STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 2, 2013)

ROBERT STANTON & SYLVIE SNOW	:	
	:	
V.	:	**C.A. No. PC 11-4105**
	:	
JOHN McCOY, CARL ZOUBRA, TARA CAPUANO, ROBERT CHAPUT, EDMUND M. McGRATH, KIMBERLY HAWTHORNE, and RICHARD C. BARRETT, in their capacity as Members of the Zoning Board of Review of the Town of Cumberland, State of Rhode Island	:	

DECISION

PROCACCINI, J. Before this Court is an appeal by Robert Stanton and Sylvie Snow ("Appellants") of a decision by the Zoning Board of Review of the Town of Cumberland (the "Board"), denying their application for a special use permit to operate a dog daycare center and a dog/cat boarding facility on their property. Jurisdiction is pursuant to G.L. 1956 § 45-24-69(a).

I

Facts and Travel

The Appellants own a parcel of land in the Town of Cumberland, located at 79 Hines Road, Cumberland Tax Assessor's Plat 18, Lot 777 (the "Property"). The Property is eight acres with a zoning designation of A-2, meaning it is "intended for agricultural use and rural density single dwelling unit detached structures." Cumberland Code of

Ordinances, Part II, Appendix B, § 3-1(b). The only abutting parcels zoned residential, not A-2, are across Hines Road from the Property.

In March of 2011, Appellants applied for a special use permit to operate a dog daycare and a dog/cat boarding facility on the Property. The Town of Cumberland Planning Board voted unanimously that the application was consistent with the Town of Cumberland's Community Comprehensive Plan. The Board then held three hearings, the first on April 13, 2011, at which Robert Stanton ("Stanton") and several abutting landowners testified.

At the first hearing, Stanton testified that the dog daycare and boarding facility was to be run by his daughter who worked in the veterinary field. (Tr. 4/13/11 at 6.) There would be a total of twenty dogs for daycare each day along with up to six dogs and ten cats for boarding overnight for a total of thirty-six animals at any one time. Id. at 19-21. Stanton intended to erect a forty foot x sixty foot, fourteen foot high, one story building, which would be insulated and partitioned. Id. at 7-8. In the rear would be one large door, which would be opened periodically for fresh air for the animals. Id. at 7. There would be outdoor kennels for the dogs, but no animals would be outside at night. Id. at 7-8. Abutting landowners appeared and raised concerns, mostly pertaining to noise. Raymond and Diane Papineau did not want Hines Road to become a business district and were concerned about the increased traffic flow. Id. at 31. Mark and Lisa Foster seconded the Papineau's concerns that the area would become a business district and testified that they could hear their neighbors five houses down so they would definitely hear dogs barking. Id. at 38-40. Ms. Sandra Gross was concerned about whether the

animal's liquid waste and any cleaning products would end up in a nearby stream. Id. at 41.

After the Board requested further information about waste disposal and soundproofing, Stanton appeared at a second hearing on May 11, 2011. At the second hearing, Stanton testified that he had contacted a waste removal company called Patriot Disposal. (Tr. 5/11/11 at 5.) Patriot Disposal told him that dog waste could be put into their dumpsters and that based on the number of animals Stanton proposed to have, the dumpsters should be emptied every week, as opposed to every two weeks, which was customary. Id. at 6. Next, Stanton testified regarding soundproofing the building, noting that he had talked to several people regarding sound-deadening insulation and proposed to use Roxul Safe Sound on all individual partitions within the building. Id. at 9-10. Roxul Safe Sound was specifically used for barking dogs, according to Stanton. Id. at 10. On top of these measures, Stanton went to such ends as to consult with a dog behaviorist and trainer about keeping dogs from barking. Id. at 11. He, his wife, and his daughter had all started taking classes with the behaviorist, and the behaviorist was to be retained to continue educating them and anyone they hired. Id. at 11-12.

The abutters then presented testimony from Mr. David Delauder, a licensed realtor in Rhode Island. Id. at 31. However, Mr. Delauder "was not qualified as an expert in any field." (Board's Decision at 2.) Mr. Delauder testified that he thought the proposed use would have a negative effect on home prices in the neighborhood as residents selling their homes would have to disclose they lived near a kennel. (Tr. 5/11/11 at 33.) Mr. R. Scott Erickson, an abutter, testified about his concerns regarding the noise and traffic the dog daycare might generate. Id. at 41-42. Mr. Jacob Salmon

also testified about the possibility of noise. Id. at 43. At a hearing on June 8, 2011, the Board voted three to two to deny the special use permit.

The Zoning Board's Decision

The Board reached its decision during the hearing on June 8 and later published a written decision on June 27, 2011. At the June 8 hearing, a motion was made to approve the special use permit, with conditions, but no second to the motion could be obtained. (Tr. 6/8/11 at 62-64.) A motion was then made to deny the special use permit. Id. at 64. In support of this motion, Mr. Chaput stated that Appellants' proposed use was allowable under Part II, Appendix B, Section 4-4, Use Code 61 and met all the other requirements of the Cumberland Code of Ordinances (the "Ordinances").[1] Id. However, it was not clear to Mr. Chaput that the dog daycare would not alter the general characteristics of the surrounding area. Id. Section 18-3(a) of Appendix B of the Ordinances requires that the special use be specifically authorized by the Ordinances and meet all the criteria set forth in the Ordinance authorizing the special use. Additionally, granting the special use permit must not alter the general character of the surrounding area or impair the intent or purpose of the community comprehensive plan of the town. Cumberland Code of Ordinances, Part II, Appendix B, § 18-3(a). It is on this third requirement that the Board based its decision.

Mr. Chaput stated that Appellants had not met the burden of showing that the noise would not change the general characteristics of the surrounding area. (Tr. 6/8/11 at 64.) The motion was seconded. Id. Subsequently, Mr. Zoubra noted that "in the past the Board has denied things, and they have been turned over in Superior Court because of a

[1] Use Code 61 allows for a "kennel" on property zoned A-2 with a special use permit. Cumberland Code of Ordinances, Part II, Appendix B, § 4-4.

lack of statement of facts," and asked Mr. Chaput to expand on his reasoning. Id. at 65. This prompted Mr. Chaput to state that it is a reality that dogs will be outside most of the time, that what tends to happen when you have twenty dogs together is they will all bark, and Appellants could not bring them all inside. Id. at 65-66. Further, Mr. Chaput stated that the neighbors' testimony was convincing and he just did not believe the steps Appellants had taken would be sufficient to deal with the noise. Id. at 66. The Board recognized that the traffic issue was a difficult issue and could not really be quantified. Id. at 67. Ms. Capuano then agreed with the points made by Mr. Chaput and voted to deny the permit. Id. at 67-68.

The third vote denying the special use permit came from Mr. McGrath, who stated he was voting against it "based . . . on the nuisance value of the noise and just [his] general experience of driving on [Hines] road." Id. at 68. He further explained that he did not believe the sight distances on Hines Road were adequate for an increase in traffic. Id. at 69. As such, the Board's decision was based on their determination, derived solely from the testimony of neighbors, that noise from barking dogs could not be prevented even with all the measures taken by Appellants and such noise and traffic would alter the general characteristics of the neighborhood.

The written decision issued by the Board detailed all the facts and arguments presented by Appellants and the abutting property owners at each hearing. (Board's Decision at 1-2.) The decision recognized that the proposed use fell within the specially permitted uses in the Ordinances and that all other criteria had been met, except showing that the use would not alter the general characteristics of the neighborhood. Id. at 2. In

its entirety, the Board's reasoning supporting its decision that Appellants did not meet this burden is as follows:

> "[T]he reality is that dogs are going to be outside most of the time and that sound proofing could not address this noise issue. [Mr. Chaput] also stated that some of the testimony of the neighbors as to a noise issue was very convincing." Id.

II

Standard of Review

Rhode Island General Laws § 45-24-69(a) grants the Superior Court jurisdiction to hear an appeal of a decision of a local zoning board. Section 45-24-69(d) lays out the specific parameters of this Court's review. It provides that:

> "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).

When reviewing a zoning board appeal this Court uses the "'traditional judicial review' standard applicable to administrative agency actions" and, thus, lacks the authority to "weigh the evidence, to pass upon the credibility of witnesses, or to substitute

[its] findings of fact for those made at the administrative level." Restivo v. Lynch, 707 A.2d 663, 665 (R.I. 1998) (quoting E. Grossman & Sons, Inc. v. Rocha, 118 R.I. 276, 284-85, 373 A.2d 496, 501 (1977)); Lett v. Caromile, 510 A.2d 958, 960 (R.I. 1986). The high level of deference afforded to a zoning board decision arises from the fact that a zoning board is presumed to be knowledgeable about matters pertaining to an effective administration of the zoning ordinance. Cohen v. Duncan, 970 A.2d 550, 561 (R.I. 2009). This Court's review is limited to examining the "'certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). Legally competent, or substantial, evidence has been defined by our Supreme Court as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means in amount more than a scintilla but less than a preponderance." Caswell v. George Sherman Sand and Gravel Co., 424 A.2d 646, 647 (R.I. 1981). If the Court can "'conscientiously find that the board's decision was supported by substantial evidence on the whole record,'" it must uphold the decision. Mill Realty Assoc. v. Crowe, 841 A.2d 668, 672 (R.I. 2004) (quoting Apostolou v. Genovesi, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978)). However, as stated in § 45-24-69(d)(5)-(6), if this Court finds that the Board's decision was "clearly erroneous, in view of the reliable, probative and substantial evidence of the whole record," or "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion" then the Court may remand the case for further proceedings or vacate the

Board's decision. See Bernuth v. Zoning Bd. of Review of New Shoreham, 770 A.2d 396, 399 (R.I. 2001).

III

Analysis

A
Parties' Arguments

Appellants contend that the decision of the Board in this case was clearly erroneous since it was not based on legally competent evidence. They further argue that the Board's decision was arbitrary, capricious, and characterized by an abuse of discretion. Appellants point to a number of factors weighing in their favor: 1) the fact that the building they propose would not be visible from the street and that the building itself is allowed on their property as a matter of right; 2) the fact that an A-2 designation allows them to have livestock, cattle and hens all as a matter of right; 3) the fact that they are permitted to engage in the retail sale of products grown or raised on site; and 4) the fact that no expert testimony regarding traffic or noise was offered by the abutting landowners. Appellants continue their argument by reiterating all the precautions they have taken to address the noise issue, including hiring a dog behaviorist, promising to put all barking dogs inside, and putting in sound deadening insulation and a rolled rubber floor with a superior acoustic rating. Finally, Appellants state that even the Board members recognized that Appellants could not have done anything more to meet their burden and that a kennel is a specially permitted use in an A-2 area. Consequently, it is, they maintain, not possible to prohibit all kennels.

The Board argues that granting the special use permit would alter the general characteristics of the surrounding area. It recognizes that Appellants could not have done

more in terms of meeting their burden. The bulk of the Board's argument on appeal is that it listened to all the evidence at numerous hearings and found that Appellants' preventive measures would not be sufficient to control the noise.

B
Discussion

Section 18-3(a) of Appendix B of the Ordinances directs the Zoning Board to apply the following analysis for a special use permit:

> "(a) General standards. In granting a special use permit, the board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:
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> (1) That the special use is specifically authorized by this appendix, and setting forth the exact subsection of this appendix containing the jurisdictional authorization;
>
> (2) That the special use meets all of the criteria set forth in the subsection of this appendix authorizing such special use, as applicable; and
>
> (3) That the granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this appendix or the community comprehensive plan of the town."

The Board found that the first two requirements of the Ordinance were met. However, with respect to the third requirement, this Court must determine whether the Board's conclusion—that the noise issue would alter the general character of the neighborhood—was based on legally competent, substantial evidence. Johnston Ambulatory Surgical Assocs., Ltd., 755 A.2d at 804-05.

Our Supreme Court has held that when a use is specially permitted by a zoning ordinance, there is an implicit holding by the legislature that the use "(1) is harmonious

with the other uses permitted in that district, and (2) is not to be excluded unless the standards for a special exception are not satisfied with respect to its establishment at a particular location or site." Perron v. Zoning Bd. of Review of the Town of Burrillville, 117 R.I. 571, 574, 369 A.2d 638, 641 (1977). In this case, the Board acknowledged that the proposed use satisfied the standards laid out in the Ordinance. Thus, there is a presumption that the Appellant's proposed use is harmonious with the other uses in the district and, as such, the general characteristics of the neighborhood.

Upon careful review of all the evidence in the record, this Court finds that there was no substantial evidence on which the Board could have determined that this presumption was overcome and that the noise issue would alter the general characteristics of the neighborhood. In fact, the record reflects substantial evidence, which would have been enough for this Court to uphold the granting of a special use permit.

The only evidence presented by the abutters against the issuance of a special use permit was their own testimony.[2] The testimony of the abutters largely discussed their concerns regarding the proposed use of the Property. They did not testify to any facts. For example, Mr. Erickson testified that one of the things he noticed about the neighborhood was that it was very quiet. (Tr. 5/11/11 at 41.) He enjoyed listening to the frogs and coyotes. Id. Mr. Salmon testified that he did not want to hear dogs barking while outside using his BBQ. Id. at 43. He further testified he did not see how the Appellants would be able to keep the animals quiet. Id. Mr. Foster testified that he was concerned about dogs barking because he could already hear his neighbors five houses

[2] The abutters also presented the testimony of Mr. Delauder, a real estate agent who was never qualified as an expert. Mr. Delauder did not testify about the noise issue, which was the basis for the Board's decision.

down. Id. at 39-40. Ms. Isaiah testified that the Stantons had dogs in the past, and she had issues with them running loose on her property. (Tr. 4/13/11 at 35-37.) Such fears of neighboring landowners about the possible result of a special use are not probative without any evidence that result is certain or even likely to happen. See Perron, 117 R.I. at 575, 369 A.2d at 641 ("[F]ears expressed by some of the neighbors concerning possible unfavorable conditions that might result were the application to be granted . . . are not an adequate basis for denying an application for a special exception.").

Moreover, Stanton's testimony regarding the lengths to which he had gone to ensure that the noise resulting from the day care and kennel was kept to an absolute minimum is substantial. Stanton plans to construct a building, which he may build as a matter of right on his property, in a location that makes it invisible from the road. Further, he researched and talked to experts to discover the best form of sound deadening insulation and plans to use that to insulate the building and the partitions within the building. (Tr. 5/11/11 at 9-10.) Stanton then went even further and hired a dog behaviorist to work with his staff to help them handle barking dogs. Id. at 11. He and his wife and daughter began taking classes with the behaviorist. Id. Moreover, he contacted a waste disposal company and made plans for adequate and efficient waste disposal. Id. at 5-6. Lastly, he stated that any dogs that were barking would be brought inside and the dogs being boarded overnight would be inside at night. (Tr. 4/13/11 at 7-8.) Stanton also provided the Board with product information regarding the insulation and floors he intended to use, a letter from the dog behaviorist he had hired, examples of the type of partitioning within the building, and the details of his arrangement with Patriot Disposal. Stanton's testimony and supporting exhibits reflect the great lengths he went to in

ensuring that the use of his property would not be a nuisance to his neighbors. Furthermore, the Board itself recognized that no one could have done more to ensure that his use would not change the general characteristics of the neighborhood. Mr. Zoubra stated that Appellants did "everything that [they could] do . . . to meet [the] obligation of keeping [the use from being] a nuisance." (Tr. 6/8/11 at 46.) Mr. Chaput also stated that he did not "think the applicant could do any more, in terms of meeting his burden." Id. at 45.

In addition to the testimony of the abutters, the Board relied on the fact that all the Board members have experiences with kennels and daycares and that when twenty dogs get together they tend to bark. Id. at 65-66. Mr. Chaput stated that sound proofing could not address the noise issue and dogs would be outside most of the time. Id. at 65. This Court cannot find any evidence in the record to support this statement. It appears to this Court that the Board's own experiences formed the basis of their belief that Stanton had not met his burden, since the evidence presented by the abutters was merely speculative. However, when the Board relies on its own experiences without disclosing on the record the specific information and experiences on which they are basing their decision, it has no probative value. See Toohey v. Kilday, 415 A.2d 732, 737-38 (R.I. 1980) (finding the Board's decision to be clearly erroneous in view of the reliable probative evidence partly due to the Board's failure to reveal the "nature of its knowledge of the character of the subject area"); Perron, 117 R.I. at 576, 369 A.2d at 641. This Court's decision must reflect the record as it finds it and it cannot speculate or infer what experiences the Board may be thinking of when making its decision. Salve Regina Coll. v. Zoning Bd. of Review of City of Newport, 594 A.2d 878, 882 (R.I. 1991). In fact, Mr. Zoubra

appropriately cautioned his fellow board members that the Superior Court would overturn their decision for failing to state the facts upon which their decision was based. (Tr. 6/8/11 at 65.)

In light of all the evidence before the Board, this Court finds that there was no substantial or legally competent evidence on which the Board could have based its determination that the noise from the Appellants' proposed use would alter the general characteristics of the neighborhood. The only evidence available to the Board was the opinion and general concerns of the abutting property owners. There is not even a scintilla of evidence that any noise issue could not be dealt with by the many precautions Stanton took. See Caswell, 424 A.2d at 647 (Substantial evidence means an "amount more than a scintilla but less than a preponderance."). Consequently, this Court must vacate the Board's decision denying the special use permit because it was not based on legally competent evidence and, as such, was clearly erroneous based on the "reliable, probative, and substantial evidence of the whole record." Sec. 45-24-69(d)(5).

Appellants further contend that the Board's decision was arbitrary, capricious and an abuse of discretion, in addition to being clearly erroneous. Sec. 45-24-69(d)(6). A special use permit may not be denied on the grounds that it would result in a certain condition when that condition would also result from a permitted use. Center Realty Corp. v. Zoning Bd. of Review of the City of Warwick, 96 R.I. 482, 486, 194 A.2d 671, 673 (1963). In Center Realty Corp., a property owner applied for a special use permit to open a gas station. Id. at 483, 194 A.2d at 672. He was refused because of a concern that it would result in more left turns out of the property and, thus, hazardous traffic conditions. Id. at 484, 194 A.2d at 672. The traffic expert testified before the Board that

a gas station would increase traffic but that "a similar increase in the number of such left turns would accompany the operation of any other permitted use on petitioner's parcel." Id. The Court reasoned that there was no probative evidence on which the Board could have based its decision because the traffic congestion would be the same if the property was used for a permitted use. Id. at 486, 194 A.2d at 673. As such, the testimony before the Board established only that "a granting of the exception sought would result in a condition that was within the contemplation of the city council when it provided for the permitted uses." Id.

Similarly, in this case, the Appellant's special use permit was denied because of a noise issue, which could also be caused by permitted uses of the Property. As Appellants point out, under an A-2 designation, they would be permitted, as a matter of right, to have livestock, cattle, and hens. It is just as plausible that a herd of cattle roaming the Property or a coop full of hens could create a noise issue. Likewise, the Appellants are able to sell any food grown on their property, also as a matter of right. It is equally as believable that the noise generated by machines harvesting crops could create a noise issue. Any traffic congestion that may be created by a dog daycare and boarding facility could also be caused by a successful farm stand selling the crops grown on the Property. Additionally, the right to have farm animals and sell crops grown on the land means that raising and caring for animals falls within the general characteristics of the neighborhood. Thus, this Court cannot find any evidence that caring for or boarding dogs would be so radically different from doing so for livestock that it would alter the general characteristics of a neighborhood zoned for agricultural uses.

Furthermore, given the lengths Stanton took to ensure minimal disruption of the neighborhood and the Board's statement that no one could have done more, it follows that if Stanton cannot open a specially permitted dog daycare and boarding facility no one in the neighborhood would be able to do so. This would be inapposite to the legislature's decision to allow kennels, as a special use, on property designated as A-2. See Center Realty Corp., 96 R.I. at 486, 194 A.2d at 673 (holding that the Board's finding that a gas station was not permitted as a special use when permitted uses would generate the same amount of traffic brought "into question the validity of the exercise by the local legislature of authority delegated to it under the provisions of the enabling act to enact an ordinance wherein it provides for permitted uses and for exceptions which are in the nature of permitted uses"). Thus, the Board's decision to deny the special use permit defeats the intent of the legislature in drafting the Ordinance and appears to this Court, after review of the Board's very limited reasoning, to have been arbitrary, capricious, and an abuse of discretion.

It is worth noting that one member of the Board who voted to deny Appellants' special use permit also mentioned traffic at the final hearing. This factor was not raised by the Board in its written decision or its memorandum on appeal. The Board stated on appeal that the "deciding factor" in its decision was the noise issue. As such, this Court will not engage in a detailed analysis of whether a decision based on an increase in traffic should be upheld. However, it is worth noting that no expert testimony was offered regarding the effect a dog daycare might have on traffic; only the concerns of the abutting landowners were presented, and our Supreme Court has long held that lay judgments on the issue of traffic have no probative force with respect to an application for a special use

permit. Toohey, 415 A.2d at 737 ("We have uniformly held since 1965 that the lay judgments of neighboring property owners on the issue of . . . traffic conditions have no probative force in respect of an application to the zoning board of review for a special exception."). Additionally, the Board member who raised the traffic issue stated that he was basing his decision on his experiences driving on the road and the fact that an expert would use a trip manual to show an additional forty to fifty-two cars on the road every day. (Tr. 6/8/11 at 68-69.) Without a disclosure on the record of the observations and information about the road on which he acted, this statement too lacked probative value. Toohey, 415 A.2d at 738 (finding the Board's decision to be an abuse of discretion partly due to the Board's failure to reveal the "nature of its knowledge on the character of the subject area"); Perron, 117 R.I. at 576, 369 A.2d at 641. Thus, even if the Board had based its decision on the potential increase in traffic, the decision would still be clearly erroneous based on the probative, reliable facts on the record, and arbitrary and capricious.

One final point of contention raised by Appellants is whether the dog daycare fits into the definition of a kennel. Section 4-4, Use Code 61, which specifically permits Appellants' proposed use, reads "Veterinarian Services and Animal Hospital; Kennel." Appendix A of the zoning ordinances further defines Use Code 61 as "Veterinarian Service and Animal Hospital; Commercial operation that provides food, shelter and care of animals or which engages in the breeding of animals for sale, whether or not in association with a veterinarian." However, in a separate section of the Ordinances not dealing with zoning, a licensed kennel is limited to ten dogs and defined as "any person engaged in the commercial business of breeding, buying, selling or boarding dogs."

Cumberland Code of Ordinances, Part II, §§ 4-36, 4-178. Thus, the issue arises of whether the dog daycare and dog/cat boarding facility Appellants may be permitted to operate with a special use permit can be limited to only ten dogs.

Appellants' position is that the daycare aspect of their business would not fall under the definition of a kennel in § 4-36 and, thus, they would not violate the Ordinance by having more than ten dogs. This Ordinance provision was raised by an abutting landowner during hearings as a method to limit the number of dogs Appellants would be permitted. However, though its meaning and application were discussed during the hearings, the Board failed to mention the issue in its decision or to make any findings of fact or decisions in relation to whether it would limit Appellants' use to only ten dogs. As such, the issue of how this provision of the Ordinance may limit Appellants' use is not properly before the Court and should be addressed by the Board on remand. See, e.g., Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 8 (R.I. 2005) (quoting Bernuth, 770 A.2d at 401) (stating that the Court "'will not search the record for supporting evidence or decide for itself what is proper'" when the record is devoid of any findings of fact or discussion).

IV

Conclusion

Upon review of the entire record, this Court finds that the Board's denial of the special use permit was clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Moreover, the denial was arbitrary, capricious, characterized by an abuse of discretion, and a clearly unwarranted exercise of discretion. As such, the

Board's decision is vacated. The case is remanded to the Board for consideration in light of this opinion. Counsel shall submit the appropriate Order for entry.