

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

[Filed: December 21, 2016]

THE GALILEE MISSION, INC.

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:

:

v.

:

C.A. No. WC-2015-0460

:

ZONING BOARD OF REVIEW OF
THE TOWN OF NARRAGANSETT,

:

:

JAMES MANNING, ROBERT

:

FERRARO, JOSEPH PAGLIA,

:

GERALDINE CITRONE, and JOHN

:

KENNEDY, in their official capacities

:

only as Members of the Zoning Board of

:

Review of the Town of Narragansett

:

DECISION

GALLO, J. Before the Court is an appeal of a decision from the Zoning Board of Review of the Town of Narragansett, Rhode Island (the Zoning Board) upholding the building official’s decision. Appellant, the Galilee Mission, Inc. (Appellant or the Galilee Mission), asks the Court to reverse the Zoning Board’s decision concerning property at 70 Inez Street, Narragansett, Rhode Island (the Property). The Zoning Board found that the Galilee Mission’s planned purchase of the Property constituted a furthering of its business purpose, and it upheld the building official’s decision that renting the Property to graduates of the Galilee Mission substance abuse program was prohibited by the Town of Narragansett Zoning Ordinance (Zoning Ordinance). For the following reasons, the Court reverses the Zoning Board’s decision.

I

Facts and Travel

The Galilee Mission is a residential substance abuse treatment program located at 268 Kingstown Road, Narragansett, Rhode Island (the Mission House). The program is licensed by the Rhode Island Department of Health and Department of Behavioral Healthcare, Developmental Disabilities and Hospitals and provides treatment for up to twelve residents at the Mission House. The Galilee Mission has a special use permit (Special Use Permit), approved in 1991, to operate a group home for twelve residents at the Mission House. (Special Use Permit Decision, Dec. 3, 1991, Opp. Ex. 1H.)

The instant appeal arises from the Galilee Mission's plans to purchase the Inez Street Property to use as a residential rental property and to rent it to graduates of its program. Currently, the Property is a two-family residential home located in an R-10 zoning district. The Zoning Ordinance permits two-family dwelling or duplex use in an R-10 zoning district, pursuant to its Table of Use Regulations. Town of Narragansett Zoning Ordinance, § 6.3.

Concerned neighbors of the Property alerted the building official, Anthony L. Santilli, Jr. (Building Official), of Galilee Mission's intended use of the Property. As a result, the Building Official approached the Executive Director of the Galilee Mission, Lynn Costigan (Costigan), about the potential purpose, and, in response, Costigan provided him with a summary (Summary) of the plans for the Property. After receipt of the Summary, on May 6, 2015, the Building Official issued a decision letter (Decision Letter) to Costigan. The Decision Letter provided in part as follows:

“Please be advised that this office has reviewed your request to rent 70 Inez Street to tenants who have graduated

the substance abuse program at the Galilee Mission. Under Section 6.3 of Chapter 731 Zoning, any use not permitted by this ordinance shall be deemed prohibited.

“You have the right to appeal this decision, obtain a use variance or apply to the Town Council to change the Table of Use Regulation 6.1 of Chapter 731 Zoning.” (Building Official Decision Letter, Appellant App. 2.)

On May 14, 2015, the Galilee Mission appealed the Building Official’s Decision Letter.

On June 18, 2015, the Zoning Board held a public hearing regarding the Galilee Mission’s appeal. At the public hearing, Costigan, Russell W. Brown (Brown), a zoning expert, and several graduates of the Galilee Mission testified on behalf of the Galilee Mission. Brown testified that, based on his understanding of the Zoning Ordinance and the Property, the proposed use as a residential property is permitted. The Galilee Mission graduates who testified spoke about their positive experiences with the Galilee Mission’s treatment programs and the progress they have made in their lives as a result. Neighboring property owners of the Property testified in opposition to the Galilee Mission’s appeal, expressing concerns with the Galilee Mission expanding further into their neighborhood, especially given the fact that occasionally program graduates will relapse.

Costigan testified as to the Galilee Mission’s program and purpose:

“In general. [sic] Galilee Mission is a residential treatment program. We cater to 6 to 12 residents. In the Mission House we do treatment. It’s a 6-month, like I said, residential. We get people back to work, back out in the community and staying clean and sober.” (Tr. 4, June 18, 2015, Appellee Ex. 1.)

Costigan also testified that the Property is a two-family dwelling unit. Id. at 5. She stated that the Galilee Mission planned to buy the Property to “rent it as . . . a residence,”

not to provide “treatment.” Id. at 6. Among other considerations, the Galilee Mission’s intent in purchasing the property is to provide additional income for the organization in light of potential changes to Mission House residents’ insurance coverage under the Affordable Care Act. Id. at 15-16.

At the hearing, the Summary provided by Costigan to the Building Official was also entered into evidence. Id. at 8. The Summary provided a list of “regulations” that would be lease conditions for potential tenants of the Property. Some of the restrictions included “no parties,” “no overnight visitors,” and no “open warrant[s] or . . . legal trouble.” (Summ., Appellant App. 9.)

Brown—a former zoning officer in both the Town of Richmond and the Town of South Kingstown—testified as an expert witness on behalf of Galilee Mission. (Tr. 56, June 18, 2015, Appellee Ex. 1.) Brown has testified in a number of zoning matters before courts and zoning boards, and the Zoning Board recognized him as an expert in the field of zoning. Id. at 57. Brown testified that he was familiar with the Property, the proposed use of the Property, and the Zoning Ordinance. Id. at 58. On direct examination by counsel for the Galilee Mission, Brown gave his opinion that the proposed use of the Property was permitted under the Zoning Ordinance:

“Q. In your opinion is the proposed use as a two-family residential property permitted under the town zoning ordinance?

...

“A. A duplex is permitted in an R-10 zone and a duplex is basically a two-family house. So they can rent it to two families or two households in that zone under the ordinance of the Town of Narragansett.

...

“Q. Not only do zoning ordinances not consider who may rent the property, does it also, it doesn’t specify who can make a certain use of the property; is that correct?

“A. Correct.

“Q. So if I bought the property, could I rent it to graduates of the Galilee Mission?

“A. You can rent it to whoever you wish.

“Q. If the Galilee Mission buys the property, can they rent it to graduates of the Galilee Mission?

“A. They can rent it to whoever they wish.” Id. at 60-61, 63-64.¹

The Zoning Board continued the public hearing to August 6, 2015, at which time it voted to uphold the Building Official’s Decision Letter. The Zoning Board issued a written decision (Decision) on August 18, 2015, which was filed in the Narragansett Land Evidence Records. In the Decision, the Zoning Board concluded that the use of the Property “by the Galilee Mission is motivated and designed to further the Appellant’s core business mission of helping people achieve and maintain substance abuse recovery, and does so in a manner consistent with ongoing treatment, transition and support programming on the existing Mission premises.” (Decision 2, Appellant App. 15.) The Zoning Board also found that the proposed regulations Galilee Mission planned to impose on tenants of the Property were more similar to those in a “drug treatment paradigm not a traditional landlord tenant relationship.” Id. As such, the Zoning Board held that allowing such a use would be an expansion of the Galilee Mission’s Special Use Permit, and, thus, would require the Galilee Mission to apply for a new special use permit for the Property.²

¹ At the hearing, the Town Solicitor, Attorney Dawson Hodgson, did clarify that the Town of Narragansett would never “limit who can be a tenant in the Town of Narragansett, particularly on their status of somebody who is in recovery.” (Tr. 68-69, June 18, 2015, Appellee Ex.1.)

² The Zoning Board in its Decision did note that “nothing in this decision shall be construed to prevent the Galilee Mission from purchasing 70 Inez Street, as long as the premises are not used to further the business purpose of the Mission.” (Decision 2, Appellant App. 15).

II

Standard of Review

This Court reviews zoning board appeals pursuant to G.L. 1956 § 45-24-69:

“(d) The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

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

“(2) In excess of the authority granted to the zoning board of review by statute or ordinance;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”
Sec. 45-24-69(d).

This Court considers “the whole record to determine whether the findings of the zoning board were supported by substantial evidence.” Lloyd v. Zoning Bd. of Review for Newport, 62 A.3d 1078, 1083 (R.I. 2013) (quoting Apostolou v. Genovesi, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). “The trial justice may not ‘substitute [his or her] judgment for that of the zoning board if [he or she] can conscientiously find that the board’s decision was supported by substantial evidence in the whole record.” Id. (quoting Apostolou, 120 R.I. at 508, 388 A.2d at 824-25) (alterations in original); see

also Murphy v. Zoning Bd. of Review of Town of S. Kingstown, 959 A.2d 535, 541 (R.I. 2008). This Court will not necessarily accept any and all evidence, but will consider “only by that which [it] determine[s], from [its] review of the record, has probative force due to its competency and legality.” Salve Regina Coll. v. Zoning Bd. of Review of Newport, 594 A.2d 878, 880 (R.I. 1991).

III

Analysis

On appeal, the Galilee Mission argues that its substantial rights were prejudiced as a result of the Zoning Board’s decision as the Property may be used as a two-family rental under the Zoning Ordinance, and there is no prohibition (nor could there be) from renting to graduates of its program. The Galilee Mission also argues that the Zoning Board’s Decision that the proposed use of the Property would constitute an expansion of the Galilee Mission’s business purpose is clearly erroneous in view of the substantial evidence of the whole record. The Galilee Mission argues that the proposed use of the Property as a two-family rental is permitted in the R-10 zoning district in which it is located, and that the Galilee Mission is free to choose its tenants.

The Zoning Board contends that because it found that the Galilee Mission’s plan was to use the Property as a “residency” of its business, the Decision was not a violation of the Rhode Island Zoning and Enabling Act (Enabling Act) or the Zoning Ordinance. Further, the Zoning Board argues that there is substantial evidence in the record to support its determination that the proposed use of the Property would constitute an expansion of Galilee Mission’s existing Special Use Permit.

The Zoning Ordinance permits two-family dwelling or duplex use in an R-10 zoning district, pursuant to its Table of Use Regulations. Town of Narragansett Zoning Ordinance, § 6.3. Further, the Zoning Ordinance permits the following uses in all residential zoning districts in accordance with the Enabling Act: households, community residences, and family day care homes. Id. at § 6.2. A household is defined under the Zoning Ordinance as “[o]ne or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit.” Id. at § 2.2. A “household unit” is synonymous with a “dwelling unit” in determining the number of units in a particular structure. Id. The Zoning Ordinance provides that up to three unrelated persons living together may constitute a “household.” Id.

It is not disputed that the Inez Street Property is properly zoned to permit two residential households each consisting of up to three unrelated roommates. See id.; see also § 6.2. Rather, the Zoning Board finds the Galilee Mission’s rental plan is an extension of the organization’s business purpose, necessitating the Galilee Mission having to apply for a variance or a zone change.

The Zoning Board concedes little when it disclaims in its Decision any intent to prevent the Appellant from purchasing or renting the Property, or, for that matter, when it sought to reassure the Appellant that it would not presume to limit the Appellant’s choice of tenants. See Tr. 68-69, June 18, 2015, Appellee Ex. 1. It should go without saying that the Appellant is free to own property and to rent it to residential tenants, including graduates of its substance abuse program. However, the Zoning Board found that the Appellant’s proposed use amounts to an expansion of its substance abuse program and

the Special Use Permit under which it operates, and is thus not permitted under the Zoning Ordinance.

The only evidence before the Board of the Appellant's plans for the Property consisted of Costigan's testimony. Costigan testified that while it was contemplated that the tenants would be graduates of the Galilee Mission program, no treatment or other services would be provided to tenants of the Property. Id. at 10-13. She also stated that the purpose of the investment was to make reasonably priced housing available to its graduates and generate income to support the Galilee Mission's operations. Id. at 15-16. In sum, there is no evidence of record to support a finding that the Appellant will be expanding its substance abuse program operation to Inez Street. See Lloyd, 62 A.3d at 1083.

The Zoning Board had before it Costigan's Summary, which, among other things, outlined some lease terms and conditions for tenants of the Property. The Zoning Board noted that requiring prospective tenants to keep the peace and maintain sobriety connotes a relationship "aligned with a drug treatment paradigm" rather than a traditional landlord/tenant relationship. (Decision 2, Appellant App. 15.) The aspirations of the Appellant for its graduates in recovery listed in the Summary are quite understandable. The fact that they may be expressed as potential lease terms should not by itself transform the relationship from landlord/tenant to treatment provider/client.

Furthermore, purchasing property for the purpose of renting it to secure income to support another business organization is permitted activity as the "right to private possession of property is a 'sacred' one." Campbell v. Tiverton Zoning Bd., 15 A.3d 1015, 1023 (R.I. 2011); see also Norma Faye Pyles Lynch Family Purpose, LLC v.

Putnam County, 301 S.W.3d 196, 212 (Tenn. 2009). In Campbell, a yacht club was located in a residential zoning district as a legal preexisting, nonconforming use. Id. at 1018. The yacht club decided to operate a marina across the street from the club on a lot it owned in a zoning district which allowed a marina. Id. 1018-19. The trial justice held that the yacht club was not permitted to operate the marina as it would impermissibly expand the club’s nonconforming use as the marina and the club “were operating in ‘tandem.’” Id. at 1023. However, our Supreme Court found that the club’s ownership and operation of a marina was legally permitted because the two entities were “physically separate” and “exist[ed] independently” from one another. Id. The Court emphasized that the club as a private-property owner had the right to sell the land to another owner who could then permissibly operate a marina; that being the case, the Court concluded, the club should be able to do the same. Id.

Similarly, here, the record indicates that the Galilee Mission is purchasing the Property to use as rental property to generate income for the organization. See Tr. 6, June 18, 2015, Appellee Ex. 1. If another individual or organization were to purchase the Property, it would be allowed, pursuant to the Zoning Ordinance, to rent it as residential units to any tenants it chose, including graduates of the Galilee Mission. As such, the Galilee Mission has the right to do so. See Campbell, 15 A.3d at 1023.

IV

Conclusion

After review of the entire record, this Court finds the Decision of the Zoning Board was clearly erroneous based on the evidence of record, and constituted an abuse of discretion. Substantial rights of the Galilee Mission have been prejudiced. Accordingly,

the Decision of the Zoning Board is reversed. Counsel shall submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **The Galilee Mission, Inc. v. Zoning Board of Review of the Town of Narragansett, et al.**

CASE NO: **WC-2015-0460**

COURT: **Washington County Superior Court**

DATE DECISION FILED: **December 21, 2016**

JUSTICE/MAGISTRATE: **Gallo, J.**

ATTORNEYS:

For Plaintiff: **John F. Kenyon, Esq.**

For Defendant: **Dawson T. Hodgson, Esq.**