

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: February 9, 2026)

EDWARD P. SUPANCIC, TODD DIONE, :
SUSAN CLELAND, SUSAN CLELAND, in her :
capacity as trustee of the Susan Cleland Trust :
dated October 31, 2016 and as amended :
thereafter, LUKE ZNOSKO, and :
FRANCINE A. LEONE, :
Appellants, :

v. :

C.A. No. WC-2024-0641

JAMES GRUNDY, PATRICK ROACH, :
STEVEN BOROWICK, MEG KERR, :
RICHARD LIPSITZ, and TRACY MCCUE, :
in their official capacities as members of the :
NORTH KINGSTOWN PLANNING :
COMMISSION, and NKGMI, LLC, :
Appellees. :

DECISION

LANPHEAR, J. Before the Court is an appeal from a decision of the North Kingstown Planning Commission granting combined preliminary and master plan approval for the construction of a solar energy system in the Town of North Kingstown. Jurisdiction is pursuant to G.L. 1956 § 45-23-71. For the reasons set forth herein, the Commission’s decision is affirmed.

I

Facts and Travel

Applicant NKGMI, LLC seeks to construct a 4 MW solar array (the Project) off Firwood Drive in North Kingstown in an area located generally between Davisville Road and Route 403. The subject property totals 36.27 acres of land between two lots and, as of October of 2024, was undeveloped woodland zoned Light Industrial. The Project site is bordered to the south by railway

and residential property and to the west by two residential neighborhoods which are zoned Rural Residential.

Properties zoned Light Industrial are intended for less intensive uses than those allowed in a General Industrial district. North Kingstown Revised Ordinances, § 21-111. Light Industrial zones must comply with several minimum performance standards, including limitations on noise, vibration, odors, heat, and glare. A freestanding solar energy system like the NKGM Project is expressly permitted in North Kingstown's Light Industrial zones without a variance or special use permit. Ordinances, Art. III. Access to the Project site will be a twenty-foot-wide gravel road over an existing-but-unimproved public right-of-way. This road will extend Firwood Drive, a residential street in a rural, residential neighborhood.

NKGM submitted its combined application to the North Kingstown Department of Planning and Development in April of 2024. After a duly-noticed public hearing, the Commission issued the seventeen-page decision granting approval for the Project on October 17, 2024.

Appellants, abutters all, filed this present appeal asking the Court to reverse the decision of the Commission. Although the initial Complaint touches on numerous theories for relief, Appellants substantively advance only two arguments: first, that the Applicant did not apply for and was not granted relief from North Kingstown Code of Ordinances, Appendix A, Article 14, § 14.2(c)(1), which prohibits residential roads from "normally" being extended to and used for access to industrial subdivisions; and second, that the Applicant failed to provide an analysis of how the Project would increase noise impact on the residential abutters. *See* Appellant's Br. 5–7.

II

Standard of Review

Pursuant to § 45-23-71, an “aggrieved party may appeal . . . a decision of the planning board” to this Court for review. *See* § 45-23-71(a). On such an appeal,

“[t]he court shall not substitute its judgment for that of the . . . permitting authority as applicable as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or permitting authority, as applicable 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 that are:

“(1) In violation of constitutional, statutory, ordinance, or planning board regulations provisions;

“(2) In excess of the authority granted to the planning board 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 45-23-71(d).

Although a permitting authority’s determination of facts must be treated with deference, the Court reviews issues of statutory interpretation *de novo*. *West v. McDonald*, 18 A.3d 526, 532 (R.I. 2011).

III

Analysis

A

Zoning Ordinance Appendix A, Art. 14, § 14.2(c)(1)

Appellants' first argument raises North Kingstown Zoning Ordinance, Appendix A, Article 14, § 14.2(c)(1), which concerns access to nonresidential subdivisions. This regulation provides, in pertinent part:

“These regulations shall be applicable to all subdivisions of land for industrial or commercial uses or purposes. These regulations shall be in addition to all other applicable requirements.

“ . . .

“(1) A paved road shall be provided to ensure adequate frontage for each lot. Such road shall be constructed in conformance with standards established by the town engineer. If access will be required for unusually heavy or bulky loads, the town engineer may increase the construction and design requirements. Roads serving primarily nonresidential traffic, especially truck traffic, shall not normally be extended to the boundary of adjacent land zoned for residential use or in residential use; nor shall primarily residential roads be used for access to industrial subdivisions. No portion of any lot shall be paved unless in accordance with an approved site plan.” North Kingstown Code of Ordinances, Appendix A, Article 14, § 14.2(c)(1).

Appellants argue that the Town erred when it granted approval of the Project because the only access to the Project site is through the residential Firwood Drive neighborhood, which they contend is prohibited by § 14.2(c)(1). The Applicant maintains that § 14(c)(1)'s use of the phrase “shall not normally” provides the Commission with the discretion to grant approval notwithstanding the “normal” prohibition, and the Town argues that because the Project site is not slated for “subdivision,” § 14.2(c)(1) is inapplicable in the first place.

North Kingstown Code of Ordinances, Appendix A, Article 2, defines “subdivision” as the

“division or redivision of a lot, tract or parcel of land into two or more lots, tracts, or parcels. Any adjustment to existing lot lines of a recorded lot by any means shall be considered a subdivision. All resubdivision activity shall be considered a subdivision. The division of property for purposes of financing constitutes a subdivision.” North Kingstown Code of Ordinances, Appendix A, Article 2.¹

Notwithstanding, the Court is persuaded that the phrase “shall not normally” provides the Commission with the discretion to approve the Project, as both the Applicant and the Town maintain. The words “shall” and “normally” impact a regulation’s discretionary or mandatory effect. The courts have wrestled with this language before, and authority can be found supporting either interpretation. *See, e.g., Baude v. United States*, 955 F.3d 1290, 1299–1300 (Fed. Cir. 2020) (concluding that the phrase “shall normally” creates a mandatory imperative); *but see id.* at 1309-10 (Wallah, J., dissenting) (providing a collection of cases standing for the principle that the phrase “shall normally” provides for a decisionmaker’s discretion).

Fortunately, here, the operative language provides that residential roads “shall *not* normally be extended to the boundary of adjacent land zoned for residential use or in residential use; nor shall primarily residential roads be used for access to industrial subdivisions.” *See* North Kingstown Code of Ordinances, Appendix A, Article 14, § 14.2(c)(1) (emphasis added). This

¹ This section defines “subdivision” as a verb, an action—here, subdivision is the *process* by which lots are created, lines are redrawn, or property is divided. The Town maintains that upon receipt of the combined application, the Commission reviewed it to determine if it proposed any “subdivision” activity, concluded that it did not, and appropriately granted the application as one for a major land development project.

The Code of Ordinances also uses “subdivision” as a noun and does so interchangeably. *See, e.g.,* North Kingstown Zoning Ordinance, Appendix A, Article 14, § 14.2(c)(1). This is common in casual conversation, and legislators, litigants, developers, and delivery drivers refer to tracts of land consisting of multiple parcels as “subdivisions” routinely. While construing a statute or ordinance decision, however, the Court must be more precise: a “subdivision,” for present purposes, must have been *subdivided* according to the definition in the Code of Ordinances. There is no record in the evidence that the Project site constituted a “subdivision” in this more technical sense, and the Appellants put forth no substantive argument to that effect.

“not” eliminates any ambiguity about the ordinance’s discretionary effect: whereas the affirmative statement “shall normally” can be read with the emphasis on the “shall” or the “normally,” and thus give rise to conflicting interpretations, the phrase “shall *not* normally” can *only* be a softening of the unmistakable imperative “shall not.” Courts, contractors, and clergy are all very comfortable with unadulterated “shall not,” because they leave no room for misinterpretation—when a court, contract, or creed says a person *shall not* do a thing, the act is clearly forbidden.

The North Kingstown Code of Ordinances does *not* say that residential roads “shall not” be extended to or used as access for an industrial subdivision—it says they shall not *normally* be so extended or so used. The sensible interpretation of the word *normally* in this context is that although the use or extension of residential roads is not *normally* permissible, sometimes it *is* permissible. The Code of Ordinances doesn’t specify when that is, but if the situation is permissible *at all*, it would need to be the Commission (the factfinder and the entity which applies the appropriate law to the facts) which makes the determination. In the absence of an express standard to apply, the Court agrees this is left to the Commission’s reasonable discretion.

The Appellants argue the Project would result in industrial traffic through their residential neighborhood, but the Commission considered and addressed this concern in its decision. Complaint Ex. 1 at 7, ¶ 20. The Commission found there will be truck traffic through the neighborhood during construction but indicated that these trips would be coordinated to avoid high neighborhood activity, such as school bus pick-up and drop-off times. The Commission also found after construction was complete, there would only be minimal trips per month to maintain and secure the site.

While the passing of “industrial grade” construction vehicles through the neighborhood might prove temporarily bothersome, such is an inescapable necessity of any major development

project. Whether it be solar panels or swimming pools, during construction trucks, machinery, and equipment of all kinds must travel over residential roads. Such traffic will not become the ‘new normal,’ because once construction is complete, the industrial-type traffic will cease, and only minimal monthly traffic to “secure and maintain” the site will be needed.

The post-construction trips are not daily occurrences: they are predicted to occur a few times every month, leaving the character of the neighborhood unaltered, regardless of what vehicles are used. Even in a worst-case scenario—say, a maintenance problem requiring heavy equipment like cranes or concrete—use of the residential roads would be a particularized response to a specific situation, and not a “new normal” industrial traffic pattern which would violate the Code of Ordinances.

Thus, where a crisp “shall not” provides the clarity of absolute prohibition, a discretionary standard permits all possibilities except major abuse. The Court finds no error of law or decision warranting reversal.

B

Noise Analysis

The second argument raised by the Appellants is that the decision should be reversed because the Applicant did not seek a waiver, variance, or similar relief regarding the noise requirements of the North Kingstown Code of Ordinances, Chapter 8, Art. VI (the Noise Control Ordinance), §§ 8-81–8-86.

The Noise Control Ordinance is straightforward enough for the layperson and technical enough for the engineer. It regulates the maximum permissible sound levels allowed at or within the property boundary of “a receiving land use.” “*Receiving land use* means the use or occupancy

of the property which receives the transmission of sound, as defined by this section.” *Id.* at § 8-84. “Sound,” as defined by § 8-84,

“means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that cause compression or rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.” *Id.*

The maximum permissible sound level allowed at the boundary of residential property is 60 decibels (dBA) between 8:00 a.m. and 10:00 p.m., and 50 dBA between 10:00 p.m. and 7:00 a.m. *Id.* at § 8-87. Section 8-85(9) specifically exempts “construction” noise from this requirement, provided such activity does not occur between the hours of 9:00 p.m. and 7:00 a.m. *Id.* at § 8-85(9).

The Appellants are correct that the record does not contain a discrete sound analysis, but neither the Appellants nor the Court have located any provision in the Code of Ordinances requiring a noise analysis. The Commission concluded impermissible sound was not established and specifically addressed the issue of noise in its decision. The Court may not substitute its judgment for that of the Commission if it “can conscientiously find that the . . . decision was supported by substantial evidence in the whole record.” *See Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004). “Substantial evidence . . . means . . . more than a scintilla but less than a preponderance.” *Lischio v. Zoning Board of Review of the Town of North Kingstown*, 818 A.2d 685, 690, n.5 (R.I. 2003) (internal quotation omitted). The Commission received testimony that the Project would be compliant with the Noise Control Ordinance’s site boundary requirements, specifically the solar panels inverters would create “less than 50 dBA at all equipment locations without the need for mitigation.” Hr’g Tr. 30:4–19, Sep. 17, 2024. Because no further noise analysis was expressly required, the Court concludes the Commission’s decision will not be

disturbed on these grounds. *See* § 45-23-71(d). The foregoing analysis is somewhat beside the point because Appellants do not challenge the Commission’s decision because of any sound the solar panels might make—they object to the sound of the adjacent road, Route 403, which sound they worry will carry more clearly once trees are cleared from the Project site. The Noise Control Ordinance provides that “[n]o person shall make, continue, or cause to be made or continued, except as permitted, any noise disturbance as defined in this article or any noise in excess of the limits for such noise established in this article.” Noise Control Ordinance at § 8-86. A “person” includes a corporation such as the Applicant, but a “noise disturbance” means “any sound that: (1) [i]njures or endangers the safety or health of humans[;] (2) [a]nnoys or disturbs a reasonable person of normal sensitivities[;] (3) [e]ndangers or injures personal or real property.” *Id.* at § 8-84. Applicant is not making or causing to be made the annoying noise—Route 403 is doing that, and the Appellants made clear at the public meeting that they *are already* disturbed by it.

To its credit, the Commission did not sit idly by in the face of these concerns and “forward[ed] a memorandum to the North Kingstown Town Council asking that they request a new noise analysis and installation of noise mitigation measures from the Rhode Island Department of Transportation to address the increase in noise from vehicles on Route 403.” (Commission decision at 7, ¶ 18.) This may not be the action the Appellants had hoped the Commission would take, but it has the benefit of being lawful, whereas denying the Applicant’s application would not.

IV

Conclusion

Accordingly, pursuant to the foregoing analysis, the Commission’s decision is **AFFIRMED.**



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Supancic, et al. v. Grundy, et al.

CASE NO: WC-2024-0641

COURT: Washington County Superior Court

DATE DECISION FILED: February 9, 2026

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Jeremy M. Rix, Esq.

For Defendant: James M. Callaghan, Esq.
John O. Mancini, Esq.