

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: June 6, 2013)

ROY LACROIX

:

v.

:

:

C.A. No. WC-2008-0281

:

TOWN OF WESTERLY

:

ZONING BOARD OF REVIEW

:

DECISION

K. RODGERS, J. This matter is presently before this Court on an appeal by Appellant Roy LaCroix (Appellant) from a decision of the Town of Westerly’s Zoning Board of Review (the Zoning Board). That decision—dated March 5, 2008 and recorded on March 24, 2008—denied Appellant’s appeal from a Notice of Violation and Order issued by the Town’s Zoning Official on March 29, 2007.

This Court has jurisdiction over this matter pursuant to G.L. 1956 § 45-24-69. For the reasons that follow, this Court remands the decision to the Zoning Board.

I

Facts and Travel

Appellant is the owner of real property located at 55 Beach Street in Westerly, Rhode Island, which is designated as Lot 105 on the Assessor’s Plat 86 (the Property). The Property is located in a General Commercial Zoning District. Appellant purchased the Property on January 29, 1996 and, since that time, has maintained and rented out first-floor apartments to various tenants.

On February 23, 2007, the Town's Assistant Zoning Official sent a letter to Appellant indicating that it had come to the Town's attention that Appellant had rented first-floor apartments on the Property, which are prohibited in a General Commercial Zoning District even where there is "mixed residential commercial use." That communication also sought to arrange an inspection of the Property before a Notice of Violation and Order would be issued.

An inspection of the Property was conducted by the Assistant Zoning Official on March 20, 2007, which revealed that two apartments—identified as #10 and #11—were both occupied. On March 29, 2007, the Town's Zoning Official sent a letter to Appellant's attorney which served as notice that the Property was in violation of Sec. 260-64A of [the] Zoning Ordinance and gave Appellant until April 22, 2007 to remedy this violation before further action was taken by the Town.

On April 26, 2007, Appellant appealed the Zoning Official's March 29, 2007 letter to the Zoning Board. As grounds for his appeal, Appellant asserted that the residential units existed at the time he purchased the Property and that they have been used as such since that time without interruption. That appeal was denied by the Zoning Board on March 5, 2008, by a vote of four to one. A copy of the Zoning Board's decision was recorded in the Town's Land Evidence Records on March 24, 2008. The Zoning Board's decision states, in full, as follows:

BOARD DECISION:

The Westerly Zoning Board of Appeals on March 5, 2008 denied an Administrative Appeal of the decision of the Zoning Official that Mixed Commercial Residential Use in a "GC" Zone **does not** permit residential use on the first floor.

Based on the evidence presented at the public hearing on March 5, 2008 the Board finds that the current use of the residential apartments on the first floor is not an allowed use according [to] the Ordinance and the appeal is denied and the notice of violation remains in effect.

VOTE OF THE BOARD:

Approve: Giorgio Gencarelli
Frank Verzillo
Mark Doescher
Harrison Day, Chairman

Dissenters: Robert Ritacco

Appeal Denied: 4 in favor- -1 opposed.

Appellant timely appealed that decision to this Court on April 11, 2008.

Although Rhode Island law requires zoning boards to file with the Court all the original documents or certified copies of documents constituting the record of the case appealed from within thirty days from being served with a complaint, see G.L. 1956 § 45-24-69(a), the Westerly Zoning Board did not certify the record of the proceedings before the Zoning Board to this Court until December 5, 2008.¹ Accordingly, Appellant filed a Motion to Sustain Appeal on November 20, 2008, which was subsequently denied by a justice of this Court in a written decision on May 1, 2009. See LaCroix v. Town of Westerly Zoning Bd. of Review, C.A. No. WC-2008-0281, 2009 WL 3328547 (Super. Ct. May 9, 2009). The case is now before this Court for decision on the merits of the appeal.

II

Standard of Review

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

¹ While the Town purported to file a certified record with this Court on December 5, 2008, that record did not contain a single transcript of the hearings that took place before the Zoning Board relative to this matter. Unofficial transcripts for those hearings—which took place on January 9, February 6, and March 5, 2008—were subsequently filed with this Court by Appellant's counsel on September 28, 2011.

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 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.

§ 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 N. 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)).

Additionally, all decisions and records of a zoning board must comply with the requirements of § 45-24-61. See § 45-24-68. Sec. 45-24-61 states that a zoning 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 or his or her failure to vote.”

III

Analysis

It is well settled that in order for this Court to engage in any meaningful analysis of the merits of any appeal from a zoning board decision, the decision itself must include findings of facts and reasons for the action taken. Bernuth v. Zoning Bd. of Review of Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001); Cranston Print Works Co. v. City of Cranston, 684 A.2d 689, 691 (R.I. 1996); Irish P'ship v. Rommel, 518 A.2d 356, 358 (R.I. 1986); May-Day Realty Corp. v. Board of Appeals of Pawtucket, 107 R.I. 235, 239, 267 A.2d 400, 403 (1970).

The obligations of zoning board members have been oft-reported and bear repeating here:

[The Court] must decide whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements. Unless they are satisfied, a judicial review of a board's work is impossible.

Bernuth, 770 A.2d at 401 (quotations omitted). Additionally, the Court will not undertake to search through the record for supporting evidence nor decide for itself what is proper in the circumstances when a zoning board fails to state findings of fact. Id. (quotation omitted).

The decision currently before this Court on appeal is woefully inadequate and fails to comply in any respect with § 45-24-61(a). It was the duty of the Zoning Board to rule on the legal and factual issues presented by the parties. However, the Zoning Board did not resolve a single one of those issues. The decision merely concluded that residential apartments on the first floor are not an allowed use, without citing any particular Ordinance provision, discussing the evidence upon which such conclusion is based, or explaining how it reached its conclusion. There were no findings of fact delineated upon which this Court could consider whether there is

substantial evidence that exists in the record to support the Zoning Board's decision. Likewise, the decision is bereft of any legal principles from which this Court could determine if they were properly applied. The deficiencies in the decision make this Court's review of Zoning Board's work impossible and, therefore, the matter must be remanded to the Zoning Board. See Bernuth, 770 A.2d at 402; Irish P'ship, 518 A.2d at 358.

Furthermore, this Court would be remiss if it did not address the inordinate amount of time and judicial resources spent on rectifying the Zoning Board's statutory failures. The conduct upon which this appeal is based dates back to 2007. Two years later, because the Zoning Board failed to timely file a certified copy of the record with the Court as required in § 45-24-69(a), another Justice of this Court issued a lengthy written decision. See LaCroix v. Town of Westerly Zoning Bd. of Review, C.A. No. WC-2008-0281, 2009 WL 3328547 (Super. Ct. May 9, 2009). Now, four years later and six years after the conduct at issue, this matter must be remanded back to the Zoning Board because of the complete absence of any findings of facts and reasons for the Zoning Board's decision upon which this Court could exercise any meaningful judicial review, as required in § 45-24-61(a). Had the Zoning Board complied with the statutory mandates of the Rhode Island Zoning Enabling Act of 1991, codified at §§ 45-24-27 et seq., from the outset, this matter would have been put to bed a long time ago.

In order to finally reach conclusion on this appeal, the Court will retain jurisdiction of the appeal, and further order as follows: (1) that an amended decision, consistent with § 45-24-61(a), be filed and recorded by July 26, 2013; (2) that the Zoning Board file official transcripts with the Court, including any hearing transcript in which the amended decision ordered herein is addressed, by August 9, 2013; (3) that Appellant shall have until August 30, 2013 to supplement his Memorandum in Support of Appeal; and (3) that the Zoning Board shall have until

September 20, 2013 to supplement its Memorandum in Opposition to Appeal.

IV

Conclusion

For all of these reasons, this Court remands this matter to the Zoning Board for further proceedings in order to file with this Court a decision containing the requisite findings of fact and conclusions of law. This Court will retain jurisdiction over this matter. Accordingly, the Zoning Board shall file and record its amended decision by July 26, 2013 and shall file official transcripts with the Court, including any hearing transcript in which the amended decision is addressed, by August 9, 2013. Appellant shall have until August 30, 2013 to supplement his Memorandum in Support of Appeal, and the Zoning Board shall have until September 20, 2013 to supplement its Memorandum in Opposition to Appeal.

Appellant's counsel shall submit an order for entry consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Roy Lacroix v. Town of Westerly Zoning Board of Review

CASE NO: WC-2008-0281

COURT: Washington County Superior Court

DATE DECISION FILED: June 6, 2013

JUSTICE/MAGISTRATE: Rodgers, Kristen, J.

ATTORNEYS:

For Plaintiff: Michael P. Lynch, Esq.

For Defendant: John R. Payne, Jr., Esq.