

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

[Filed: March 27, 2024]

RONALD PERKINS and
LOUIS FICHERA
Appellants,

:
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:
:

v.

C.A. No. KC-2021-1012

:
:

KIMBERLY J. TAYLOR and
CHRISTOPHER COLE; TOWN OF
COVENTRY, COVENTRY ZONING
BOARD OF APPEALS; ROBERT
CROWE, MEMBER; RUSSELL
LACAILLADE, MEMBER;
EDWARD IANNOTTI, MEMBER;
KEITH CLOUTIER, MEMBER;
LEONARD DOEG, MEMBER;
MICHAEL NEW, MEMBER
Appellees.

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DECISION

McHUGH, J. Before this Court for decision is the appeal of Ronald Perkins and Louis Fichera (Appellants) from a decision of the Coventry Zoning Board of Review (the Board). The Board rendered its decision on September 1, 2021 and ratified its written decision on October 6, 2021. The Board approved Christopher Cole’s (Mr. Cole) and Kimberly J. Taylor’s (Ms. Taylor) (collectively referred to as Shed Owners) application for a dimensional variance and a special use permit. (Pls.’ Mem. Ex. Decision on Application (Decision), at 2.) The Board granted a dimensional variance and a special use permit allowing Mr. Cole and Ms. Taylor to build a new shed on their property located at 68 Acres of Pine Road in Coventry, Rhode Island (the Property).

Id. at 4. This Court has jurisdiction to review the Board’s decision pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

A

Coventry Department of Planning and Development Report

1

Report Background and Shed Owners’ Proposal

On June 23, 2021, the Town of Coventry Department of Planning and Development (Department) sent a letter to the Board. (Defs.’ Mem. Ex. C (Letter), at 1.) The Department also attached a staff report (the Report) with their June 23, 2021 letter. (Defs.’ Mem. Ex. B (Report), at 1.) The Report’s background section explains that Mr. Cole and Ms. Taylor applied to the Board regarding the issuance of a special use permit and a dimensional variance pursuant to the Town of Coventry’s (Coventry) Code of Zoning Ordinances (Coventry Code). *Id.* at 1-2. The real property is located at 68 Acres of Pine Road in Coventry, Rhode Island and is designated as Assessor’s Plat 318, Lot 36. *Id.* at 1. The Report describes the Property as having a zoning designation in the RR2 Rural Residential zone. *Id.* The Report describes the parcel as being 0.13 acres in size with fifty-five feet of frontage, noting that the lot is “severely undersized for the zone.” *Id.*

The background section of the Report further notes that “[t]he size of the lot and the location of the existing house limits the potential locations for a shed.” *Id.* at 1-2. According to the Report, the Property “previously had a shed in the front yard for many years.” *Id.* at 2. The Report also states that the Shed Owners, “wanted to replace the old, dilapidated shed with a new

one[,]” and that it was made known to the Shed Owners that they would have to get a dimensional variance and a special use permit for the structure. *Id.*

According to the Report, the Shed Owners were proposing a twelve foot by twenty-three foot by ten foot shed in their front yard. *Id.* The Report reflects the Shed Owners’ wishes to finish building their new shed in the same location as their old shed. *Id.* According to the Report, “[t]he proposal is to place the shed 2 feet from the side property line where 10 feet is required.” *Id.* The Report notes that according to the Shed Owners’ application, the Shed Owners will need both a dimensional variance for the side yard setback, and a special use permit for the placement of the shed in the front yard. *Id.* The Report also recognizes that the Shed Owners’ shed requires a dimensional variance of eight feet. *Id.* at 3.

2

Report’s Findings and Recommendation

While analyzing the criteria to consider the dimensional variance pursuant to the Coventry Code, the Report makes the following determinations. In analyzing criteria under Article IV Section 454(A) as to whether the hardship from the Shed Owners is due to the characteristics of the land, the area, or the physical or economic disability of the Shed Owners the Report states:

“The relief needed is due to the unique characteristics of the land. The property is severely undersized, leaving few places to put the shed. The house is too close to the property line to place the shed in either side yard and an elevation change makes it impossible to place the shed in the rear yard near the pond. The front yard is the most logical location for the shed.

“The dimensional variance for the house is not related to the characteristics of the surrounding residential neighborhood.

“The applicants make no claim of physical or economic disability.”
(Report at 3-4.)

In analyzing criteria under Article IV Section 454(B) as to whether the hardship is from the result of any of the Shed Owners' prior action or a desire for greater financial gain the Report states: "It does not appear that there is any hardship created by the prior action of the applicants. The application appears to be motivated by the applicants' desire for more storage and not by a desire for financial gain." *Id.* at 4.

In analyzing criteria under Article IV Section 454(C) as to whether the granting of the variance will alter the general character of the surrounding area or impair the intent of Coventry's Zoning Ordinance or Coventry's Comprehensive Plan the Report states:

"The property is located in an area of developed, nonconforming structures. Other lots in the area also have both principle [*sic*] and accessory structure setbacks that are below standard. The proposed shed will not alter the general character of the surrounding area.

"While any variance technically impairs the intent of the Zoning Ordinance, the location of the proposed shed appears reasonable and logical and would not appear to impair uses on the abutting residential properties or result in over-development of the lot in question.

This proposal would not increase residential density." *Id.*

In analyzing criteria under Article IV Section 455(B) as to whether the hardship the Shed Owners will suffer if the dimensional variance is not granted will be more than a mere inconvenience, the Report states: "The hardship that the applicants would suffer in not being able to build the shed as presented is more than a mere inconvenience. There is no other reasonable alternatives to the location of the proposed shed." *Id.*

While analyzing the criteria to consider the special use permit pursuant to the Coventry Code, the Report makes the following determinations. In analyzing under Article IV Section 432(A) as to safe ingress and egress for vehicles the Report states, "[i]ngress and [e]gress to the lot is provided via an existing drive with permanent physical access to Acres of Pine Road. The

proposed shed will not impede automotive or pedestrian safety, traffic flow, or access to the property.” *Id.* at 5.

In analyzing under Article IV Section 432(B) as to the availability of off-street parking the Report states, “[s]ufficient off-street parking is available on the property.” *Id.*

In analyzing under Article IV Section 432(C) as to adequate trash, storage and delivery areas the Report states, “[t]here appears to be adequate trash storage for both the existing and proposed uses.” *Id.*

In analyzing under Article IV Section 432(D) as to availability and location of utilities the Report states, “[t]he available utilities should be adequate.” *Id.*

In analyzing under Article IV Section 432(E) as to the need for screening and buffering the Report states, “[n]o screening or buffering is necessary.” *Id.*

In analyzing under Article IV Section 432(F) as to signs and exterior lighting the Report states, “[n]o signs or exterior lighting are proposed.” *Id.*

In analyzing under Article IV Section 432(G) as to the required yards and open space the Report states, “[t]his proposal satisfies the requirements for yards and open space where applicable.” *Id.*

In analyzing under Article IV Section 432(H) as to general compatibility with abutting lots the Report states, “[t]he lot size and residential use is compatible with the neighboring properties.” *Id.*

In analyzing under Article IV Section 432(I) as to the compliance with industrial performance standards under Article 7 of the Coventry Code the Report states, “[t]his is a residential use; industrial performance standards are not applicable.” *Id.*

In analyzing under Article IV Section 432(J) as to general compatibility with Coventry's Comprehensive Plan the Report states, "[t]he proposal is consistent with the Coventry Comprehensive Plan." *Id.*

In analyzing under Article IV Section 432(K) as to whether granting of the special use permit will create conditions inimical to public health, safety, welfare or morals the Report states, "[t]he granting of the special-use permit will not affect the health, safety and welfare of the neighborhood." *Id.*

After analyzing all the aforementioned requirements of both a dimensional variance and a special use permit, the Report recommended that the Board grant approval of the requested special use permit and dimensional variance reasoning that "[t]he project does not appear unreasonable given the existing conditions on-site and on abutting properties." *Id.*

B

The Board's Review

Prior to providing its written decision ratified on October 6, 2021, the Board conducted two Zoning Board hearings—the first one on August 4, 2021, and the second on September 1, 2021.

1

Shed Owners' Application to the Board

In their application to the Board, Shed Owners applied for both a special use permit under Section 430 of the Coventry Code and a dimensional variance under Section 455B of the Coventry Code. (Pls.' Mem. Ex. Application to Zoning Board of Review (Application), at 2-3.) In their application, Shed Owners stated that they were seeking the dimensional variance and the special use permit to rebuild a shed in the same location as an old shed. *Id.* at 2. The application also

states that the new shed would be twelve feet wide by twenty-three feet long by ten feet high. *Id.* at 2. The application also stated that the shed would be in the front yard because there is no room in the backyard to place the new shed. *Id.* at 2-3. The application also states that the only available placement for the new shed would be in the front yard two feet from the property line. *Id.* at 3.

2

August 4, 2021 Board Hearing

On August 4, 2021, the Board held a hearing where the Shed Owners presented their application to the Board for it to review. During the hearing, the Board members questioned Mr. Cole about the new shed. (Pls.' Mem. Ex. August 4, 2021 Minutes of Hearing (August 4 Hearing), at 8-10.) Mr. Cole testified that there was already a shed in the same location, and that the new shed was two feet from the property line whereas the old shed was eighteen inches from the property line. *Id.* at 8. Mr. Cole had already begun constructing the new shed to replace the old one; however, Coventry issued a cease and desist order for Mr. Cole to stop construction on the new shed. *Id.* Mr. Cole told the Board that he wanted to construct the new shed for more storage. *Id.* He also told the Board that the new shed is "a couple of feet bigger wider and longer[]" than the old shed. *Id.* Mr. Cole stated that the old shed was rotting and that he did not have a foundation under the new shed. *Id.* at 8-9. Mr. Cole was then asked about the shed's location, and the Board deemed that no other area would be suitable to place a shed because of an existing cesspool on the Property and Mr. Cole's desire to put in a leach field. *Id.* at 9.

Also present at the meeting was Cherrie Perkins representing the abutter's rights of Ronald Perkins and Luca Shera. *Id.* Ms. Perkins stated that the new shed is "much larger than the other shed and its (*sic*) right next to the fence." *Id.* Ms. Perkins also stated that the Shed Owners have a large front yard and recommended that the shed be placed in the other yard saying that the shed is

a “huge structure and an eye sore.” *Id.* At the August 4, 2021 hearing, the Board voted to take the Shed Owners’ request under advisement. *Id.* at 9-10.

3

September 1, 2021 the Board Hearing

On September 1, 2021, members of the Board discussed Shed Owners’ application for the dimensional variance and for the special use permit. (Pls.’ Mem. Ex. September 1, 2021 Minutes of Hearing (September 1 Hearing), at 4-5.) The Board members stated that the new shed is right where the old shed was, stated that the new shed was already built, and stated that there are giant trees and bushes behind the shed and that the old shed had been in the same location for a long time. *Id.* at 4. The Board members also noted that the lot was small and there are not many places where Shed Owners could place the new shed. *Id.* After considering all those and the previous testimony, the Board voted to approve both the special use permit and the dimensional variance. *Id.* at 4-5.

C

The Board’s Written Decision

On October 6, 2021, the Board ratified the decision for Shed Owners’ application for the dimensional variance and the special use permit. *See* Decision, at 1. In Section I of the decision, the Board summarized the testimony from the August 4, 2021 and September 1, 2021 hearings. (Decision at 2.) Section I also states that “[b]etween the August 4 and September 1 hearings, Members of the Board viewed the property.” *Id.*

In Section II of the Board’s decision, the Board stated the following findings of fact:

“Based upon materials provided with the application, the testimony of the applicant and staff reports, the Board finds as follows:

“1. The Board accepted the applicant’s testimony and materials submitted as credible and reliable;

“2. The Board reviewed and accepted the staff report as credible and reliable;
“3. Board members were all familiar with the subject property[.]” *Id.*

In Section III of the decision, the Board provided their conclusions of law as to the dimensional variance based on the aforementioned facts. *See id.* at 3-4. As to the hardship due to the land, the Board found that “the hardship is due to the location of the home on the lot, the location of the driveway and the septic system.” *Id.* at 3. The Board also found that “[t]he relief requested is not due to the physical or economic disability for the [Shed Owners].” *Id.* The Board further found that “the hardship is due to the configuration of the lot and the existing home and the location of the driveway and septic system and not the result of any prior action of the [Shed Owners] and does not result primarily from the desire of the [Shed Owners] to realize greater financial gain.” *Id.* The Board found that “the proposed shed, as presented, will not alter the general character of the surrounding residential neighborhood or impair the intent or purpose of [Coventry’s] Ordinance or the Coventry Comprehensive Plan.” *Id.* The Board further found that “the requested relief is the least relief necessary based on the materials submitted.” *Id.* The Board also found that “denying the variance would result in more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use.” *Id.* at 4.

In Section IV of the decision, the Board provided their conclusions of law as to the special use permit based on the aforementioned facts. *Id.* The Board found that the Shed Owners “required a Special Use Permit as the existing lot is a nonconforming lot of record.” *Id.* The Board also reasoned that it was able to utilize the findings of facts used in its dimensional variance analysis. *Id.* The Board found that the Shed Owners “met [their] burden of proof and production on the

elements required to be established for a Special Use Permit, pursuant to Art. IV, § 430 of the Coventry Zoning Ordinance.” *Id.*

D

Appellate Travel

Shed Owners’ application seeking a special use permit and a dimensional variance first appeared before the Department where the Department created the Report. The Department’s recommendation then went before the Board. The Board then voted to grant the dimensional variance and special use permit on September 1, 2021 (September 1 Hearing, at 4-5; Decision at 1), and ratified its written decision on October 6, 2021. (Decision at 1). After the Board’s approval of both the special use permit and the dimensional variance, Appellants filed their Complaint with this Court on November 23, 2021.

II

Standard of Review

When reviewing a decision by a local board, this Court must apply the law as it existed “when the applicant-developer submitted its application” *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). The 2021 version of § 45-24-69 of the Rhode Island Zoning Enabling Act governs this Court’s review of a zoning board decision and provides in subsection (d) that:

“(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.”
Section 45-24-69(d).

“It is the function of the Superior Court to ‘examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.’” *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). “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.’” *New Castle Realty Company v. Dreczko*, 248 A.3d 638, 643 (R.I. 2021) (quoting *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013)). The Court “gives deference to the findings of a local zoning board of review” because it “‘is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance.’” *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008) (quoting *Monforte v. Zoning Board of Review of City of East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962)). Nonetheless, “a zoning board’s determinations of law, like those of an administrative agency, ‘are not binding on the reviewing court; they may be reviewed to determine what the law is and its applicability to the facts.’” *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 6 (R.I. 2022) (quoting *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859).

III

Analysis

Appellants argue that the Board’s decision to grant Shed Owners’ special use permit was not based on substantial evidence and argue that the Board’s decision is an improper conclusion of law. *See* (Pls.’ Mem. at 1-5.) Shed Owners argue that the Board’s decision utilized substantial evidence and that the decision granting the special use permit was proper. *See* (Defs.’ Mem. at 6-12.)

A

Dimensional Variance

In Coventry, “[t]he Board shall have the power to: . . . Grant a variance from the use regulations or requirements of [the] chapter where application is made for reinstatement of a nonconforming use.” Coventry Code, § 255-450(A)(2) (January 1, 2019). Along with the power to grant a variance, the Coventry Code also details what the Board is to consider when granting a variance:

“In granting a variance, the Board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

“(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;

“(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;

“(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Coventry Comprehensive Plan; and

“(4) That the relief to be granted is the least relief necessary.”
Section 255-450(D)(1)–(4).

Along with the standards, the Coventry Code states that the Board shall require that evidence entered into the record of the proceedings show:

“(1) Granting of variances:

“(a) In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of this chapter. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

“(b) In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one’s property.

“(2) The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.” Section 255-450(E).

1

Clearly Erroneous in View of Substantial Evidence of the Whole Record

In Section II of the Board’s decision granting the dimensional variance for the new shed, the Board stated that:

“Based upon materials provided with the application, the testimony of the applicant and staff reports, the Board finds as follows:

“1. The Board accepted the applicant’s testimony and materials submitted as credible and reliable;

“2. The Board reviewed and accepted the staff report as credible and reliable;

“3. Board members were all familiar with the subject property[.]” (Decision at 2.)

Relying on the above-mentioned factual record, the Board decided that there was sufficient evidence for the Board to grant the dimensional variance. *Id.* at 4. The Board decided that the dimensional variance was needed due to the location of the home on the lot, and due to the configuration of the lot. *Id.* at 3. The Board also found that the proposed shed would not alter the

general character of the surrounding residential neighborhood, that the requested relief was the least relief necessary, and that denying the variance would result in more than a mere inconvenience. *Id.*

The Report analyzed each of the Coventry Code's criteria for granting a dimensional variance. *See supra* Part I.A.2. The Board's decision notes that the Board finds the Report to be credible and reliable. (Decision at 2.) The Board's decision on the dimensional variance adopts the findings of the Report and incorporates the Report by reference. *See id.* at 3. In reviewing the Board's decision, the Court "gives deference to the findings of a local zoning board of review" because it "is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance." *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859 (quoting *Monforte*, 176 A.2d at 728). The Report clearly articulates the factual findings of the Board and is part of the "whole record." *See* Report.

Along with the Report, the Board incorporates and finds Mr. Cole's testimony at the August 4, 2021, hearing credible and reliable. (Decision at 2.) At that hearing, Mr. Cole testified that there was already a preexisting shed in the same location as the proposed new shed. (August 4 Hearing at 8.) Mr. Cole also testified to the fact that there was no other good place on the Property to place the new shed. *See id.* at 9.

Therefore, viewing the whole record including the Report's extensive criteria and analysis regarding the Coventry Code's requirements for a dimensional variance, and the Board's credibility determinations regarding Mr. Cole's testimony at the August 4, 2021 hearing, the Court finds that the Board's decision regarding its granting of the dimensional variance was not clearly erroneous and came to its decision through reliable, probative and substantial evidence in the whole record.

Arbitrary or Capricious

Adopting the analysis from above, the Court also finds that the Board’s decision regarding the grant of the dimensional variance was not arbitrary or capricious because the Board relied on credible and reliable evidence to come to its decision.

Therefore, viewing the Board’s reliance on the whole record including the Report’s extensive criteria and analysis, the Board’s credibility determinations regarding Mr. Cole’s testimony, and the Board’s visit and familiarity with the Property, the Court finds that the Board’s decision regarding its granting of the dimensional variance was not arbitrary or capricious.

B

Special Use Permit

The Coventry Code includes the following restrictions on nonconforming development:

“A. A nonconforming use may be continued so long as it remains otherwise lawful, and does not cause any adverse impacts to surrounding uses, subject to the restrictions of this section.

“B. A nonconforming use shall not be enlarged or extended unless with a special use permit in accordance with § 255-860 of this article.” Section 255-840(A)–(B).

The Coventry Code also contains the following restrictions on nonconforming structures:

“A. A nonconforming structure may be continued provided that it conforms to the requirements of this section.

...

“C. A nonconforming residential structure in a residential zone shall not be enlarged, extended or altered to increase its nonconformity unless with a special use permit in accordance with § 255-860.

...

“E. A nonconforming structure which is demolished or removed in whole or in part by the voluntary and lawful action of the owner or

other authorized party shall not be rebuilt or replaced unless it conforms with this chapter.

...

“H. Any nonconforming residential structure located in a residential district which is damaged or destroyed by other than the voluntary and lawful action of the owner or other authorized party may be repaired or rebuilt provided that such repair or reconstruction does not occupy a larger footprint than the damaged structure unless it can do so in conformance with the dimensional regulations in § 255-600.” Section 255-850 (A), (C), (E), (H).

Section 255-860 of the Coventry Code requires a special use permit when:

“The expansion, extension or alteration of nonconforming uses so as to increase their nonconformity shall require a special use permit from the Board. Application for a special use permit shall be made to the Board according to the provisions of Article 4, except that permits for nonconforming lots will not require development plan review unless recommended by the Board.” Section 255-860.

The Coventry Code allows the Board to grant a special use permit including for when an extension of a nonconforming use is sought. When granting a special use permit under Article IV, the Coventry Code requires that the Board review the following evidence:

- “(1) Ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe;
- “(2) Off-street parking and loading areas where required (see Article XII), with particular attention to the items in Subsection B(1) above, and to the economic, noise, glare or odor effects of the special use permit on adjoining lots;
- “(3) Trash, storage and delivery areas with particular reference to the items in Subsection B(1) and (2) above;
- “(4) Utilities, with reference to locations, availability and compatibility;
- “(5) Screening and buffering with reference to type, dimensions and character (see Article XVII);
- “(6) Signs, if any, and exterior lighting with reference to glare, traffic safety, economic effect on and compatibility and harmony with lots in the zoning district (see Article XV);
- “(7) Required yards and other open space;

- “(8) General compatibility with lots in the same or abutting zoning districts;
- “(9) The use will not result in or create conditions that will exceed the industrial performance standards in Article VII;
- “(10) General compatibility with the Coventry Comprehensive Plan; and
- “(11) That the granting will not result in conditions inimical to the public health, safety, morals and welfare.” Section 255-430(B).

1

Clearly Erroneous in View of Substantial Evidence of the Whole Record

As part of its conclusions of law regarding the special use permit, the Board incorporated Section II of its decision. In Section II of its decision, the Board stated that:

- “Based upon materials provided with the application, the testimony of the applicant and staff reports, the Board finds as follows:
 - “1. The Board accepted the applicant’s testimony and materials submitted as credible and reliable;
 - “2. The Board reviewed and accepted the staff report as credible and reliable;
 - “3. Board members were all familiar with the subject property[.]” (Decision at 2.)

In its decision regarding the special use permit, the Board once again incorporates the extensive criteria and analysis of the Report, incorporates Mr. Cole’s testimony regarding the size and location of the new shed that it found credible and reliable, and the Board notes its familiarity with the Property. *See id.* 2-4.

As to the requirements of the special use permit, the Board relied on the Report. *See id.* The Report analyzed each of the Coventry Code’s criteria for granting a special use permit. *See supra* Part I.A.2. The Board’s decision notes that the Board finds the Report to be credible and reliable. (Decision at 2.)

Appellants argue that the Board did not consider the larger size of the shed in making its decision. (Pls.’ Mem. at 1-5.) Although the Report does not address the issue regarding the size

of the shed, the Report is not the only evidence that the Board considered when making its decision. *See* Decision at 2. The Board also relied on Mr. Cole’s testimony, which the Board found to be credible and reliable, and the Board’s own observations of the Property including observations of the new shed and any potential adverse impacts on the abutting properties when making its decision. *Id.*

At the August 4, 2021 hearing, Mr. Cole testified that the new shed is “a couple of feet bigger wider and longer.” (August 4 Hearing at 8.) Ms. Perkins also testified at the hearing stating that the new shed is “much larger than the other shed and its [*sic*] right next to the fence.” *Id.* at 9.

Our Supreme Court has held “that evidence gleaned from the personal observations of zoning board members constituted ‘legally competent evidence upon which a finding may rest . . . if the record discloses the nature and character of the observations upon which the board acted.’” *Restivo v. Lynch*, 707 A.2d 663, 666 (R.I. 1998) (quoting *Perron v. Zoning Board of Review of Town of Burrillville*, 117 R.I. 571, 576, 369 A.2d 638, 641 (1977)). In Section I of its decision, the Board states that “[b]etween the August 4 and September 1 hearings, Members of the Board viewed the property.” (Decision at 2.) Although the Board’s observations of the new shed were not stated in its decision, the September 1 hearing reflects that the Board made various observations about the Property and the new shed, including that the new shed was already built, that the new shed was “right where the old shed was[,]” that “there are giant trees and bushes behind it and its been there for a long time[,]” that the trees hide the shed, that there are a lot of other sheds in the front lots of other homes in the neighborhood, and that the Property’s “lot is small and there aren’t a lot of places [one] could put [the shed].” (September 1 Hearing at 4.)

The Court finds that the record is clear that the Board relied on substantial evidence in the record when making its decision. When the Board considered the layout of the new shed, the

Board based its decision on Mr. Cole's testimony, Ms. Perkins's testimony, the Report's criteria and analysis, and the Board members' actual observations of the new existing shed. The Board also based its decision to grant the special use permit on the Board's own observations of the new shed, as articulated in the September 1, 2021 hearing. Therefore, viewing the whole record including the Report's extensive criteria and analysis, the Board's credibility determinations regarding Mr. Cole's testimony, and the Board's visit and familiarity with the Property, the Court finds that the Board's decision regarding its granting of the special use permit was not clearly erroneous and was based on substantial evidence.

2

Arbitrary or Capricious

Adopting the analysis from above, the Court also finds that the Board's decision regarding the granting of the special use permit was not arbitrary or capricious because the Board relied on credible and reliable evidence to come to its decision.

Therefore, viewing the whole record including the Report's extensive criteria and analysis, the Board's credibility determinations regarding Mr. Cole's testimony, Ms. Perkins's testimony regarding the new shed's size, and the Board's visit and familiarity with the Property, the Court finds that the Board's decision regarding its granting of the special use permit was not arbitrary or capricious.

IV

Conclusion

For the reasons set forth herein, this Court **AFFIRMS** the Board's decision granting Mr. Cole's and Ms. Taylor's request for a dimensional variance and a special use permit. The Board's decision was not clearly erroneous based on substantial evidence of the whole record and

its decision was not arbitrary or capricious. The Board's decision also does not prejudice Appellants' substantial rights because the Board considered possible harms to the abutting properties including those rights of Ronald Perkins and Louis Fichera. Counsel shall prepare the appropriate order.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Ronald Perkins and Louis Fichera v. Kimberly J. Taylor, et als.**

CASE NO: **KC-2021-1012**

COURT: **Kent County Superior Court**

DATE DECISION FILED: **March 27, 2024**

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

ATTORNEYS:

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