

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 18, 2025)

JOHNSTON WINSOR III, LLC and
the STEERE FAMILY TRUST,
Plaintiffs/Appellants,

v.

C.A. No. PC-2024-00835

TOWN OF JOHNSTON ZONING
BOARD OF REVIEW; THOMAS
LOPARDO, in his capacity as the
Chairman of the Town of Johnston
Zoning Board; ANTHONY PILOZZI,
JOSEPH ANZELONE, RICHARD
LOBELLO, RICHARD FASCIA,
DENNIS CARDILLO, and ALBERT
COLANNINO, in their capacities as
members of the Town of Johnston Zoning
Board; JOSEPH CHIODO, in his capacity
as Finance Director of the Town of
Johnston, and THE TOWN OF
JOHNSTON, as a municipal entity,
Defendants/Appellees,

-and-

DAVID AMALFITANO, SHERRY
PALIOTTA, JOHN GRISSOM, and
LYNN GRISSOM,
Defendants/Intervenors.

DECISION

LANPHEAR, J. Before this Court is Johnston Winsor III, LLC and the Steere Family Trust’s appeal from the January 26, 2024 decision of the Town of Johnston Zoning Board of Review, denying their application for a special use permit. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the appeal is denied, and the Board’s decision is affirmed.

I

Facts and Travel

On June 9, 2023, Johnston Winsor III, LLC and the Steere Family Trust (Appellants) applied to the Town of Johnston for a special use permit. The proposed use was a twenty-four-megawatt solar array, consisting of 46,000 panels and associated improvements. Certified Record (R.) No. 1 at 2. The project was to be located at 112 Winsor Avenue, Johnston, Rhode Island, Assessor's Plat 59, Lot 15 (the Property). *Id.* at 1. The Property consists of approximately 158 acres of mostly vacant forestland in the R-40 Zoning District.¹ *See* R. No. 13 at 8. The application sought the permit for "Public Utility Uses . . . Electric power generating facility[.]" R. No. 1 at 2. Pursuant to the Town of Johnston Code of Ordinances (Johnston Code) Table of Use Regulations, a Special Use Permit is required for such a use in the R-40 Zone. Johnston Code § 340, Attachment 1.

On September 28, 2023, November 2, 2023, and January 25, 2024, the Board held duly noticed public hearings on the application, spanning eleven hours. At these hearings, Appellants, through counsel, proffered reports, materials, and testimony of five expert witnesses: Joseph McCue, an environmental expert; Joseph Lombardo, a planning and land use expert; Thomas Sweeney, a real estate expert; Kevin Alverson, a landscape architect; and Kevin Morin, the project engineer.

The Board also heard a group of objecting abutters represented by counsel. The abutters presented expert reports and testimony from Nancy Letendre, a planning and land use expert, and

¹ The R-40 Zoning District "covers a large portion of the Town into which urban-type development should logically expand as the need arises. This district is characterized by a commingling of open land interspersed with residential uses." Town of Johnston Code of Ordinances (Johnston Code) § 340-5(A).

James Houle, a certified general appraiser. Numerous members of the public spoke during public comment.

On January 25, 2024, the Board voted 4-0 to deny the permit application. On January 26, 2024, the Board issued a written decision, where it found (1) the application was substantially similar to a previous one from 2022, thus denial was required based on the doctrine of administrative finality; (2) the proposed solar panels were “structures” pursuant to the zoning ordinance, and therefore exceeded the permissible lot coverage; (3) the solar array was inconsistent with the comprehensive plan; and (4) the project would reduce property values in neighboring parcels.

Appellants filed the instant appeal on February 13, 2024. On June 5, 2024, this Court allowed the objecting abutters to intervene. Appellants, the Board, and intervenors submitted briefs and appeared for oral arguments on February 5, 2025.

II

Standard of Review

When reviewing local zoning board decisions, the Court 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).

This 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). The Court may not substitute its judgment for that of the 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 burden is on the applicant “seeking relief . . . to prove the existence of the conditions precedent to a grant of relief.” *DiIorio v. Zoning Board of Review of City of East Providence*, 105 R.I. 357, 362, 252 A.2d 350, 353 (1969).

III

Analysis

On appeal, Appellants argue the Board abused its discretion by applying the doctrine of administrative finality to deny the application, that lot coverage is not a basis to deny the permit, and that the Board abused its discretion when it found the permit did not comport with the Comprehensive Plan and would reduce property values of neighboring parcels. Finally, Appellants contend that the Board failed to meet its obligations by not making findings relevant to each criterion of Johnston Code § 340-75(B).

A

Administrative Finality

Although Appellants submitted their application on June 9, 2023, it was not the first time they had sought relief from the Board to develop a solar array on the Property. Appellants previously applied for a permit in 2022, which the Board denied in a written decision issued on May 27, 2022.²

According to the doctrine of administrative finality, “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 Company, Inc. v. State by and through Division of Taxation*, 297 A.3d 96, 114 (R.I. 2023) (quoting *May-Day Realty Corporation v. Board of Appeals of City of Pawtucket*, 107 R.I. 235, 237, 267 A.2d 400, 402 (1970)). This rule “is operative only if the relief sought in each case is substantially similar.” *Id.* (quoting *May-Day Realty*, 107 R.I. at 237, 267 A.2d at 402).

Administrative finality is also codified in the Johnston Code, which provides that when the Board denies an application, it “may not consider another application request for the same amendment, special use permit or variance for a period of two years from the date of such denial or withdrawal[.]” Johnston Code § 340-113A. However, the Board “may accept such an application after one year, . . . provided that [the applicant shows] a substantial change of circumstances justifying a rehearing.” *Id.* at B.

² The 2022 denial was appealed to the Superior Court, consolidated with appeals from four other decisions of the Board. *See Johnston Winsor I, LLC v. Town of Johnston Zoning Board. of Review*, PC-2022-03675, PC-2022-03672, PC-2022-03670, PC-2022-03678, PC-2022-03676, 2024 WL 3543092 (R.I. Super. July 18, 2024). This Court remanded the cases to the Board for additional findings of fact and conclusions of law.

Appellants contend the Board abused its discretion when it applied administrative finality after finding that the 2023 and 2022 Applications were substantially similar. In Appellants' view, the difference between their two applications is analogous to the change of circumstances seen in *May-Day Realty, supra*. There, the petitioner applied for a permit to erect two ten-family apartment houses on one lot. *May-Day Realty*, 107 R.I. at 237, 267 A.2d at 402. In the petitioner's subsequent application, it sought to construct a single apartment building containing 100 units with underground parking for 125 automobiles. *Id.* The Court held that "the two [applications were] so dissimilar that the doctrine of administrative finality [was] inapplicable." *Id.*

Here, Appellants point to the 2023 Application master plan which states that the engineers "reduced the proposed solar development from 24 MW to 19 MW, a 20% reduction in overall panel surface area." R. No. 13 at 7. However, the Board found that project engineer Kevin Morin undercut that claim by testifying on cross-examination that the lot coverage was only reduced by approximately 5 percent (from 48.2 percent of the land to 42.6 percent). He further conceded that during the 2022 Application, the applicants voluntarily agreed to remove some panels during the hearing. The Board concluded that the 2023 Application had only a 1 percent reduction in land use and electricity generation.

The Board found this portion of Mr. Morin's testimony persuasive, and this Court is discouraged from substituting its judgment for that of the Board's with respect to the credibility of witnesses. *Lett*, 510 A.2d at 960. Accordingly, the Court finds that substantial evidence supports the Board's finding that the 2022 and 2023 Applications were substantially similar. Thus, the Board did not abuse its discretion to apply the doctrine of administrative finality, and the denial is

affirmed on that basis.³

IV

Conclusion

For the foregoing reasons, Johnston Winsor III, LLC and the Steere Family Trust's appeal is denied, and the Board's decision is affirmed.

³ This Court was inclined to discuss applicants' objections to the Board's other conclusions but with the administrative finality issue dispositive to this appeal, the Court declines to discuss other issues. Not only could such conclusions be dicta, but the 2022 application remains before the Zoning Board after the prior remand.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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DATE DECISION FILED: March 18, 2025

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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