esq.**
For Defendant:	**Robert D. Murray, Esq.** **Stephen H. Marsella, Esq.**