STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED – JULY 18, 2012)

JOSEPH MONTAQUILA	:	
	:	
V.	:	**C.A. NO. KC-2010-1567**
	:	
ZONING BOARD OF REVIEW OF THE CITY OF WARWICK	:	

DECISION

K. RODGERS, J. Joseph Montaquila ("Montaquila" or "Appellant") appeals the October 1, 2010 decision of the Zoning Board of Review of the City of Warwick ("the Board"). In that decision, the Board granted certain zoning relief to Donna Siravo and Paul Siravo ("the Siravos" or "the Applicants") for their property at 60 Bradford Avenue ("the Property") in Warwick. This Court has jurisdiction pursuant to G.L. 1956 § 45-24-69. For the reasons set forth below, the Board's decision is affirmed.

I
Facts and Travel

The Property is a waterfront lot designated as Warwick Assessor's Plat 202, Lot 33, and is located in the coastal flood zone of the Potowomut area of Warwick. It is situated south of Ives Road and in the area of Sandy Point.

The Property is located in an A40 zone. The Warwick Zoning Ordinance, adopted in 1994, requires that property in an A40 zone be at least 40,000 square feet ("sf") in area, and that there be a minimum 40′ front- and rear-yard setbacks, 30′ side-yard setbacks, 150′ lot frontage, and 150′ width. (Warwick Zon. Ord. App. A, § 300, Table 2A—Dimensional Regulations.) Additionally, regulations promulgated by the Federal Emergency Management Agency

("FEMA") mandate that any dwelling on the Property have a minimum elevation of 15′ above grade to protect from flooding.

The Siravos have owned the Property since 1997. The Property measures approximately 4,270 sf with 50′ of frontage on Bradford Avenue, and includes an existing single-story, two-bedroom dwelling that was built in 1940. The existing dwelling is approximately 30′ x 40′ in dimension and meets none of the setback, frontage or width requirements for an A40 zone. Thus, the Property is presently nonconforming by area as well as nonconforming by dimension.

Citing disrepair and constant flooding, the Applicants propose to demolish the existing dwelling and construct a two-story, two-bedroom dwelling in its place. The Applicants' plans specify that the new dwelling would be built on columns rising 15′ above grade in accordance with FEMA regulations, and would be placed on the same 30′ x 40′ footprint on which the existing building sits. Consequently, the new dwelling would be similarly nonconforming by dimension. The new dwelling would increase the Siravos' living space from approximately 1,050 sf to 2,100 sf with the addition of a second floor, and would include a garage and storage area on the ground level, replacing approximately 4′ of crawl space. The proposed structure would be less than 35′ in height, which is the maximum height allowed by the Ordinance. See Warwick Zon. Ord. App. A, § 300, Table 2A—Dimensional Regulations. The new structure would be serviced by a modern septic system as required by the Rhode Island Coastal Resources Management Council ("CRMC").

In order to effectuate their plans for the new dwelling, the Siravos filed petition #9846 with the Zoning Board on August 4, 2010, seeking dimensional variances from front-yard, side-yard, and coastal-feature setbacks, as well as from the lot area, frontage, and width requirements. A public hearing on the Applicants' petition was held before the Board on August 24, 2010.

Thomas D'Angelo ("D'Angelo"), a land use facilitator and real estate agent, testified before the Board in support of the proposed plan. D'Angelo addressed the Property's nonconforming characteristics and the current state of the existing dwelling, noting that the seventy-year old dwelling was "in need of extensive repairs due to weathering and fallen trees" and risks becoming uninhabitable. (Tr. 4, 6.)[1] D'Angelo also testified that federal regulations required that any building in a waterfront area be raised to an elevation of 15′ in case of flooding. (Tr. 6-7, 9.) Finally, he described the necessity and benefit of installing a modern septic system on the Property. (Tr. 4-5, 6.)

A neighbor, Theresa Sousa ("Sousa"), also testified in support of the proposed plan. Sousa owns the adjacent lot to the north of the Property. Sousa stated that just four years prior, she herself sought and received the required approvals to demolish and rebuild her home on a nonconforming lot for similar reasons as the Applicants have cited. (Tr. 19.) She further testified that during a recent storm she saw ocean water "hitting [Mrs. Siravo's] sliding door" and that "she got water in her home." (Tr. 20.) Sousa opined that a new house on the Siravos' lot would be an improvement to the aesthetics of the surrounding area. (Tr. 19.)

Appellant lives roughly 260′ from the Property and presently enjoys an easterly view of Narragansett Bay by looking over the Property. (Tr. 10.) Appellant objected to the proposed plan because "any additional height on the house . . . would obstruct [his] view." (Tr. 11.) Through counsel, Appellant also argued that certain provisions in the Zoning Ordinance mandate that the existing structure could not be voluntarily demolished and reconstructed, nor could it be added to or enlarged, unless it conformed to all dimensional regulations, which it does not. (Tr. 15-16.) It was further noted during the public hearing that Appellant would not object to the

[1] Citations herein are to the Official Record Supplement filed by counsel for the City of Warwick and date-stamped August 4, 2011.

structure being razed and rebuilt on the same footprint, so long as there is no increase in height. (Tr. 15.)

At the conclusion of the testimony, the Board voted 5-0 in favor of the Applicants, and on October 1, 2010, the Board filed its written decision granting the Applicants' request for dimensional variances. The Board found that the existing structure on the Siravos' undersized, nonconforming Property had fallen into disrepair, that many homes in the immediate area have been removed, replaced and renovated, and that the surrounding area consists of all residential structures. (Decision at 1-2.) The Board concluded that: (1) the hardship created is due to the unique characteristics of the Property; namely, the undersized lot that was platted long before zoning laws were enacted and stands amid many other nonconforming parcels; (2) no action by the Applicants caused the hardship, nor does a hardship result from the Applicants' desire to realize greater financial gain; (3) granting the request will not alter the general characteristics of the surrounding area nor impair the purposes of the Zoning Ordinance or the City's Comprehensive Plan, but rather would improve the use, value and enjoyment of the Property and the surrounding area; (4) the relief requested is the least relief necessary and is in keeping with the character of the dwellings in the area; and (5) literal enforcement of the dimensional regulations would constitute more than a mere inconvenience as there is no alternative for the Applicants to gain additional lot area from adjacent, developed parcels. (Decision at 2-3.)

Montaquila filed a timely appeal to this Court.

II
Standard of Review

This Court's review of a zoning board decision is governed by § 45-24-69(d), which provides as follows:

> "[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 reverse or modify a 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." Sec. 45-24-69(d).

This Court "must examine the entire record to determine whether 'substantial' evidence exists to support the [zoning] board's findings." Salve Regina Coll. v. Zoning Bd. of Review of City of Newport, 594 A.2d 878, 880 (R.I. 1991) (quoting DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). The term "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." Lischio v. Zoning Bd. of Review of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

III
Analysis

When considering a variance request, the Board is bound by § 45-24-41, which states in pertinent part:

> "(c) In granting a variance, the zoning board of review requires that evidence to the satisfaction of the following standards 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…;
> (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."
> Sec. 45-24-41(c).

In addition to the considerations and evidence required in § 45-24-41(c), § 45-24-41(d)(2) also requires evidence establishing 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." Sec. 45-24-41(d)(2).

On appeal, Appellant asserts that the Zoning Ordinance prohibits the voluntary destruction and rebuilding of a nonconforming structure on a nonconforming parcel; that the Board acted arbitrarily in ignoring the intent of the Zoning Ordinance and the Comprehensive Plan which seek the eventual elimination of nonconforming uses rather than the expansion of nonconformance; that the relief sought and granted was not the least relief necessary; that the Board was clearly wrong in granting relief as the Applicants have not established that they do not have a reasonable alternative to enjoy a legally beneficial use of the property; and that the Board committed an error of law by considering the nonconforming uses in the vicinity of the Property. These issues will be addressed *seriatim*.

A
The Zoning Board's Authority to Grant Dimensional Variances To Rebuild on a Nonconforming Lot

Appellant contends that § 403 *et seq.* of the Warwick Zoning Ordinance prohibits the Applicants from demolishing the nonconforming dwelling and rebuilding on the nonconforming lot, and that the Zoning Board's decision granting the dimensional relief to Applicants arbitrarily and improperly ignored this legislative prohibition.

As a threshold matter, this Court notes the provisions of the Zoning Ordinance upon which Appellant relies in arguing that the Board acted arbitrarily. Section 401.6 of the Zoning Ordinance provides:

> "401.6. *Most restrictive regulations to apply*. A building, structure, or parcel of land nonconforming by more than one factor, such as by use, dimension, area or parking, shall comply with all regulations of this section. Where the regulations conflict, the most restrictive regulations shall apply." Warwick Zon. Ord. App. A, § 401.6.

Section 403, entitled "Buildings or structures nonconforming by dimension," provides in pertinent part:

> "403.4. *Addition and enlargement*. A building or structure nonconforming by dimension shall not be added to or enlarged in any manner, unless such addition or enlargement conforms to all of the dimensional regulations of the zone in which the building or structure is located.
> . . .
> 403.8. *Demolition*. A building or structure nonconforming by dimension, if voluntarily demolished, shall not be reconstructed, unless it conforms with the dimensional regulations of the zone in which it is located. Such voluntary demolition shall be considered an abandonment of the use. If such building or structure is involuntarily demolished, destroyed or damaged, it may be repaired or rebuilt to the same size and dimension as previously existed" Warwick Zon. Ord. App. A §§ 403.4, 403.8 (emphasis added).

Finally, § 405.4 addresses nonconforming residential lots:

> "405.4 *Residential use of nonconforming lots*. In any district in which dwellings are permitted, a dwelling may be erected, enlarged or altered on a nonconforming lot or on two abutting nonconforming lots subject to the following:
> . . .
> (C) Where there is an existing dwelling on a nonconforming lot prior to the effective date of this ordinance or any amendment thereto, such dwelling may be enlarged or altered without approval from the zoning board of review being necessary provided that such alteration or enlargement complies with the front and corner side yard, side yard and rear yard requirements of Table 2A, Dimensional Regulations, for the district in which such lot is located." Warwick Zon. Ord. App. A, § 405.4 (emphasis added).

From these provisions, Appellant would have this Court conclude that because § 403.4 mandates conformity with all requirements found in Table 2A—including lot area, frontage, and width, in addition to front-, side- and rear-yard setback requirements—§ 403.4 is the most restrictive and, in accordance with § 401.6, applies to the Siravos' application. This analysis, however, is inapposite to the issues before the Court. The question before this Court is whether the Zoning Board had authority to—and properly did—grant dimensional variances to the Applicants to erect a nonconforming building on a preexisting nonconforming lot. The provisions of the Zoning Ordinance cited by Appellant do not in any way prohibit the Zoning Board from considering dimensional variances when sought, nor from granting such relief when an applicant satisfies the requirements in § 45-24-41. Indeed, § 906.1 of the Zoning Ordinance authorizes applications for variances when relief is needed "from the literal enforcement of a zoning ordinance because of hardship." A fair reading of § 405.4 also suggests that the Zoning Board will encounter variance requests to enlarge an existing dwelling on a nonconforming lot when front-, side- or rear-yard setback requirements are not satisfied. See § 405.4 (authorizing

enlargement of existing structures on nonconforming lots without the necessity of Zoning Board approval when front-, side- and rear-yard setback requirements are satisfied).

This Court must "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994). In viewing the entire Zoning Ordinance as a whole, it is evident that the Board is authorized to consider and approve dimensional variances, including for nonconforming properties that existed before the enactment of the Ordinance. See § 405.4; see also § 906.1. To conclude otherwise would render meaningless the authority of the Zoning Board to consider "[a]n application for relief from the literal requirements of a zoning ordinance because of hardship." Sec. 906.1. Thus, the Board did not arbitrarily ignore § 403.4, which requires additions and enlargements of nonconforming buildings to comply with all dimensional regulations set forth in Table 2A, but rather properly considered the relief from the literal requirements of § 403.4 and Table 2A consistent with its authority under § 906 *et seq*.

Similarly, the Board has authority to consider and grant relief from the literal requirements of § 403.8. Any demolished and reconstructed building on the Property would not conform to any dimensional regulations due to the size of the preexisting nonconforming lot. Accordingly, the Board was authorized to consider and rule upon the Applicants' request for dimensional variances pursuant to § 906 *et seq.*, and the Board did not arbitrarily ignore § 403.8 in granting the Applicants the relief they sought.

B

The Intent of the Zoning Ordinance and the Comprehensive Plan

Appellant next argues that the dimensional relief contravenes the intent of the Zoning Ordinance and the Comprehensive Plan, both of which seek to eliminate rather than expand

nonconformities. Contrary to Appellant's argument, however, there is substantial evidence on the record to support the Zoning Board's finding that granting the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the Warwick Zoning Ordinance or the Warwick Comprehensive Plan.

Section 103 of the Zoning Ordinance provides:

> **"103. Purpose.**
> This ordinance is designed to:
> 103.1. Promote the public health, safety and general welfare of the city.
> . . .
> 103.9. Promote safety from fire, flood, and other natural or manmade disasters." Warwick Zon. Ord. App. A, §§ 103.1, 103.9.

In specifying the restrictions on buildings and structures that are nonconforming by dimension, § 403 of the Zoning Ordinance begins as follows:

> "**403. Building or structure nonconforming by dimension.** Buildings or structures that are nonconforming by dimension are likely to cause overcrowding and congestion in the neighborhoods, contribute to unhealthy conditions and are contrary to the purposes of this ordinance. Buildings or structures that are nonconforming by dimension cause disruption of the comprehensive land use pattern of the city, inhibit present and future development of nearby properties, and confer upon their owners a position of unfair advantage. It is intended that existing buildings or structures that are nonconforming by dimension shall not justify further departures from this ordinance for themselves or for any other property." Warwick Zon. Ord. App. A, § 403.

Warwick's Comprehensive Plan also discusses undersized lots in the Potowomut area where the Property is located. It states:

> "Density and Land Use – The existing coastal land use pattern in Potowomut is basically well suited to the environmental characteristics of the peninsula. . . . The only area where land use density may be greater than is desirable is the residential area between Sandy Point and Sally Point. Many homes in this vicinity are on very small lots (5,000 – 7,000 square feet). This density is high given the fact that Potowomut is not served with public sewers." Warwick Comprehensive Plan, Land Use Element, ch. VII, at 63.

It goes on to address specific coastal areas as follows:

> Private coastal lands between Potowomut Bridge and Sandy Point (property south of Ives Road) should be designated for very low-density residential use. Warwick Comprehensive Plan, Land Use Element, ch. VII, at 107.

Notably, the use of the Property is not being changed, nor is the footprint or the occupancy of the dwelling. The existing one-story, two-bedroom dwelling would be replaced by a two-story, two-bedroom dwelling on the same footprint as it presently stands. The proposed nonconformity by dimension is not being extended in any way and is not a "further departure" from the dimensional regulations in the Zoning Ordinance. See Warwick Zon. Ord. App. A, § 403. Additionally, the Board found that "[t]he proposed new dwelling would significantly improve the use, value and enjoyment of the subject property and the surrounding area." (Decision at 2.) Such finding is indeed consistent with the purposes of the Zoning Ordinance in that granting the variance and allowing the Applicants to build the proposed dwelling would "[p]romote safety from fire, flood, and other natural or manmade disasters." (Warwick Zon. Ord. App. A, § 103.9.) Certainly an elevated waterfront home—in accordance with FEMA regulations—will provide greater protection from coastal flooding and storm surge. In this regard, the Board's decision "[p]romote[s] the public health, safety, and general welfare" and, consequently, does not impair the intent or purpose of the Zoning Ordinance. (Warwick Zon. Ord. App. A, § 103.1.)

Similarly, the intent of the Comprehensive Plan is not violated by granting the relief sought. The density of the Property and its affect on the surrounding residential area, as proposed, is the same as in its present state, and the proposal does not further burden environmentally sensitive areas or create additional concerns because of the lack of public sewers in the area. Indeed, the evidence demonstrates that granting the setback variances in this

case will directly "protect, preserve, and enhance [a] residential neighborhood[] and [an] environmentally sensitive area[][.]" (City of Warwick Comprehensive Plan, Land Use Element, ch. VII, at 94.) Having heard from D'Angelo and viewing photographs of the existing home, the Board found that the house had fallen into disrepair and that several houses in the area had been replaced or renovated on preexisting nonconforming lots. (Decision at 1.) The Board had also heard from the Applicants' neighbor, Sousa, who testified that the Siravos' existing house stood in contrast to the appearance and condition of the surrounding homes in the area. (Tr. 19.) A member of the Board noted, during the public hearing, that "the improvement on the property is apparent from looking at the pictures [and] would improve the overall aesthetics in view from all of the neighbors." (Tr. 23.) The Board also had before it the report from the CRMC stating that a modernized septic system was required for the Property given its coastal location. Thus, the Zoning Board concluded that the proposed dwelling would significantly improve the use, value and enjoyment of the Property and the surrounding area. (Decision at 2.)

In granting the requested relief, the Zoning Board has authorized the replacement of a dilapidated cottage with a structure like other recently rehabilitated or reconstructed structures in the surrounding residential area. Not only would the proposed structure enhance the neighborhood, but also the new septic system to be installed would protect the environmentally sensitive coastal area, and the 15′ elevated height of the structure would also protect the dwelling from storm surge. Accordingly, there is ample evidence on the record to demonstrate that the requested variance would not alter the general character of the surrounding area nor will it impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan. For these reasons, Appellant's argument that granting dimensional relief to the Applicants contravenes the intent of the Zoning Ordinance and the Comprehensive Plan is unavailing.

C
The Least Relief Necessary

Appellant further contends that the Applicants' requested relief is not the least relief necessary, as required by § 45-24-41(c)(4) and § 906.3(4) of the Zoning Ordinance. In support thereof, Appellant suggests that doubling the Applicants' living space and tripling the number of floors of their two-bedroom dwelling has not been proven to be necessary. In other words, because the Applicants did not present evidence that they need additional living space or storage space, they have not satisfied their burden.

Appellant's argument misses the mark. The relief requested in this case is not dictated by the amount of living space or storage space in the new structure, but rather by the placement of the dwelling on the pre-existing, nonconforming lot. The relief sought would be no different than if the Applicants were to raze and rebuild the exact same one-story, two-bedroom dwelling that currently exists because it lies on the same footprint. Certainly, had the Applicants sought to increase living space and storage space by expanding the one-story dwelling horizontally rather than vertically, then Appellant's contention that the relief sought is not the least relief necessary would be more meritorious. However, that hypothetical further supports the fact that Applicants' request is indeed the least relief necessary as there is no change in the footprint but rather in height only, and even so, the proposed height complies with the height restrictions imposed by the Zoning Ordinance. Accordingly, the Board did not err in concluding that the relief sought by and granted to the Applicants was the least relief necessary.

D

The Standard by which Applicants Must Establish That Denial of the Relief Requested Would Be More Than a Mere Inconvenience

Appellant argues that the Board was clearly wrong in granting relief when the Applicants have failed to demonstrate that they have no reasonable alternative to enjoy the Property. Appellant's reliance on this standard is entirely misplaced and this argument cannot be sustained.

Section 906.3(A) of the Zoning Ordinance specifies the standards the Board must apply to all requests for variances and mirrors the standards set forth under State law. See Warwick Zon. Ord., App. A., § 906.3(A); cf. § 45-24-41(c). However, § 906.3(B) goes on to identify the additional, yet different standards to be applied specifically to use variances and to dimensional variances. With respect to dimensional variances, § 906.3(B)(2) provides:

> B. *Different standards for use and dimensional variances*. The board shall, in addition to the [§ 906.3(A)] standards, require that evidence be entered into the record that:
> . . .
> (2) In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief. Warwick Zon. Ord., App. A., § 906.3(B)(2) (emphasis added).

The Zoning Ordinance's definition of "mere inconvenience" is more stringent than that which is presently required under the General Laws. A brief history of pertinent State law is in order. In 1960, the Rhode Island Supreme Court held that for an applicant to obtain a dimensional variance (or deviation), the applicant need only show an adverse impact that amounted to more than a mere inconvenience. Viti v. Zoning Bd. of Review of Providence, 92 R.I. 59, 64-65, 166 A.2d 211, 213 (1960). This judicially-created standard came to be known as

the Viti Doctrine, and for many years, landowners seeking dimensional relief were not required to demonstrate a loss of all beneficial use of the land in the absence of the requested relief. See Gara Realty, Inc. v. Zoning Bd. of Review of South Kingstown, 523 A.2d 855, 858 (R.I. 1987); DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 246, 405 A.2d 1167, 1170 (1979).

In 1991, the General Assembly enacted sweeping changes to the existing zoning laws, which generally had been enacted in 1921. The Zoning Enabling Act of 1991, codified at G.L. 1956 §§ 45-21-27 through 45-21-72, created a uniform, comprehensive statewide zoning plan that revised previous zoning laws in several respects, including the standard for dimensional variances. All municipalities were required to conform their existing zoning ordinances to these new provisions by December 31, 1994, and any nonconforming municipal ordinances thereafter would be rendered null and void as of that date. See § 45-24-28. The General Assembly also expressly set forth definitions of certain words and phrases which are to be "controlling in all zoning ordinances created under [the Zoning Enabling Act]." Sec. 45-21-31.

Importantly, the Zoning Enabling Act effectively repealed the Viti Doctrine by imposing a more stringent standard for dimensional variances and redefining "more than a mere inconvenience" as "mean[ing] that there is no reasonable alternative to enjoy a legally permitted beneficial use of one's property," Sec. 45-24-41(d)(2), as amended by P.L. 1991, ch. 307, § 1. That higher standard was effective only until 2002 when the General Assembly amended §45-24-41(d)(2) to reinstate the Viti Doctrine, thereby requiring that an applicant for a variance demonstrate only an adverse impact amounting to more than a mere inconvenience. Sec. 45-24-41(d)(2), as amended by P.L. 2002, ch. 218, § 1. Following the 2002 amendment, the Supreme Court confirmed that for an applicant to obtain a dimensional variance, the applicant needed to

satisfy the relaxed standard by showing only an adverse impact that amounted to "more than a mere inconvenience," and not having to show that "no other reasonable alternative" existed. Lischio v. Zoning Bd. of Review of North Kingstown, 818 A.2d 685, 692 (R.I. 2003).

Notwithstanding the State statutory scheme, the Warwick Zoning Ordinance maintains the higher standard for granting a dimensional variance as was required statewide from 1991 through 2002. See § 906.3(B)(2). However, our Supreme Court has held that a municipal "ordinance inconsistent with a state law of general character and state-wide application is invalid." Town of East Greenwich v. O'Neil, 617 A.2d 104, 109 (R.I. 1992) (quoting Wood v. Peckham, 80 R.I. 479, 482, 98 A.2d 669, 670 (R.I. 1953)). The Supreme Court has also held that where the General Assembly clearly intends to establish uniform procedures throughout the State and in explicit terms provides definitions which shall supersede local regulations, the local regulations will be pre-empted. Munroe v. Town of East Greenwich, 733 A.2d 703, 711 (R.I. 1999); see also New England Expedition-Providence, LLC v. City of Providence, 773 A.2d 259, 262 (R.I. 2001) (holding Providence zoning ordinance preempted by Zoning Enabling Act where definition of land development project differed). The Zoning Enabling Act is one such law of statewide application. Munroe, 733 A.2d at 710 ("Zoning, land development and subdivision regulations constitute a valid exercise of police power, and are matters of statewide concern."). Further, § 45-24-31 explicitly provides that "the words and phrases defined in this section are controlling in all local ordinances created under this chapter." "Mere inconvenience" is defined in § 45-24-31 as follows: "See § 45-24-41." Sec. 45-24-31(46). Undoubtedly, then, the General Assembly intended that the definition of "mere inconvenience" in § 45-24-41(d)(2) would be uniform statewide and would be "controlling in all local ordinances."

The definition of "mere inconvenience" set forth in the Warwick Zoning Ordinance clearly and impermissibly conflicts with State law by including the additional requirement that the applicant demonstrate that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property,[2] a requirement that was repealed in 2002. Sec. 906.3(B)(2); cf. § 45-24-41(d)(2), as amended by P.L. 2002, ch. 218, § 1. As the Warwick Zoning Ordinance definition is preempted by the "mere inconvenience" definition and standard set forth in § 45-24-41(d)(2), Appellant's contention that the Siravos failed to demonstrate that there was no reasonable alternative use of their property is entirely unsound. Accordingly, the Board's decision was not affected by an error of law in applying the "mere inconvenience" standard in § 45-24-41(d)(2) rather than the more stringent standard required in § 906.3(B)(2) of the Warwick Zoning Ordinance.

E
The Board's Reliance on Other Nonconforming Properties in Area

Finally, Appellant maintains that the Board committed an error of law by considering nonconforming properties adjacent to the Property. Specifically, Appellant relies upon Terry v. Carlson, 2005 WL 372217 (Super. Ct. Jan. 31, 2004) (Thompson, J.), in arguing that it is black letter law that "[n]onconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance." (Appellant's Mem. in Support of Complaint at 12.) Terry, however, involved a use variance rather than a dimensional variance. 2005 WL 372217 at *8. Furthermore, § 45-24-41(d)(1) expressly states that "[n]onconforming uses of neighboring lands or structures in the

[2] Notwithstanding this invalid higher standard, the Board did conclude that because there was no opportunity for the Applicants to enlarge the Property by acquiring adjacent property, all of which is developed, there is no other reasonable alternative. (Decision at 3.) Thus, even employing the higher standard, substantial evidence in the record exists to support the Board's findings as it relates to the mere inconvenience that the Applicants would suffer without the requested relief.

same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance." Sec. 45-24-41(d)(1) (emphasis added). A similar prohibition is not set forth in § 45-24-41(d)(2) governing the additional standards for dimensional variances. Accordingly, Appellant's argument in this regard also must fail.

F
Substantial Evidence of Record

Notably, Appellant does not contend that the Zoning Board erred in concluding that the hardship from which the Applicants seek relief is due to the unique characteristics of the Property, and not to the general characteristics of the surrounding area or to a physical or economic disability of the Applicants. See § 45-24-41(c)(1). Likewise, Appellant does not contend that the Zoning Board erred in concluding that the hardship from which the Siravos seek relief is not the result of any prior action by the Applicants, nor does it result primarily from the desire of the Applicants to realize greater financial gain. See § 45-24-41(c)(2). Appellants would be hard-pressed to maintain such arguments because there is overwhelming evidence in the record to support the Zoning Board's conclusions in these respects. The Property is a unique lot in a unique area on the water in Potowomut. The size of this lot prohibits any structure from being built thereon, including the existing one-story, two-bedroom dwelling, without the need for dimensional variances. Both the size of the lot and the existing dwelling (as well as nearby nonconforming lots in what is now an A40 zone) pre-date zoning regulations and clearly are not the result of any prior action taken by these Applicants, who have owned the Property since 1997. The unique characteristics of the Property cannot be ignored, even among other nonconforming lots in the surrounding residential area. There is substantial evidence in the record to support the Board's decision in all respects.

IV
Conclusion

Having reviewed the entire record before it, and for the foregoing reasons, this Court is satisfied that the decision of the Warwick Zoning Board is supported by reliable, probative and substantive evidence, and is neither an abuse of discretion, clearly erroneous, nor affected by error of law. The substantial rights of Appellant have not been prejudiced. Accordingly, the decision of the Zoning Board of the City of Warwick is affirmed. Counsel for the Zoning Board shall prepare a Judgment consistent with this Court's Decision.