STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: JANUARY 3, 2013)

BAIRD PROPERTIES, LLC	:	
	:	
v.	:	
	:	**C.A. No. WC-2011-0079**
THE ZONING BOARD OF REVIEW OF THE TOWN OF EXETER, LARRY DESACK, KATHLEEN WARD-BOWEN, PAUL MCADAM, JOSH GRASSO, AND LARRY CORNELL, in their capacities as Members of the Zoning Board of Review of the Town of Exeter, Rhode Island	:	

DECISION

STERN, J. Before this Court is an appeal from a January 25, 2011 decision of the Town of Exeter's Zoning Board of Review denying in part and granting in part the special use permit applications of Appellant Baird Properties, LLC. Appellant filed its timely appeal on February 10, 2011, seeking a review and reversal of the Zoning Board's decision. Both sides have filed substantial memoranda in support of their respective positions and, based on a review of those documents and the applicable law, the Court issues this Decision. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

Baird Properties, LLC ("Appellant") owns two multi-acre lots located on Nooseneck Hill Road in Exeter, Rhode Island. These lots are designated as Lots 24-25 on the Tax Assessor's Plat 20, Block 3. These lots are located in the Light Business/Residential zoning district and, as

such, two businesses are currently operated on the lots—Mike's Tree Service and Mulch 'n More. On Lot 24, which is five acres, mulch and other landscaping materials are sold. On Lot 25, which is three and a half acres, plants and garden supplies are sold. A mobile home is also found on Lot 25. The mobile home is occupied by a tenant who provides some security for the property by watching the property when the business is closed.

Although the timing is unclear based on the parties' filings, it appears that the Town of Exeter's zoning official served a cease and desist order on Appellant. That order, as well as a zoning enforcement action filed in the Superior Court, sought to enjoin and restrain Appellant from conducting unpermitted activities on Lot 25. In response, Appellant filed an application with the Exeter Zoning Board of Review ("Zoning Board") seeking special use permits for both lots. More specifically, Appellant sought to sell additional landscaping materials, such as firewood, stone, and sand. On Lot 24, Appellant also sought to construct a display area for the landscaping materials as well as a 10,250 square foot building that would contain office, storage, and repair space for Appellant's tree cutting equipment. On Lot 25, Appellant sought to primarily store firewood and landscaping materials as well as construct an area for production of certain materials. The nursery business on Lot 25 would remain under Appellant's proposed plan. Appellant also sought to keep the mobile home on Lot 25 for the security the tenant provides for the property when the business is closed.

The Zoning Board conducted a public hearing on Appellant's application on October 14, 2010. Following this hearing, Appellant amended its application and, pursuant to the Zoning Board's request, submitted separate applications for each lot. The new application for Lot 24 sought special use permits to (1) screen and store landscaping materials, (2) cut and sell firewood, and (3) process wood. The new application for Lot 25 sought special use permits for

those exact three uses. Additionally, the Lot 25 application proposed three permitted uses for (1) the roadside sale of agricultural products, (2) the existing nursery, and (3) the sale of mulch and landscaping products.[1]

A second public hearing was then conducted on November 18, 2010. The Zoning Board heard testimony from Mr. Baird, his engineer, Hal Morgan (the Zoning Inspector), and a number of abutting property owners. Two motions were then made to grant both applications as presented; however, both of those motions failed as the Zoning Board voted unanimously to deny Appellant's applications for special use permits pursuant to Article II, § 2.6.5 of the Zoning Ordinance (the "Multiple Use Ordinance"). That provision allows the Zoning Board to issue special use permits for more than one nonresidential use on a single lot provided that "such uses shall be only those that are permitted within the district in question." Zoning Ordinance § 2.6.5. The Zoning Board determined that, because the requested uses were not "permitted uses" within the Light Business/Residential zoning district, it was not within the Zoning Board's authority to grant the requested special use permits. A third motion was then made to grant a special use permit for the three permitted uses proposed for Lot 25. That motion passed unanimously, conditioned upon removal of the mobile home from the lot and submission of plans to the town's planning board.

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[1] Although these three uses are permitted by §§ 2.4.1.11, 2.4.1.20, and 2.4.1.24 of the Zoning Ordinance, § 2.6.5 limits the number of nonresidential uses per lot. That provision states:

> "More than one nonresidential structure may be allowed on a single lot within appropriately zoned nonresidential districts if devoted to the same actual use. Upon application to the zoning board of review, *a special use permit may be granted . . . where more than one actual use on a lot may be requested; provided, however that such uses shall be only those that are permitted within the district in question*." Zoning Ordinance § 2.6.5 (emphasis added).

Thus, Appellant was required to obtain a special use permit to legally conduct all three of these permitted uses concurrently on Lot 25.

A written decision was issued by the Zoning Board on January 25, 2011. That decision memorialized the votes on each of the three motions presented at the public hearing on November 18, 2010.[2] In addition to these three motions, the Zoning Board contends that, following the denial of the multiple special use permits requested for Lot 24, no further action was required as to that lot because the only remaining request, "sale of lumber, building materials, hardware, grain or feed," was permitted as a matter of right. That decision was recorded in the land evidence records on January 26, 2011. Appellant subsequently filed this timely appeal on February 10, 2011, seeking a review and reversal of the Zoning Board's decision. To date, each side has submitted substantial memoranda in support of their respective positions.

II

Standard of Review

Superior Court review of a Zoning Board decision is governed by R.I. Gen. Laws § 45-24-69. In conducting such a review, "[t]he court shall not substitute its judgment for that of

[2] As summarized in the decision:

> "A motion was made to grant the applicant special use permits under §§ 2.4.1.8, 2.4.1.9b, 2.4.1.24, and 2.4.1.41 on Lot 24. The board voted 0-5 against the application, and the motion failed.
>
> "A motion was made to grant the applicant special use permits under §§ 2.4.1.1, 2.4.1.8, 2.4.1.9b, 2.4.1.11, 2.4.1.20, 2.4.1.24, and 2.4.1.41 on Lot 25. The board voted 0-5 against the application, and the motion failed.
>
> "A motion was made to grant the applicant a special use permit to conduct more than one permitted use under §§ 2[.]4.1.11, 2.4.1.20, and 2.4.1.24 on Lot 25, subject to development plan review and removal of a trailer from the premises. The Board voted unanimously to grant [the] motion, and the motion passed." Zoning Bd. Decision at 9.

the zoning board of review as to the weight of the evidence on questions of fact." G.L. 1956 § 45-24-69. In determining what constitutes the record to be reviewed, the statute states:

> "The court shall consider the record of the hearing before the zoning board of review and, if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the report, constitutes the record upon which the determination of the court is made." Id.

Additionally, a zoning board must comply with G.L. 1956 § 45-24-61, which states that the board "shall include in its decisions all findings of fact and conditions, showing the vote of each participating member, and the absence of a member . . . ." All decisions and records of a zoning board, even on appeal, must also comply with this standard. See G.L. 1956 § 45-24-68. Following its review of the record, "[t]he court may affirm the decision of the zoning board of review or remand the case for further proceedings." Id. § 45-24-69.

Judicial review, however, is not conducted *de novo*. Munroe v. Town of East Greenwich, 733 A.2d 703, 705 (R.I. 1999) (citing Kirby v. Planning Bd. of Review of Middletown, 634 A.2d 285, 290 (R.I. 1993)). Rather, the review of questions of fact "is confined to a search of the record to ascertain whether the board's decision rests upon 'competent evidence' or is affected by an error of law." Id. (quoting Kirby, 634 A.2d at 290). By contrast, questions of law are to be reviewed *de novo*. See Pawtucket Transfer Operations v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008); Tanner v. Town Council, 880 A.2d 784, 791 (R.I. 2005).

The Superior Court should only "reverse or modify the decision if substantial rights of the appellant have been prejudiced." G.L. 1956 § 45-24-69. Such prejudice occurs when "findings, inferences, conclusions, or decisions" are found to be:

> "(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." Id.

This standard requires a certain level of deference to the decisions of zoning boards so long as those zoning boards have based their decisions on competent evidence.

III

Analysis

A

Appellant's Initial Arguments

The instant appeal was filed on February 10, 2011. Subsequently, Appellant filed a memorandum in support of its appeal on July 19, 2011. The Zoning Board filed its responsive memorandum on September 6, 2011. Appellant then filed a reply memorandum on September 19, 2011 to address the arguments made by the Zoning Board. In these documents, Appellant asserts three arguments as to why this Court should reverse the Zoning Board's decision. First, Appellant asserts that there is no evidence that the Zoning Board's members made findings of fact and conclusions of law on either application. Next, Appellant argues that the Zoning Board exceeded its authority by requiring removal of the mobile home as a condition of its approval of the three permitted uses on Lot 25. Finally, Appellant contends that the Zoning Board improperly elicited testimony concerning Appellant's prior zoning violations. This Court will address each of these arguments in turn.

1

Findings of Fact & Conclusions of Law

R.I. Gen. Laws § 45-24-61 requires a zoning board of review to "include in its decision all findings of fact and conditions, showing the vote of each participating member, and the absence of a member or his or her failure to vote." Additionally, the Rhode Island Supreme Court has long held that "a zoning board of review is required to make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review." Cranston Print Works Co. v. City of Cranston, 684 A.2d 689, 691 (R.I. 1996) (quoting Thorpe v. Zoning Bd. of Review of N. Kingstown, 492 A.2d 1236-37 (R.I. 1985)).

Here, Appellant concedes in its first memorandum that the Zoning Board's decision contains both findings of fact and conclusions of law; however, it asserts that "there is simply nothing in the record to indicate [those findings and conclusions] were made by the board at the hearing." Appellant's Mem. at 6. Appellant contends that this is shown by the fact that only the chairman of the Zoning Board signed the decision. As such, Appellant claims that the decision is merely that of "the board's attorney or . . . of municipal employees" rather than the members of the Zoning Board. Id. at 7.

This Court does not find Appellant's argument to be compelling. While it is true that R.I. Gen. Laws § 45-24-61 does require the Zoning Board's decision to "show[] the vote of each participating member, and the absence of a member or his or her failure to vote," this does not require the signature of each board member to make the Zoning Board's decision valid. In its decision, the Zoning Board stated the names of the members who were present at each of the

hearings on Appellant's applications.[3] Additionally, the decision explains that for each of the three motions made to grant Appellant's various special use permits, the five Zoning Board members voted unanimously.

Furthermore, although Appellant asserts that there is nothing to indicate that the Zoning Board's findings of fact and conclusions of law "were made by the board at the hearing," no such requirement has been imposed by either the Legislature or the Rhode Island Supreme Court. Rather, R.I. Gen. Laws § 45-24-61(a) requires zoning boards to issue decisions "within a reasonable time period" "[f]ollowing a public hearing." It is in such a decision that zoning boards must include the relevant findings of fact and conclusions of law. Therefore, this Court finds no evidence of any requirement that such findings of fact and conclusions of law be made at the hearing, as Appellant suggests.

As previously stated, this Court's review of the Zoning Board's decision is not conducted *de novo*. Munroe, 733 A.2d at 705 (citing Kirby, 634 A.2d at 290). Rather, the review of questions of fact "is confined to a search of the record to ascertain whether the board's decision rests upon 'competent evidence' or is affected by an error of law." Id. (quoting Kirby, 634 A.2d at 290). Here, there this Court finds that competent evidence was provided at the hearings on Appellant's applications via testimony from not only Mr. Baird and the Zoning Inspector but also a number of abutting property owners. Thus, this Court finds that the findings of fact and conclusions of law found in the Zoning Board's decision are sufficient. Therefore, this Court does not have the authority, based on Appellant's first argument, to reverse or modify the Zoning Board's decision based on the alleged insufficiency of the Zoning Board's findings of fact.

[3] Specifically, the second paragraph of the Zoning Board's decision states that "[a]t all hearings on the matter, the following Board members were present[:] Larry DeSack, Chair, Kathleen Ward-Bowen, Vice-Chair, Paul McAdam, and alternates John Grasso and Larry Cornell."

2

Legal Nonconforming Use

Appellant next argues that the Zoning Board exceeded its authority by requiring Appellant to remove the mobile home from Lot 25 as a condition of the approval of the permitted uses on that lot. In support of this argument, Appellant asserts that the mobile home is a legal nonconforming use. A nonconforming use is a use of land "that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect." Black's Law Dictionary 1682 (9th ed. 2009).

Generally, "the right to continue a nonconforming use does not . . . include the right to expand or intensify that use." Town of Richmond v. Wawaloam Reservation, Inc., 850 A.2d 924, 934 (R.I. 2004) (quoting Town of W. Greenwich v. A. Cardi Realty Associates, 786 A.2d 354, 362 (R.I. 2001)). Rather, this Court must "strictly construe the scope of nonconforming uses" because they are "detrimental to a zoning scheme, and the overriding public policy of zoning . . . is aimed at their reasonable restriction and eventual elimination." Id. at 934-35 (quoting RICO Corp. v. Town of Exeter, 787 A.2d 1136, 1144-45 (R.I. 2001) (internal quotations omitted)). Indeed, the Zoning Ordinance states that a nonconforming use "shall not be intensified in any manner." Zoning Ordinance § 3.2.7.

At the hearings on Appellant's applications, the Zoning Board determined that the mobile home was, indeed, a nonconforming use. However, the Zoning Board also concluded that granting Appellant's application for special use permits as to those permitted uses on Lot 25 would amount to an intensification of the nonconforming use by having multiple permitted uses

on the lot, as allowed by the Multiple Use Ordinance.[4] Appellant argues that there was no proposed intensification of the nonconforming use because testimony showed that "the mobile home would remain on Lot 25 at its current location and that no changes would be made to it." Appellant's Mem. at 8.

"There is a difference in the manner and which nonconforming uses and nonconforming . . . structures are viewed." Arden Rathkopf and Daren Rathkopf, The Law of Zoning and Planning § 72:5 (4th ed. 2004, as amended). Indeed, "uses which do not conform to the provisions of the ordinance are, and historically have been, looked upon more seriously than noncompliance with nonuse restrictions (i.e., regulations affecting lot size and building bulk, height, and location)." Id. The Zoning Ordinance makes this distinction by differentiating between "nonconforming by use" and "nonconforming by dimension." See Zoning Ordinance §§ 3.1.3, 3.1.4.

Here, there are no allegations that the mobile home does not conform to the relevant dimensional restrictions and, therefore, its presence on Lot 25 is "nonconforming by use." In its memorandum, it appears that Appellant attempts to make the argument the presence of the mobile home conforms to the current zoning regulations. In making this argument, Appellant notes that the mobile home on the property was improperly classified in the application as a single-family structure under § 2.4.1.1 rather than as a mobile home under § 2.4.1.12. See Appellant's Mem. at 8, n. 3. Section 2.4.1.12 of the Zoning Ordinance provides that "[s]ingle-family mobile homes will be allowed as temporary living structures for a period of one year

[4] Indeed, the sixteenth finding of fact in the Zoning Board's decision states:

> "That the proposed retention on Lot 25 of the single family mobile home is not merely a continuation of a pre-existing use, but rather taken together with the multiple uses proposed on Lot 25 constitutes intensification of a pre-existing non-conforming use."

under the following conditions; i.e. fire- and storm-related damage." This use is permitted on the Light Business/Residential zoning district; however, "[t]he license will be reviewed by the zoning board of review after one year." Zoning Ordinance § 2.4.1.12.

Regardless of the classification of the mobile home, the structure was deemed to be nonconforming by use.[5] As previously stated, "the right to continue a nonconforming use does not . . . include the right to expand or intensify that use." Town of Richmond, 850 A.2d at 934. By attempting to obtain a special use permit to allow for more than one nonresidential use of the property pursuant to the Multiple Use Ordinance, Appellant necessarily seeks to expand the scope of the uses on Lot 25.

In granting the special use permit as to those three permitted uses, the Zoning Board may impose conditions that are in line with the well-accepted notions that nonconforming uses are "detrimental to a zoning scheme, and [that] the overriding public policy of zoning . . . is aimed at their reasonable restriction and eventual elimination." Id. at 934-35 (quoting RICO Corp., 787 A.2d at 1144-45 (internal quotations omitted)). Therefore, this Court holds that the Zoning Board acted within its authority in conditioning the grant of the special use permit on the removal of the mobile home from Lot 25.

3

Prior Zoning Violations

Appellant's final argument as to why this Court should reverse the decision of the Zoning Board is that the Zoning Board inappropriately "heard a detailed account of [Mr. Baird's]

[5] Appellant's argument that "the mobile home would remain on Lot 25 at its current location and that no changes would be made to it" is made irrelevant by the determination that the mobile home is nonconforming by use rather than by dimension. See Appellant's Mem. at 8. This is because Appellant's argument is applicable only in the realm of structures that are nonconforming by dimension. Here, it is the mere presence of the mobile home that amounts to a nonconforming use in this zoning district.

interactions with Coventry officials concerning zoning violation issues" as well as testimony from the zoning enforcement officer. Appellant's Mem. at 9. Appellant claims that the Zoning Board's decision is invalid "to the extent that . . . [it] was based on either Mr. Baird's testimony about his previous zoning violations or on board members' *ex parte* discussions with the zoning enforcement officer." Id.

As previously stated, this 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." G.L. 1956 § 45-24-69. The Rhode Island Supreme Court has stated that zoning boards are charged "with the duty of determining facts from reasonably competent testimony and other proper means, such determination forming the basis for official action within the limits of reasonable discretion. In other words, the board is required to act judicially on facts lawfully ascertained." Robinson v. Town Council of Narragansett, 60 R.I. 422, 199 A. 308, 314 (1938). The Court later clarified that "other proper means" as referred to in the Robinson decision "includes knowledge acquired by inspections as well as that presumed to be possessed by members of such boards." Zimarino v. Zoning Bd. of Review of City of Providence, 95 R.I. 383, 386-87, 187 A.2d 259, 261 (1963).

Thus, it is clear that it was within the broad scope of the Zoning Board's powers to hear testimony from Mr. Baird and Hal Morgan, the Zoning Inspector. The only limitation on the Zoning Board's ability to hear testimony is that—when issuing a decision—the Zoning Board must act "on the basis of facts lawfully ascertained." Id. at 387, 187 A.2d at 261. Our Supreme Court clarified that:

> "This does not mean, however, that such boards are required to conduct these hearings in strict compliance with the rules of procedure that apply in the conduct of judicial trials or to strictly observe the rules of evidence. Such hearings may be conducted with substantial informality in matters of procedure and evidence." Id. at 387, 187 A.2d at 261-62.

Here, Appellant asserts that "[t]he purpose of the zoning enforcement officer's appearance before the board[] was not explained" and, therefore, "[i]t is not clear whether he was testifying as a witness, questioning the applicant, or answering questions himself." Appellant's Mem. at 9. However, under the above-quoted language from Zimarino, it is clear that "boards are [not] required to conduct the[ir] hearings in strict compliance with the rules of procedure that apply in the conduct of judicial trials." Zimarino, 95 R.I. at 386-387, 187 A.2d at 261. Thus, the particular purpose of Hal Morgan's testimony is seemingly irrelevant to our present review.

Appellant also contends that the Zoning Board's decision was improper to the extent that the members engaged in any *ex parte* communications with Hal Morgan. This argument is without merit. First, this Court notes that it is not only likely but also necessary for the members of the Zoning Board to have a certain amount of *ex parte* interaction with the zoning officials based on the nature of the zoning process. Secondly, this Court notes that there is no evidence that such communications formed the basis of the Zoning Board's decision. Rather, this decision is based on seventeen (17) findings of fact, none of which mention any communication between the Zoning Board and Hal Morgan.

It is also important to note that not a single one of these findings of fact makes any reference to any past zoning violation by Mr. Baird. Appellant argues that "[a] zoning board of review that bases its decision to deny relief on allegations of zoning violations has exceeded its authority and has 'invaded the province of the courts.'" Appellant's Mem. at 10 (quoting Wyss v. Warwick Zoning Bd. of Review, 99 R.I. 562, 563-64, 209 A.2d 225, 226 (1965)). This Court, however, need not determine whether the Zoning Board "invaded the providence of the courts" because there is absolutely no evidence put forward that the Zoning Board's decision was based in any way on Appellant's past zoning violations. Based on this lack of evidence to the

contrary, this Court finds that the Zoning Board's decision was based on the findings of facts as laid out in that decision, none of which require this Court to reverse or remand the decision based on procedural or legal error.

B

Appellant's Second Supplemental Memorandum

On August 17, 2012, Appellant filed a Second Supplemental Memorandum. In that memorandum, Appellant set forth entirely new legal theories to support its appeal and sought a declaration from this Court that the Multiple Use Ordinance is void as a matter of law. The arguments put forth in this memorandum are that: (1) the ordinance conflicts with the Development Project Statute, R.I. Gen. Laws § 45-24-47; (2) the ordinance conflicts with both the Rhode Island Zoning Enabling Act of 1991, R.I. Gen. Laws §§ 45-24-27 to 45-24-72, and the Zoning Ordinance' definitions of "permitted use;" and (3) the ordinance "subjects permitted uses to arbitrary reasoning."

The Uniform Declaratory Judgments Act ("UDJA"), R.I. Gen. Laws § 9-30-1 et seq., gives the Superior Court, upon petition, the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." G.L. 1956 § 9-30-1. "The decision to grant or to deny declaratory relief . . . *is purely discretionary*." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (emphasis added) (citing Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997); Lombardi v. Goodyear Loan Co., 549 A.2d 1025, 1027 (R.I. 1988)).

Here, rather than petition this Court for declaratory judgment regarding the validity of the Multiple Use Ordinance, Appellant submitted an application for various special use permits to the Zoning Board. Following the Zoning Board's denial of the majority of the request permits,

Appellant filed the instant appeal. The first two memoranda filed by Appellant, on July 19, 2011 and September 19, 2011, sought to have this Court vacate the Zoning Board's decision "due to legal and procedural errors," as discussed in the preceding sections of this Decision. Nearly a year later, on August 17, 2012, Appellant filed its Second Supplemental Memorandum, which seeks declaratory relief as to the validity of the Multiple Use Ordinance.

The Rhode Island Supreme Court has addressed similar arguments when presented as part of a zoning appeal by stating:

> "This court has heretofore held in a number of cases that by asking the zoning board to exercise its discretion under an application for an exception or variance the applicant precludes himself from raising any question as to the constitutionality of the enabling act or the validity of a zoning ordinance enacted thereunder, because by filing such an application he necessarily admits the constitutionality or validity of the laws upon which he relies." Sweck v. Zoning Bd. of Review of N. Kingstown, 77 R.I. 8, 11, 72 A.2d 679, 680 (1950).

Following this precedent from our Supreme Court, it is clear that the arguments asserted in Appellant's Second Supplemental Memorandum are without merit. Here, Appellant submitted applications for special use permits to the Zoning Board and, therefore, is precluded "from raising any question as to . . . the validity of a zoning ordinance enacted" under the Zoning Enabling Act in this appeal. Id.

In a similar appeal of a decision by the Zoning Board, the Superior Court declined to rule on the validity of § 2.6.4 of the Zoning Ordinance. See Hone v. Exeter Zoning Bd., WC-2003-0410, 2004 WL 1769152 (Super. Ct. July 14, 2004). In so doing, the Superior Court stated that:

> "While Appellant . . . asked the Zoning Board whether Zoning Ordinance § 2.6.4 had 'ever been tested in court,' he neither explicitly argued that the Ordinance was invalid, nor questioned the jurisdiction of the Zoning Board itself. Instead, by filing his application and presenting his case for dimensional relief at a duly noticed public hearing, *Appellant . . . submitted himself to the jurisdiction of the Zoning Board. As a result, Appellant . . . is precluded from challenging the*

> *validity of the Ordinance or the jurisdiction of the Zoning Board in this appeal*." Id. (emphasis added).

The instant case is comparable in this regard. Appellant chose to submit itself to the jurisdiction of the Zoning Board and, therefore, "is precluded from challenging the validity of [the Multiple Use Ordinance] or the jurisdiction of the Zoning Board in this appeal." Id. For this reason, this Court must decline to engage in further analysis of the arguments set forward in Appellant's Second Supplemental Memorandum. As such, this Court cannot grant declaratory relief, as requested by Appellant.

IV

Conclusion

For the reasons discussed in this Decision, this Court denies the declaratory relief improperly requested by Appellant in its Second Supplemental Memorandum. As to the appeal itself, this Court first holds that the Zoning Board's decision was based on competent evidence and that there is no evidence of procedural or legal error. Furthermore, this Court holds that it was within the authority of the Zoning Board to condition the approval of multiple uses on Lot 25 on the removal of the mobile home existing on that lot. Finally, this Court holds that there is no evidence presented that would indicate that the Zoning Board's decision was based on testimony regarding Appellant's previous zoning violations.

Based on these holdings, it is clear that no substantial rights of the Appellant have been prejudiced by:

> "findings, inferences, conclusions, or decisions" are found to be:
>
> > "(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." G.L. 1956 § 45-24-69.

Therefore, this Court cannot reverse or modify the Zoning Board's decision. Accordingly, the Zoning Board's decision is AFFIRMED.