

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 4, 2026)

PATRICIA MALLOZZI and	:	
LEONARD DAVENPORT,	:	
<i>Appellants,</i>	:	
	:	
v.	:	C.A. No. PC-2025-00840
	:	
CITY OF EAST PROVIDENCE	:	
ZONING BOARD OF REVIEW;	:	
EUGENE SAVEORY, JOHN BRAGA,	:	
MATTHEW GUNNIP, JONATHAN	:	
JACOBS, and ASHLEY ROZES, in	:	
their capacities as Members of the East	:	
Providence Zoning Board of Review;	:	
MALCOLM MOORE, in his capacity as	:	
Director of Finance for the City of East	:	
Providence; and CITY OF EAST	:	
PROVIDENCE, as a municipal entity,	:	
<i>Appellees.</i>	:	

DECISION

SIGNORE, J. Before the Court is Patricia Mallozzi and Leonard Davenport’s (Appellants) appeal from a decision of the City of East Providence Zoning Board of Review (the Board) denying Appellants’ application for dimensional variances to permit construction of a single-family residence with third-floor living space (the Application). Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, Appellants’ appeal is denied and the decision of the Board is affirmed.

I

Facts and Travel

On October 4, 2024, Appellants submitted an application for relief from several dimensional requirements of the Revised Ordinances of the City of East Providence, Rhode Island, Supp. No. 86 (Sep. 17, 2024) (the Ordinance).¹ (Certified R. (CR)-000001.) Appellants own property located at 1099 Bullocks Point Avenue in East Providence, Rhode Island, also known as Lots 14 and 14.1 on East Providence Tax Assessor's Map 414, Block 4 (the Property). The Property is zoned R-3, residential. *Id.* Among other relief, Appellants sought a variance to permit construction of third-floor living space because the Ordinance specifies that homes in the R-3 zone may not exceed two stories. CR-000002; Ordinance § 19-145.² The Board held a hearing on January 8, 2025, wherein it denied the Application after finding that construction of the third-floor living space was not in character with the surrounding area. (CR-000033.)

At the January 8, 2025 hearing, counsel for Appellants introduced the third-floor living space portion of the Application as follows:

¹ This Court generally applies the versions of statutes and municipal ordinances in effect on the date the Application was certified as substantially complete. *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006) (citing *Kaveny v. Town of Cumberland Zoning Board of Review*, 875 A.2d 1, 4-5 (R.I. 2005)); see G.L. 1956 § 45-24-44. The Certified Record in this case is Bates-stamped and was filed in the Court portal dated July 11, 2025. That record does not reveal the date on which the Application was certified complete, but it is clear that the Application was submitted on October 4, 2024 and reviewed thereafter. Thus, all citations to statutes and ordinances herein are to those versions effective on October 4, 2024.

² The Application also sought relief from the Ordinance's front yard and side yard setback requirements. (CR-000002.) However, these requests were immaterial to the Board's decision and are not relevant to this appeal. *See, e.g.*, Hr'g Tr. 10:21-11:11, Jan. 8, 2025 (Appellants' attorney stating that "the only thing before the Board is the addition of a third story" and that "[t]he only thing triggering the need for zoning relief is the livable third-floor space").

“It’s interior living space for my clients and their ever-growing family. They have four kids, four grandchildren. They live out of state. They’re looking for additional living space for their family to come and visit. This is going to be their retirement home. They intend to live here, and they’re very much a part of the community already.” (Hr’g Tr. 11:22-12:5, Jan. 8, 2025.)

The proposed third-floor living space included “a bedroom and a small exercise room” and an open-air deck. *Id.* at 31:4-6.

Appellants next presented the testimony of Mr. James Houle (Houle), a real estate appraiser, whom the Board accepted as an expert witness. Houle opined that the Application met every standard entitling them to relief from the Ordinance, including that the Application was “very much in harmony with the general neighborhood.” *Id.* at 28:9-10. Houle argued that there is a “trend” toward third-floor living space in the neighborhood. *See id.* at 42:20-23. Houle also prepared and submitted a written report to the Board that echoed his opinion that Appellants were entitled to relief. (CR-000169.) As the basis of his opinion that the third-floor living space was consistent with the character of the surrounding area, Houle indicated that he evaluated other homes in the area that have third-floor living space.³ Hr’g Tr. 29:4-7, Jan. 8, 2025. He conceded that a 200-foot area surrounding the Property was “the gold standard” for characterizing neighborhoods but opined that the houses he evaluated outside that range were “very, very close, and they certainly comprise what I would consider the neighborhood and would be looked at for the characteristics within the neighborhood.” *Id.* at 29:8-21.

Chairman Eugene Saveory (the Chairman) disagreed strenuously with Houle’s methods and conclusions regarding whether the proposed third-floor living space was consistent with the

³ Houle testified that he formed his opinions based upon a visit to the neighborhood and a review of the Ordinance, the City of East Providence’s Comprehensive Plan, real estate listings on a Multiple Listing Service, and tax assessor property cards. (Hr’g Tr. 15:5-13, Jan. 8, 2025.)

character of the area. *See id.* at 39:2-47:20. The Chairman criticized Houle’s consideration of properties more than 200 feet away from the Property. *See id.* at 39:3-24. For example, he observed, “what happens on the coastline . . . I can’t count those houses[.]” *Id.* at 39:20-22. The Chairman acknowledged that there are properties within 200 feet of the Property that have third-floor living space, but distinguished those houses and asserted that the size of Appellants’ house, coupled with the size and location of the Property, rendered the proposed third-floor living space out of character with the area. *Id.* at 41:6-47:20.

The Board then heard comments from members of the public. Prior to the hearing, the Board received three letters from nearby property owners in support of the Application. (CR-000182-84.) The Board also received letters opposing the Application, but it is unclear how many. (Hr’g Tr. 50:2-10, Jan. 8, 2025.) At the hearing, no members of the public spoke in favor of the Application. *Id.* at 59:9-12. Five neighbors told the Board that they were opposed to the Application. *Id.* at 60:7-124:21. In general, opposition to the Application was based on the neighbors’ dislike of the size and design of the proposed house and concerns that it would disturb the character of the neighborhood. *E.g., id.* at 68:9-18 (“[T]he design of the house is not going to suit the neighborhood. It’s not in character.”). Public opposition to the Application also stemmed from fears that the third-floor living space with windows would interfere with neighbors’ privacy. *E.g., id.* at 67:7-9 (“[W]ith third-floor windows looking down into my yard, in my home, I can’t be comfortable.”). Counsel for Appellants retorted that “[t]he standard . . . is whether it’s consistent with the neighborhood, and a privacy issue isn’t really articulated in the standards[.]” *Id.* at 94:23-95:2. He argued, “the third-floor space that’s being proposed is mostly interior and it does not go out to the full extent of the second floor . . . [s]o the projection . . . [overlooking] a neighbor’s yard . . . [is] not as extensive as one may perceive[.]” *Id.* at 95:5-13.

Two members of the Board agreed with Houle that there was a “trend” in the area toward allowing third-floor living space, and, therefore, the Application would not alter the character of the surrounding area. *Id.* at 128:10-13, 130:4-9; CR-000032-33. But the other three members disagreed, and the Board issued a written decision on February 4, 2025 denying the Application. CR-000031. The members voting against the Application found that granting relief from the dimensional requirement limiting the maximum number of livable floors would impair the character of the surrounding area. *See* CR-000033 (“I do have the issue with the living space in there I don’t think the current design is in character with the neighborhood . . . [;] I find this . . . [will] significantly alter[] the general character of the surrounding area.”).

Appellants timely appealed the Board’s decision on February 13, 2025.

II

Standard of Review

Under § 45-24-69(a), as enacted by P.L. 1999, ch. 296, § 1, “[a]n aggrieved party may appeal a decision of the zoning board” for review by this Court. On review,

“[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) 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 reviewing the decision of a zoning board, “[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) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). 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)). This deference to a zoning board’s factual determinations “is due, in part, to the principle that ‘a zoning board of review 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 East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962)). If the Court finds that a board’s decision was supported by substantial evidence, then it must stand. *See Lloyd*, 62 A.3d at 1083.

III

Analysis

Appellants argue that the Board’s conclusion that permitting the construction of a dwelling with third-floor living space would impair the character of the surrounding neighborhood was not supported by substantial evidence. (Appellants’ Mem. in Supp. of Administrative Appeal (Appellants’ Mem.) 19-21.) In their view, Houle’s expert opinion that there is “a trend in [the] area to move towards” third floor living space was uncontradicted and unimpeached. *See* CR-000032; Appellants’ Mem. 21; Hr’g Tr. 42:20-23, Jan. 8, 2025. Thus, their argument goes, Houle’s expert opinion “must carry the day” and the Board abused its discretion by rejecting it. Appellants’ Mem.

20-21 (first citing *Dreczko*, 248 A.3d at 645; then citing *Restivo v. Lynch*, 707 A.2d 663, 671 (R.I. 1998); and then quoting *Murphy v. Zoning Board of Review of Town of South Kingstown*, 959 A.2d 535, 542 (R.I. 2008)). The City of East Providence (the City) counters that the Board was entitled to reject Houle’s opinion and rely upon its board members’ observations of the neighborhood and special knowledge regarding the character of the community. (Appellees’ Mem. of Law in Opp’n to Appellants’ Administrative Appeal. (City’s Mem.) 3-5.)

It is an abuse of discretion for a zoning board to reject the uncontradicted and unimpeached opinion of an expert witness with respect to matters uniquely within the expert’s expertise. *Dreczko*, 248 A.3d at 646; *Murphy*, 959 A.2d at 542 n.6. In both *Murphy* and *Dreczko*, the Rhode Island Supreme Court held that a zoning board erred when it made findings contrary to an unimpeached expert’s testimony. *Murphy*, 959 A.2d at 543; *Dreczko*, 248 A.3d at 646. In *Murphy*, an important issue before the board was whether a parcel of land contained 80,000 square feet of land suitable for development in 1992. *Murphy*, 959 A.2d at 538-39. An expert reviewed relevant government studies and photographs and opined that it did not. *Id.* at 539. Nonetheless, the zoning board rejected the expert’s opinion and decided that it could not conclusively determine whether there were 80,000 square feet of buildable land. *Id.* at 542.

On appeal, the Court rejected the argument that it was the zoning board’s prerogative to make credibility determinations concerning the expert witness:

“While it is generally true that ‘there is no talismanic significance to expert testimony [and it] may be accepted or rejected by the trier of fact,’ . . . it is also true that, if expert testimony before a zoning board is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for a zoning board to reject such testimony.” *Id.* (first quoting *Restivo*, 707 A.2d at 671; and then citing *Bonitati Brothers, Inc. v. Zoning Board of Review of Cranston*, 99 R.I. 49, 55, 205 A.2d 363, 366-67 (1964)).

The Court explained that the zoning board erred when it rejected the expert's analysis because no one ever contradicted or impeached him, and his testimony made it "clear that [the parcel] contained less than 80,000 square feet of land suitable for development in 1992[.]" *Id.* at 543.

In *Dreczko*, the Court reaffirmed the principle that members of a zoning board may not supplant their conclusions for those of an uncontradicted expert regarding "concerns that are clearly within the realm" of the expert. *Dreczko*, 248 A.3d at 646. In *Dreczko*, an applicant sought to build a house and install a septic system on a lot that contained wetlands. *Id.* at 640. The applicant, prior to filing the application, had acquired a permit from the Rhode Island Department of Environmental Management (DEM) to alter the wetlands. *Id.* at 641. However, several members of the zoning board rejected the application because they believed, contrary to DEM's conclusions and based upon their own personal observations and measurements, that the proposal was insufficient to protect the wetlands. *Id.* at 646. The Court explained that the zoning board erred because "an applicant for zoning relief ought to be able to rely on permits granted by DEM with respect to those matters uniquely within DEM's expertise." *Id.* The personal observations of the members of the zoning board did not constitute competent contradictory evidence because the members "lacked the specialized knowledge necessary to refute" DEM's conclusions. *Id.* at 645.

Thus, *Murphy* and *Dreczko* stand for the proposition that the zoning board may not turn a blind eye to uncontradicted expert testimony regarding scientific or technical matters that are beyond the expertise of the members of the board. Indeed, both cases required the measurement and analysis of technical information. In *Murphy*, the board needed to determine whether a parcel with wetlands contained at least 80,000 square feet of developable land in 1992, which required the synthesis of technical information. *Murphy*, 959 A.2d at 539. In *Dreczko*, the board needed to determine whether the proposed construction would negatively impact the surrounding wetlands,

which also required taking measurements and analyzing information about which members of the board lacked specialized knowledge. *Dreczko*, 248 A.3d at 645. As one member of the board acknowledged at the hearing in *Dreczko*, “I’m not a wetlands biologist. I’m not an expert.” *Id.*

The City contends that this Court must defer to the Board’s factual findings regarding the impact of the Application on the character of the community, and as part of its argument supplies the following quotation: “[A] zoning board of review is presumed to have *special* knowledge of matters related to the administration of the zoning ordinance *and the character of the community*.” City’s Mem. 3-4 (emphases added). The citation is to *Monforte*, but the City’s memorandum misquotes the opinion and thus misstates the law. The Court actually wrote only that “a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance.” *Monforte*, 93 R.I. at 449, 176 A.2d at 728.⁴

In any event, it is well settled in this state that “evidence gleaned from the personal observations of zoning board members constitute[] ‘legally competent evidence upon which a finding may rest . . . if the record discloses the nature and character of the observations upon which the board acted.’” *Restivo*, 707 A.2d at 666 (quoting *Perron v. Zoning Board of Review of Burrillville*, 117 R.I. 571, 576, 369 A.2d 638, 641 (1977)); see *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1157-58 (R.I. 2006) (discussing *Restivo*). For example, the Court held in *Restivo* that city council⁵ members’ personal

⁴ Additionally, the City’s memorandum cites to a case that this Court has not been able to locate. See City’s Mem. 7 (citing “*Cruz*, 99 A.3d at 713”). As the Supreme Court recently “reiterate[d] in no uncertain terms . . . advancements in technology do not absolve attorneys from their obligations to ensure the accuracy and veracity of their filings.” *Rhode Island Joint Reinsurance Association v. Ricci*, ___ A.3d ___, Nos. 2023-251-Appeal, 2024-246-Appeal, 2026 WL 2192726, at *1 n.1 (R.I. July 30, 2026).

⁵ The distinction between city council members and members of a zoning board is immaterial because “council members may rely on their own expertise to the same degree and under the same conditions as can members of a zoning board.” *Restivo v. Lynch*, 707 A.2d 663, 667 (R.I. 1998).

observations regarding flooding problems faced by residents in a neighborhood were competent evidence supporting denial of an application for a subdivision of land. *Restivo*, 707 A.2d at 666-67. There, the council needed to determine whether a proposed development’s drainage system was adequate and whether the development might exacerbate existing drainage problems. *Id.* at 664-65. An engineering consulting group opined that the project would not exacerbate drainage problems, but the council disagreed and denied the application. *Id.*

The Supreme Court upheld the denial and explained that the council members “made detailed personal observations”; all of which related to “subject matter . . . 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.” *See id.* at 667, 671 (citing and distinguishing *Salve Regina College v. Zoning Board of Review of Newport*, 594 A.2d 878, 881-82 (R.I. 1991)). The Court highlighted that two council members noted on the record that they had traveled to the neighborhood two days after a rainfall and observed that the land was still wet. *Id.* at 667. Further, council members “reported their personal knowledge that the area of the proposed subdivision was a high-density water area and that neighbors in the area had experienced flooded basements[.]” *Id.* One member “disclosed that he had walked the neighborhood in the past and familiarized himself with the [flooding and drainage] problems of the residents in that area.” *Id.*

The case at bar is like *Restivo* and unlike *Murphy* and *Dreczko*. In *Murphy* and *Dreczko*, the zoning board supplanted uncontradicted and unimpeached expert testimony with its own judgment on technical matters beyond the expertise of its board members. *Murphy*, 959 A.2d at 543; *Dreczko*, 248 A.3d at 646. Here, although Houle testified that there was a “trend” for houses in the neighborhood surrounding the Property to include third-floor living space, the Chairman relentlessly contradicted Houle’s opinion with his personal knowledge and expertise. He observed

that Houle’s analysis included houses “on the coastline” that the Chairman believed were not illustrative of the neighborhood character:

“I always look at the neighborhood as what’s in front of me, what’s next to me, what’s behind me, and what are on my four point corners and how that will affect the quality of life of those people. Because they’re the ones that are impacted immediately. The guy down the street, two streets over is not impacted by it. I rode that neighborhood yesterday. I spent a good hour of City’s time, by the way.

“ . . .

“I saw one house down the street . . . with the third level on it. Now, what happens on the coastline . . . I can’t count those houses because they have nothing in front of them or in the back of them . . .

“ . . .

“What I’m looking for is . . . the consistency in the neighborhood.

“ . . .

“[C]haracteristically[-]wise it doesn’t fit.” Hr’g Tr. 39:7-47:11, Jan. 8, 2025.

The Chairman’s observations are precisely the type of “detailed personal observations” on matters within the realm of the Board members’ expertise that the Supreme Court endorsed as competent evidence in *Restivo*. Like the council members in that case, the Chairman traveled to the neighborhood, observed “one house down the street” with third-floor living space, concluded that Houle’s analysis erroneously considered “what happens on the coastline,” and determined that the Application was inconsistent with the character of the area. *Id.* Moreover, like the council members in *Restivo*, who familiarized themselves with neighbors’ drainage concerns, the members of the Board here familiarized themselves with neighbors’ concerns about privacy. *See Restivo*, 707 A.2d at 667. As the courts of this state have reaffirmed *ad nauseum*, “a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective

administration of the zoning ordinance.” *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859 (quoting *Monforte*, 93 R.I. at 449, 176 A.2d at 728). This Court is not persuaded that the consistency of an application with a neighborhood’s character is a matter “so arcane that inferences from factual lay testimony could not be drawn by members of the [Board] based, in part, on their own expertise.” *See Restivo*, 707 A.2d at 671. Unlike *Murphy* and *Dreczko*, which involved determinations as to square footage of developable area in a particular year and the ability of a proposed septic system to preserve wetlands—rather technical issues—the Board here was tasked to “make sure it fits.” *See Hr’g Tr.* 41:16-17, Jan. 8, 2025. The Chairman’s personal observations stated on the record throughout the January 8, 2025 hearing, coupled with his presumed knowledge relating to the effective administration of the Ordinance, constitute substantial evidence that supports the Board’s conclusion that granting relief would impact the character of the area. Likewise, the Board’s rejection of Houle’s opinion about “trends” in the area was not legal error.

Appellants also argue that they established the other elements necessary for relief from the dimensional requirements of the Ordinance; namely, that their hardship is due to the unique characteristics of the Property and not the general characteristics of the surrounding area, that the hardship is not the result of any of their prior actions, and that the hardship they will suffer if the relief is not granted amounts to more than a mere inconvenience. *See* §§ 45-24-41(d) and (e) (delineating factual findings necessary to grant variance from zoning ordinance).

However, this Court need not address these arguments in light of its determination that substantial evidence supports the Board’s conclusion that the Application was inconsistent with the character of the surrounding area. “[T]he cardinal principle of judicial restraint’ is that ‘if it is not necessary to decide more, it is necessary not to decide more[.]’” *Tempest v. State*, 141 A.3d 677, 687 n.15 (R.I. 2016) (quoting *PDK Laboratories, Inc. v. Drug Enforcement Administration*,

362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment)). The burden is upon the applicant for a dimensional variance to establish entitlement to zoning relief, including compliance with *all* state and municipal standards. *New Castle Realty Co.*, 248 A.3d at 647.

Accordingly, this Court's determination that substantial evidence supports the Board's finding that granting relief would impair the character of the neighborhood is sufficient *per se* to deny Appellants' appeal. *See, e.g., East Side, LLC v. Pimental*, No. WC-2024-0378, 2026 WL 1959866, at *14 (R.I. Super. July 1, 2026) (affirming zoning board despite concluding that some of board's conclusions were affected by error of law or not supported by substantial evidence because burden is on applicant to establish *all* requirements for variance). Especially considering that the Board's decision does not include explicit findings or conclusions regarding the other requirements for relief, this Court refrains from passing on these arguments unnecessarily.

IV

Conclusion

Accordingly, Appellants' appeal is **DENIED** and the decision of the Board is affirmed. Counsel shall prepare the appropriate order.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Patricia Mallozzi, et al. v. City of East Providence
Zoning Board of Review, et al.

CASE NO: PC-2025-00840

COURT: Providence County Superior Court

DATE DECISION FILED: August 4, 2026

JUSTICE/MAGISTRATE: Signore, J.

ATTORNEYS:

For Plaintiff: Matthew J. Landry, Esq.

For Defendant: Joel J. Votolato, Esq.