

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC.

SUPERIOR COURT

(FILED: SEPTEMBER 5, 2012)

GREENVALE FARM, LLC	:	C.A. No. NC-11-0056
	:	
V.	:	
	:	
ZONING BOARD OF REVIEW FOR	:	
THE CITY OF PORTSMOUTH, by	:	
and through its members	:	
KEVIN M. AGUIAR, BYRON HALL	:	
JOHN BORDEN, TIA SCIGULINSKY	:	
and BRIAN SMITH	:	

DECISION

NUGENT, J. Before this Court is an appeal from a decision of the Zoning Board of Review of the Town of Portsmouth (the “Board”), which dismissed Applicant Greenvale Farm, LLC’s (“Greenvale”) petition for a special use permit requesting that the board allow its existing winery to conduct weddings, receptions, corporate functions, and banquets on its property. Greenvale is seeking to overturn the dismissal of its petition for a special use permit and urges that the matter be remanded to the Board for a hearing on the merits. Jurisdiction for review of this appeal is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

Greenvale is a Rhode Island limited liability company with its principal place of business in Portsmouth, Rhode Island. (Compl. ¶ 1.) Greenvale owns approximately 58 acres of real property located (the “Subject Property”) on Greenvale Lane in Portsmouth, Rhode Island designated as Tax Assessor’s Map 65, Lot 4. Id. The Subject Property is located in an R-40

zoning district. (Dec. 12/30/10 at 1.) Since 1863, the Subject Property has been used for farming purposes and began growing grapes and operating as a vineyard to produce wine during the 1980s. (Tr. 10/19/2010 at 22-23.) In addition to the winery, Greenvale also allows the Subject Property to be used as a venue for weddings and wedding receptions. Id. at 27. Specifically, Greenvale allowed guests to rent the Subject Property from Greenvale to conduct special events such as weddings and corporate functions for private groups and local community organizations. Id.¹

Greenvale filed a petition with the Board, assigned for hearing on April 15, 2010, which was replaced by an amended petition originally scheduled for hearing on May 10, 2010. (Dec. 12/30/10 at 1.) Greenvale petitioned the Board for a special use permit under the applicable Portsmouth Zoning Ordinance to “conduct weddings, receptions, corporate functions, banquets and the like” on the Subject Property. The Board ultimately held a hearing on October 19, 2010. Id. at 1-2. Greenvale’s amended petition set forth two alternative grounds for obtaining a special use permit. Id. at 1.

Greenvale’s first theory alleged that it was entitled to a special use permit under Portsmouth Zoning Ordinance Article V, Section B.12. Id. This section provides that the following uses are allowed by special use permit in an R-40 zone: “(c)ountry club, golf, swimming, tennis or other outdoor recreational facility”. Id. Greenvale requested a special use

¹ After a neighbor took issue with these special event uses, the Portsmouth Zoning Enforcement Officer found that the uses were not in violation of the applicable Zoning Ordinance. The neighbor appealed that decision to the Board. The Board held a hearing on the appeal on December 17, 2009. Following the hearing, the Board sustained the appeal and found that “[h]olding of weddings and/or wedding receptions is not a use that is accessory to agricultural use. An accessory must be connected to the main use.” Greenvale took an appeal of that decision of the Board, which is currently pending in this Court. During that appeal hearing, the Board indicated that Greenvale could seek a special use permit to conduct its special event operations.

permit on the basis that it is an “outdoor recreational facility.” Id. As an “outdoor recreational facility,” Greenvale requested that it be allowed to “conduct weddings, receptions, corporate functions, banquets and the like”. Id.

In the alternative, Greenvale asserted that it was entitled to a special use permit under Portsmouth Zoning Ordinance Article V, Paragraph 1, a “catch all” provision authorizing the Board to determine if the proposed use is most similar to those described in Article V, Section B.12 or is most similar to a use contained in another section of the zoning ordinance. Id. Specifically, Article V, Paragraph 1 provides as follows:

“Proposed uses not [listed in the Table of Use Regulations] may be presented to the Zoning Board of Review by the property owner. Such uses shall be evaluated by the Zoning Board of Review according to the most similar use(s) that is (are) listed, as well as the purposes and uses generally permitted in the subject use district. The Zoning Board of Review may approve the proposed uses as permitted, or deny the proposed use as not permitted, or allow the proposed use subject to a Special Use Permit.” PORTSMOUTH, R.I., ZONING ORDINANCE Article V, § 1 (2008).

At the hearing held on October 19, Greenvale presented the testimony of the General Manager and part owner of the Subject Property, Nancy Parker Wilson. (Dec. 12/30/10 at 2). Ms. Wilson stated that Greenvale “runs tours and allows picnics and other recreational activities on its land.” Id. She also stated that Greenvale engages in activities such as “passive recreation, educational programs and music,” which she opined are similar to those activities conducted at a country club, golf, swimming, tennis, or “other outdoor recreational facility”. Id. Additionally, Greenvale presented Mr. Peter M. Scotti, a licensed real estate broker and appraiser. Id. at 3. The Board voted unanimously to recognize Mr. Scotti as an expert in real estate matters. Id. Mr. Scotti testified as to the definition of recreation, which he defined as “anything other than work,

and as ‘any activity one performs during leisure time.’ He included weddings, proms, and corporate functions as social and recreational uses.” Id.

The objectors presented Mr. Paul Hogan, a real estate consultant, as a witness. Id. The Board voted unanimously to accept him as an expert in the field of real estate. Id. Mr. Hogan testified that the uses listed in Article V, Section B.12 of the zoning ordinance “combine[d] social activit[ies] with physical activity”. Id. He concluded that Greenvale’s proposed uses do not fit that section of the ordinance. Id. Mr. Hogan further testified that of all the uses listed in the Portsmouth Table of Use Regulations, the proposed use is most similar to “an eating place”. Id. An eating place is listed in Article V, Section E.3 and is a service business which is prohibited in an R-40 Zone. Id.

The Board limited the hearing to the issue of whether Greenvale’s proposed uses fit under either of the applicable sections. Id. The Board did not consider testimony regarding the other elements required generally for relief by way of a special use permit. (Tr. 10/19/2010 at 5.) The Board moved to continue the hearing to December 2, 2010. (Dec. 12/30/10 at 3.) On December 2, the Board heard additional testimony and argument from over twenty witnesses. Id. Some of the testimony it heard “tended to wander away from the limited issue before the board” and was relevant only to whether granting of the special use permit was a good or bad idea generally. Id. As such, the Board refused to consider these arguments to the extent that “they went beyond the limited issue of whether the proposal was within the uses permitted by ordinance Article V, Section B.12, or whether the proposed uses were most similar to the uses listed in that section.” Id.

In light of the testimony presented to the Board at the hearings held on October 19, 2010 and December 2, 2010, the Board voted 3-2 to dismiss Greenvale’s petition for a special use

permit, finding that “[w]eddings are social, not recreational events.” Id. at 3-4. The Board also concluded, based on Mr. Hogan’s testimony, that the use listed in the Portsmouth Zoning Ordinance Table of Use Regulations that is most similar to that sought by Greenvale was an eating place, a use that is prohibited in an R-40 zone. Id. at 4. Accordingly, the Board dismissed Greenvale’s petition for a special use permit under Article V, Section B.12 and Article V, Paragraph 1. Id.

As a result of the Board’s decision, Greenvale filed this appeal on December 2, 2011, claiming the Board’s decision was made by unlawful procedure pursuant to § 45-24-69(d)(3) of the Rhode Island General Laws. (Compl. ¶ 6-C.) Greenvale asserts that because the board required Greenvale to “carry the ‘burden of proof’ that it was an outdoor recreational facility” but did not allow a full hearing on the special use permit application, the Board “deprived Greenvale of its right to seek relief by dismissing the Petition without conducting a hearing on the merits.” (Pl’s Mem. 12/2/11 at 6-7.) Greenvale also claims that the Board committed clear error in finding that its proposed uses did not fit the definitions under which it claimed relief. Id. at 7. Further, Greenvale argues that even if it was required to prove that its uses were consistent with an outdoor recreational facility or country club, “it clearly did so and the Board committed clear error in determining that it did not meet these definitions.” Id. Greenvale urges this Court to reverse the decision of the Board, and remand the matter to the Board to effectuate a full hearing. Id. at 10.

II

Standard of Review

Rhode Island General Laws § 45-24-69(a) grants this Court jurisdiction to review a local zoning board's denial of a special use permit. Such Superior Court review of zoning board decisions is governed by G.L. 1956 § 45-24-69(d). That section provides:

“[t]he 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 that 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 and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion” G.L. 1956 § 45-24-69(d).

In reviewing questions of law, this Court conducts a de novo review. Tanner v. Town Council, 880 A.2d 784, 791 (R.I. 2005). In reviewing questions of fact, the trial justice must “examine the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings.” DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979). Our Supreme Court has defined substantial evidence as “relevant evidence that a reasonable person would accept as adequate to support the board’s conclusions and amounts to ‘more than a scintilla but less than a preponderance.’” Lischio v. Zoning Bd. of Review of the Town of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand and Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

If this 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 Apostolu v. Genovesi, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978)); see Monroe v. Town of East Greenwich, 733 A.2d 703 (R.I. 1999). The applicant has the burden of persuasion to demonstrate why the relief sought should be granted. See Dilorio v. Zoning Bd. of Review East Providence, 105 R.I. 357, 252 A.2d 350 (1969).

III

Analysis

Greenvale challenges the Board’s decision pursuant to § 45-24-69(d)(3), arguing that the Board’s decision to dismiss Greenvale’s petition for a special use permit was made upon unlawful procedure. (Compl. ¶ 6-C.) Greenvale claims it qualifies as an outdoor recreational facility under Article V, Section B.12 of the local zoning ordinance, or that its proposed use was most similar to a country club or outdoor recreational facility under Article V, Paragraph 1. (Dec. 12/30/10 at 1.) Specifically, Greenvale argues that the Board denied Greenvale its right to seek relief by dismissing Greenvale’s petition without conducting a hearing on the merits with regard to obtaining a special use permit. (Pl’s Mem. 12/2/11 at 7.) Greenvale claims it should have been permitted to establish the elements for granting a special use permit and, therefore, the Board’s decision to dismiss the petition was done under unlawful procedure. Id. at 6-7. Greenvale requests the matter be remanded to the Board to conduct such a hearing on the merits.

In its complaint, Greenvale also challenges the Board’s decision as violative of constitutional, statutory, or ordinance provisions; in excess of the authority granted to the Zoning Board by statute or ordinance; affected by error of law; clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; and/or arbitrary and capricious or

characterized by an abuse of discretion or clearly an unwarranted exercise of discretion. (Comp. ¶ 6.) However, Greenvale’s brief only raises arguments regarding unlawful procedure and the sufficiency of the evidence. The Court is satisfied that the failure to meaningfully discuss these remaining challenges constitutes a waiver of those issues. See Town of Coventry v. Baird Properties, LLC, 13 A.3d 614, 619 (R.I. 2011) (“This Court frequently has stated that summarily listing issues for appellate review, ‘without a meaningful discussion thereof or legal briefing of the issues, does not assist the Court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue.’”) (quoting Wilkinson v. State Crime Laboratory Commission, 788 A.2d 1129, 1131 n. 1 (R.I.2002)).

A

The Board’s Decision

Pursuant to § 45-24-61(a), a Zoning Board must issue a written decision, which affirms or denies a request for zoning relief. Sec. 45-24-61(a). The Board’s written decision must include “all findings of fact and conditions, the vote of each participating member, and the absence of a member or his or her failure to vote.” Id. “When the board fails to state findings of fact, the court will not search the record for supporting evidence or decide for itself what is proper [under] the circumstances.” Bernuth v. Zoning Bd. of Review of the Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001).

The record reveals that the Board considered Greenvale’s application at two public hearings, which were held October 19, 2010 and December 2, 2010. (Dec. 12/30/10 at 2-3.) During the hearing on October 19, Greenvale presented the testimony of Nancy Parker Wilson, General Manager and part owner of Greenvale. Id. at 2. Ms. Wilson testified that Greenvale runs tours and allows picnics and recreational activities on its land. Id. When asked by

Greenvale's attorney what activities take place on the farm that are similar to those conducted at a country club, golf, swimming, tennis or other outdoor recreational facility, she responded by citing passive recreation, educational programs, and music. Id. During Ms. Wilson's testimony, Board member John Borden stated that he found an on-line definition of recreation which included picnicking and hiking. Id.

Greenvale also presented the testimony of Mr. Peter M. Scotti, a licensed real estate broker and appraiser. Id. at 3. The board voted unanimously to recognize Mr. Scotti as an expert in real estate matters. Id. Mr. Scotti testified, citing various dictionary sources, that recreation is defined as "anything other than work, and as 'any activity one performs during leisure time.'" Id. He also testified that he considered weddings, proms, and corporate functions as social and recreational uses. Id. In response to a question from Board member John Borden, Mr. Scotti stated that a wedding is not a recreational activity but is a use accessory to a country club. Id.

Objectors to Greenvale's petition for a special use permit presented Mr. Paul Hogan, a real estate consultant, as a witness. Id. at 3. The board voted unanimously to accept him as an expert in the field of real estate. Id. Mr. Hogan testified that the uses in Article V, Section B.12, and recreational activity in general, "combine(s) social activity with physical activity." Id. He concluded that Greenvale's "proposed use does not fit into that section of the ordinance." Id. He testified that "the most similar to the proposed use is an eating place, a service business listed in Article V, Section E.3[,]" which is prohibited in an R-40 zone. Id.

The Board voted to continue the hearing to December 2, 2010. Id. Counsel agreed to submit memoranda to the Board prior to that date so that the Board could review the memoranda, listen to abutters and other interested parties, and render a decision on that date. Id. On December 2, the Board heard testimony and argument from over twenty witnesses. Id.

Although the Board stated it did not wish to interrupt presenters not trained in the law, “arguments were not considered to the extent that they went beyond the issues of whether the proposal was within the uses permitted by ordinance Article V, Section B.12, or whether the proposed uses were most similar to the uses listed in that section.” Id.

The Board voted 3-2 to dismiss Greenvale’s petition for a special use permit. Id. The Board found “that Petitioner ... failed to prove that it is seeking a special use permit to operate a country club, golf, swimming, tennis or other outdoor recreational facility on its property.” Id. at 4. The Board cited an admission by Greenvale that the use of Greenvale’s land is as a winery. Id. The Board stated that “adding occasional weddings, receptions, corporate functions, banquets and the like will neither make the farm an outdoor recreational facility, a country club, or any other use listed in Section B.12, nor create a secondary primary use consistent with that section.” Id. The Board further stated that Greenvale failed to prove that the requested use is most similar to those found in Article V, Section B. 12 of the Portsmouth Zoning Ordinance. Id.

The Board noted that the ordinance does not define “country club.” Id. However, it determined, based on testimony presented and common experience, that a country club generally is “an organization whose members have a common interest, hold regular meetings, and pay dues.” Id. The Board further found that “it is clear that Petitioner is not seeking to operate a country club,” “[n]or has Petitioner proved that it is seeking to operate an outdoor recreational facility.” Id. The Board found that hiking and enjoying the scenery “bear little relation to the activities set forth in the Petition: weddings, receptions, corporate functions, banquets and the like.” Id. The Board found that weddings “are social, not recreational, events” and “the term ‘outdoor recreational uses’ does not apply to those listed in the Petition.” Id. Finally, the Board

concluded that “the use listed in the zoning ordinance that was most similar to those sought by Petitioner is an eating establishment, a use that is prohibited in an R-40 Zone.” Id.

This Court finds that the Board’s decision complies with § 45-24-61(a) because it sets forth the findings of fact that the Board relied upon in dismissing the application. As such, the Court has the necessary information to evaluate the Board’s decision and can reach the substantive merits of the instant appeal. See Bernuth v. Zoning Bd. of Review of the Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001) (determining that a zoning board of review must make findings of fact and conclusion of law in support of its decision to enable effective judicial review).

B

Unlawful Procedure

At issue in this case is the procedure used by the Board in hearing and dismissing Greenvale’s petition for a special use permit. Greenvale asserts that it should have been permitted a hearing where it could establish the elements for the granting of a special use permit. Greenvale asserts that by prohibiting them from establishing each requirement, the Board decided this issue on unlawful procedure.

Article VII, § A(5) of the Portsmouth Zoning Ordinance states:

“Items to be considered when granting a special use permit include, but are not limited to, the following:

- a). The desired use will not be detrimental to the surrounding area;
- b). It will be compatible with the neighboring land uses;
- c). It will not create a nuisance or a hazard in the neighborhood;
- d). Adequate protection is afforded to the surrounding property by the use of open space and planting;

- e). Safe vehicular access and adequate parking are provided;
- f). Control of noise, smoke, odors, lighting and any other objectionable feature is provided;
- g). Solar rights of the abutters is provided for;
- h). The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth;
- i). The health, safety and welfare of the community is protected; and
- j). It is consistent with the Purpose of Design Standards set forth in Article IX, Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III”. PORTSMOUTH, R.I., ZONING ORDINANCE Article VII, § A(5) (2008).

The term “special use” is defined as a “regulated use which is permitted pursuant to the special-use permit issued by the authorized governmental entity . . .” See § 45-24-31(57). In order to award a special use permit, there must be a specific provision in the local zoning ordinance authorizing the proposed use by special use permit. Monopoli v. Zoning Bd. of Review, 102 R.I. 576, 232 A.2d 355 (1967); see also Souza v. Zoning Bd. of Review of Warren, 104 R.I. 697, 248 A.2d 325 (1968) (auto body shop could not be allowed as a special use since the record did not disclose that applicant sought a use that was permitted in zoning ordinance). Zoning ordinances establish certain “conditionally permitted” uses upon which to base a special use permit. See Roland F. Chase, R.I. Zoning Handbook § 148 (2d 2006). “By definition, such a use is one which the local legislature has conditionally permitted and has thereby, at least implicitly, found to be harmonious with those uses which are permitted² in the district.” Nani v. Zoning Bd. of Review of Town of Smithfield, 104 R.I. 150, 155, 242 A.2d 403, 406 (1968).

² One of the enumerated factors to consider when deciding whether to award a special use permit is whether “the proposed special use will be in conformance with the purposes and intent of the

There is ample evidence in the record to support the determination of the Board that Greenvale's proposed use did not fit within the permitted uses listed in the zoning ordinance. The Board sought the advice of the City Solicitor of the Town of Portsmouth, and followed his recommendations on how to proceed. (Tr. 10/19/2010 at 35.) The Solicitor stated that there is a two-pronged test that the Board must follow in this proceeding. Id. at 4. First, the Board should take evidence and/or argument on whether the proposed uses are listed or are similar to any uses listed in the zoning ordinance. Id. The Board advised petitioner that if it voted in Greenvale's favor on this first issue, then it would hear all the arguments in favor of a special use permit. Id. at 35. The Solicitor then stated, "if the evidence is to the contrary . . . the petitioner proceeds no further, because this cited section of the ordinance does not apply." Id. Lastly, the Solicitor stated that only if Greenvale proved that its proposed use was similar to any use listed in the zoning ordinance would it be able to present evidence as to whether the use was of a type in accord with the purpose and uses generally permitted in the applicable zone. Id. at 4. The Board found that the proposed use "was neither contained in Article V, Section B.12 of the Portsmouth Zoning Ordinance, nor most similar to the uses listed there, but was most similar to the use listed in Article V, Section E.3, an eating establishment[.]" which is a prohibited use in Greenvale's zoning district. (Dec. 12/30/10 at 3.)

C

Sufficiency of Evidence

Although it was not expressly asserted by Greenvale in support of this appeal, it appears Greenvale is arguing that the Board committed clear error, based on the presented evidence, in deciding that Greenvale could not be considered a "country club, golf, swimming, tennis or other

comprehensive plan and the zoning ordinance of the Town of Portsmouth." PORTSMOUTH, R.I., ZONING ORDINANCE Article VII, at § A(5)(h).

outdoor recreational facility,” or that its proposed uses were the most similar to that categorization.

When a zoning board considers a special use permit application, the standard provides that the proposed uses must fit into the language that allows a special use permit to be granted, not whether existing accessory uses bring the said property under those auspices. PORTSMOUTH, R.I., ZONING ORDINANCE Article VII, § A(5)(h) (2008). The Board is allowed to give weight to all evidence presented. Here, there were two experts that testified as to whether the proposed uses fit into Article V, Section B.12 or Article V, Paragraph 1. “It is well settled in Rhode Island that ‘there is no talismanic significance to expert testimony. It may be accepted or rejected by the trier of fact.’” Restivo v. Lynch, 707 A.2d 663, 671 (R.I. 1998) (citing Kyle v. Pawtucket Redevelopment Agency, 106 R.I. 670, 673, 262 A.2d 636, 638 (1970)). However, where “expert testimony before a zoning board is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for a zoning board to reject such testimony. Murphy v. Zoning Bd. of Review of Town of South Kingstown, 959 A.2d 535, 542 (R.I.,2008) (citing Bonitati Bros., Inc. v. Zoning Bd. of Review of Cranston, 99 R.I. 49, 55, 205 A.2d 363, 366-67 (1964)). “Essentially, the members of the board were faced with a ‘battle of the experts’ and they made a credibility-based determination in reaching their conclusion.” Merva v. Noonan, 1997 WL 839895 (R.I. Super. 1997).

Here, the two experts were at odds and the Board was forced to make a credibility determination.

The Board decided to give more weight to Mr. Hogan’s testimony that weddings, banquets, corporate functions or the like did not fit into those sections of the ordinance asserted by Greenvale. (Dec. 12/30/10 at 3). It further decided that weddings are primarily social

gatherings, not recreational activities, and the Board was free to render this conclusion based on Mr. Hogan's testimony to that effect. Id. at 4. Although Greenvale also presented its expert, Mr. Scotti, in support of its argument, the Board challenged his opinions. (Tr. 10/19/2010 at 72-73.) The Board asked Mr. Scotti whether he thought a wedding reception was a recreational activity to which Mr. Scotti stated "[n]o, a wedding is a use that is permitted as an accessory use for facilities like a county club or other recreational facility." Id. at 72. Mr. Scotti went on to say that a wedding, or wedding reception, is a social, not recreational, activity. Id. at 80. When Mr. Scotti was asked repeatedly by the Board whether wedding receptions typically have food and beverages consumed at them, Mr. Scotti answered that food and beverages are typically consumed at these events. Id. at 82. As the Board continued with its questioning, they stated that eating places or establishments, a use prohibited in R-40 zone, was defined in the zoning ordinance as a place that serves food and beverages to be consumed within a building. Id. at 83. Mr. Scotti said that Greenvale is not a restaurant and, therefore, the receptions and banquets it held could not make Greenvale's proposed use most similar to an eating place. Id. However, the Board found that for purposes of the zoning ordinance and its listed uses, it "doesn't matter if the facility is a restaurant, it matters if it's a place where food and beverage is consumed." Id. at 83-84. Mr. Scotti then conceded that if eating and drinking is the primary activity for that use, then a reception or banquet could be considered an eating place. Id. at 84.

As the Rhode Island Supreme Court affirmed in Murphy v. Zoning Bd. of Review of South Kingstown, "it should go without saying that expert testimony proffered to a zoning board is not somehow exempt from being attacked in several ways." 959 A.2d 535, 542 n.6 (R.I. 2008) (citing East Bay Community Development Corp. v. Zoning Bd. of Review of Barrington, 901 A.2d 1136, 1157 (R.I. 2006)); see also Restivo, 707 A.2d at 671 (noting that expert testimony

can be discredited through examination of the expert by members of the zoning board or by counsel for an interested party). The Board was free to discredit Mr. Scotti's testimony and accept Mr. Hogan's testimony to the contrary. Looking at the factual findings the Board made, this Court is persuaded to follow the rationale of the court in Foley, where, in affirming the board's decision, the court stated "[u]pon review of the record, the court declines to disturb that conclusion". Id. at 10. (citing Lowry v. Faraone, 500 A.2d 950, 952 (R.I. 1985) (upholding factfinders's decision in spite of conflicting expert testimony where finding was not clearly erroneous)). Greenvale has failed to carry its burden that the Board's decision was not supported by substantial evidence. Considering that the testimony of Mr. Hogan, and not Mr. Scotti, was relied upon and cited by the Board in support of its decision, this Court is convinced that there was "relevant evidence that a reasonable person would accept as adequate to support the board's conclusions." See Lischio v. Zoning Bd. of Review of the Town of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand and Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

IV

Conclusion

After a careful review of the entire record, this Court affirms the decision of the Board to dismiss Greenvale's petition in light of the factual determination by the Board that the proposed use did not fit within the enumerated list of specially permitted uses and that the proposed use was most similar to a use prohibited in an R-40 zone. There was reliable, substantial, and probative evidence in the record to support this decision, and it was not made upon unlawful procedure. Substantial rights of the petitioner have not been prejudiced

Counsel shall submit the appropriate judgment for entry.