STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: October 6, 2015)

DONEGAL PROPERTIES, LLC. *Plaintiff/Appellant,*	:	
v.	:	**C.A. No. NC 2010-0378**
ZONING BOARD OF REVIEW OF THE TOWN OF MIDDLETOWN, THOMAS D. SILVEIRA, LUCY LEVADA, PETER VAN STEEDEN, STEVEN MACGILLIVRAY and THOMAS NEWMAN, in their capacities as members of the Zoning Board of Review of the Town of Middletown and LEON AMARANT a/k/a LEONIDAS AMARANT and DESPINA AMARANT *Defendants/Appellees.*	:	

DECISION

STONE, J. Before the Court is an appeal from a decision of the Zoning Board of Review of the Town of Middletown (the Board), granting a special use permit to Leon and Despina Amarant (collectively, Defendants or Amarants) to construct a two-family dwelling on their R-10 zoned lot in Middletown, R.I.[1] The appellant, Donegal Properties, LLC (Donegal or Plaintiff), is seeking to reverse the Board's decision. Jurisdiction in this Court is pursuant to G.L. 1956 § 45-24-69. For the reasoning set forth below, this Court affirms the decision of the Board.

[1] The Board, along with its individual members named in their official capacity, are also parties to this appeal. However, they have adopted the arguments put forward by the Amarants and are discussed accordingly infra. See Mem. of Defs./Appellees, Middletown Zoning Board of Review, 4.

I

Facts and Travel

The Amarants own property located at 25 and 39 Crescent Road, Middletown, Rhode Island (the Property), which is represented as Lot 32 on Tax Assessor's Plat 116NW. (Zoning Board of Review of the Town of Middletown Decision at 1, June 23, 2010 (Decision).) The Property is situated in an R-10 zoned district. See Middletown Zoning Ordinance (Ordinance) Article 6, § 602. Pursuant to § 602 of the Ordinance, property located in an R-10 zoned district may include a two-family dwelling only upon the issuance of a special use permit.[2]

To enable the construction of a two-family dwelling on the Property, the Amarants applied for a special use permit in accordance with §§ 602 and 902 of the Ordinance. (Zoning Board Hr'g Tr. (Tr.) 3:1–4.) In 2006, a previous owner of the Property, Hilda Erfe (Erfe), had applied for similar relief from the Board. See Defs.' Resp. Mem., Ex. A, Town of Middletown Zoning Board of Review Decision at 1, Aug. 23, 2006 (seeking to erect a two-family dwelling). That relief was denied by the Board, noting traffic and parking concerns. Id. at 2. On May 25,

[2] Article 9, § 902 provides that a special use permit will be granted if

> "(1) It will not result in a significant diminution of property values in the surrounding area of the district;
> "(2) It will not create a nuisance in the neighborhood;
> "(3) It will be compatible with the Comprehensive Community Plan of the Town of Middletown;
> "(4) That the granting of such special use permit will not be detrimental to or substantially or permanently injure the appropriate use of property in the surrounding area or district;
> "(5) That the granting of such special use permit will not result in hazardous conditions or conditions inimical to the public health, safety or welfare."

2010, the Board held a hearing regarding the Amarants' application. See Tr. at 3. At that hearing, the Board heard testimony from six witnesses.[3]

First, Leon Amarant testified, initially providing the Board with background information regarding the Property. Id. at 7–14. When questioned about parking issues, Mr. Amarant explained to the Board that the proposed structure would entail parking for eight vehicles, facilitated by two two-car garages and additional room for up to four vehicles. Id. at 16:11–18. Also, cars would be able to turn around in the driveway, as opposed to backing out into traffic. Id. at 16:4–7. Mr. Amarant also testified that he intended to occupy at least one of the residences on the lot with his wife and daughter. Id. at 17:21–23.

Following what was to be the close of Mr. Amarant's testimony, the Board engaged in a lengthy colloquy with the town solicitor and counsel for the Amarants and the primary objector, Donegal. See generally id. at 30–39. During that exchange, the town solicitor—over the objection of the Amarants' counsel—advised the Board that to proceed further, it should make a determination as to whether there had been changed circumstances or if the application was substantially different. Id. at 33:20–34:2. This determination was to be in addition to the passage of time conditions for successive applications set forth in Article 2, § 204 of the Ordinance. Tr. at 31:21–32:17.

Immediately thereafter, counsel for the Amarants questioned Mr. Amarant regarding the differences between the 2006 application and the application at bar. See id. at 40–44. Mr. Amarant noted that in the 2006 decision, "[t]he Board was concerned that [Erfe] had not shown

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[3] Those witnesses were Leon Amarant, the applicant; George Durgin, Amarants' real estate expert; Marilyn O'Regan, the principal of Donegal; Lee St. Laurent, Robert McKenna, and William Dole, all of whom were objecting property owners.

that adequate off street parking had been provided," and he continued to contrast that with the eight parking spaces made available in his plan as opposed to her four. Id. at 41:5–21 (quoting Board decision at 2, Aug. 23, 2006); see also id. at 43:14–18 (observing the absence of garages in the earlier proposal). Additionally, reference was made to the physical differences between the two proposed structures, with the present plan encompassing one large building and the prior plan roughly showing two buildings attached at the corner. Id. at 42:4–15.[4] Lastly, Mr. Amarant compared Erfe's utilization of the property, which included short-term and seasonal rentals, with his own plans for long-term tenants in conjunction with owner occupation. Id. at 44:10–21.

Next, George Durgin, who was accepted as an expert in the field of real estate, testified about his familiarity with the area, with the Amarants' petition, and with the Ordinance and Comprehensive Plan. See, e.g., id. at 45–50. He opined that the Amarants' proposed use of the Property did not conflict with any of the then-existing uses in the area, either in size or in use, and that the design and location were consistent with the surrounding neighborhood. Id. at 45:14–48:21. Mr. Durgin testified that the proposed use would not alter the neighborhood's existing character and was compatible with the Ordinance and Comprehensive Plan. Id. at 50:7–24. He also testified that granting the special use permit would not be detrimental to the surrounding area or result in hazardous conditions. Id. at 50:25–51:10.

The Board then heard from Marilyn O'Regan, the principal of Donegal, which owns property at 19 Briarwood Avenue, Middletown, Rhode Island. She testified regarding her concerns for the Amarants' proposed development. In essence, her testimony was that approval

[4] It was later revealed on examination by Donegal's attorney that Erfe's plans included a connector between the two properties, but it was offered that it was "still a lot different from [the Amarants'] plans, which enclosed both units in the same structure." Id. at 62:12–13.

of the special use permit would cause her to vary her current use of the property, create parking concerns, and that the Amarants could change their proposed plan for occupancy in the future. Id. at 64–66. Similarly, Lee St. Laurent came before the Board to express concerns regarding the steadfastness of the Amarants' plan for continued occupancy, and, finally, William Dole voiced his concern as to congestion, traffic, and noise that could result from the proposed plan. Id. at 74:1–-9; 78:14–22.

Following a brief summation from the parties, the Board began to deliberate regarding the underlying application. Id. at 88:8. Board member Peter Van Steeden found there were "substantially material differences" in the two applications, noting the appearance, the mechanisms for use of the property, and the application and procedures used. Id. at 101:25–102:10. Likewise, member Steven MacGillivray found there to be a substantial change based upon "a combination of things." Id. at 103:1–2. He articulated his reasoning by indicating that this finding was pursuant to material differences in the application, change in the neighborhood over time, and the presence of a new owner. Id. at 103:4–11. Subsequently, the Board unanimously voted to approve the Amarants' application. Id. at 103:20.

On June 23, 2010, the Board issued a written Decision. In its Decision, the Board found that there had "been a substantial change in circumstances since [the] petition denied by the Board in . . . 2006." Decision, at 1. As such, the Board then went on to unanimously grant the petition for the special use permit. Id. at 2. Donegal then filed this timely appeal, challenging the validity of the Board's finding that there had been a substantial change in circumstances since the 2006 application was denied. A Motion to Assign for Decision was granted on June 5, 2015.

II

Standard of Review

This Court employs the standard of review set forth in § 45-24-69(d) when hearing an appeal from a zoning board decision. That section provides as follows:

> "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 evaluating a zoning board of review's factual findings, the court must '"examine the entire record to determine whether substantial evidence exists to support the board's findings."' Mill Realty Assocs. v. Crowe, 841 A.2d 668, 672 (R.I. 2004) (quoting DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)) (internal quotation marks omitted). The term "[s]ubstantial evidence" is defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance." Lischio v. Zoning Bd. of Review of N. Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (internal citation omitted). The court gives deference to a zoning board because "a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective administration of the

zoning ordinance." Monforte v. Zoning Bd. of Review of E. Providence, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962).

Although the "factual findings of an administrative agency are afforded great deference, a dispute involving statutory interpretation is a question of law . . . ." Rossi v. Emps.' Ret. Sys., 895 A.2d 106, 110 (R.I. 2006). As such, "[a] planning board's determinations of law, like those of a zoning board or 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." West v. McDonald, 18 A.3d 526, 532 (R.I. 2011) (citing Pawtucket Transfer Operations v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008)).

III

Analysis

On appeal, Donegal proffers but a single theory as to why this Court should reverse the Board's Decision. Namely, it argues that the Defendants' application for a special use permit was barred by the doctrine of administrative finality. In support of this contention, Plaintiff submits that both the application itself was "identical" to the earlier relief sought by Erfe and that Defendants failed to make the requisite showing of changed circumstances to qualify for relief from the Board.

In response, the Defendants contend that the Board, based upon substantial evidence in the record, found that the Amarants' plan was substantially and materially different to the one submitted by Erfe in 2006. Moreover, the Amarants ask this Court to read § 204 of the Ordinance, which provides filing requirements for successive applications to the Board, as limiting the applicability of the doctrine of administrative finality in successive applications. Each of these contentions is addressed in seriatim below.

A

Changed Circumstances

Pursuant to the doctrine of administrative finality, "when an administrative agency receives an application for relief and denies it, a subsequent application for the same relief may not be granted absent a showing of a change in material circumstances during the time between the two applications." Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 808 (R.I. 2000) (citing Audette v. Coletti, 539 A.2d 520, 521–22 (R.I. 1988)). The goal of this doctrine "is to promote consistency in administrative decision-making, such that if the circumstances underlying the original decision have not changed, the decision will not be revisited in a later application." Johnston Ambulatory Surgical Assocs., 755 A.2d at 810.

Thus, "[w]hile the rule is sound, it is operative only if the relief sought in each case is substantially similar." May-Day Realty Corp. v. Board of Appeals of Pawtucket, 107 R.I. 235, 237, 267 A.2d 400, 402 (1970). An applicant has the burden of showing a substantial or material change in circumstances between the first and second applications. See Johnston Ambulatory Surgical Assocs., 755 A.2d at 809. In meeting that burden, it must be remembered that:

> "[w]hat constitutes a material change will depend on the context of the particular administrative scheme and the relief sought by the applicant and should be determined with reference to the statutes, regulations, and case law that govern the specific field. The changed circumstances could be internal to the application, as when an applicant seeks the same relief but makes important changes in the application to address the concerns expressed in the denial of its earlier application. Or, external circumstances could have changed, as when an applicant for a zoning exception demonstrates that the essential nature of land use in the immediate vicinity has changed since the previous application. Finally, there is a burden on the administrative decision-maker to articulate in its decision the specific materially changed circumstances that warrant reversal of an earlier denial of the relief sought." Id. at 811 (emphasis added).

Here, Donegal insists that the 2010 application filed by the Amarants was merely a reiteration of the 2006 application submitted by Erfe. See May-Day Realty Corp., 107 R.I. at 237, 267 A.2d at 402 (requiring substantial similarity). To buttress this claim, Donegal points the Court's attention to the similarities that exist between the two submissions. Specifically, it notes that both sought relief pursuant to § 902 of the Ordinance, both wanted to build a two-family home on the property, and that neither application would provide parking for all potential residents and guests.

However, the Amarants urge this Court to accept the findings of the Board, contending that substantial evidence in the record supports a finding of changed circumstances. Among the internal changes they note are the increased parking capacity of their planned development, the improved utility of the driveway, and the transfer of ownership since the 2006 application. Additionally, they note two external changes in that the Town of Middletown's Ordinance was in flux and a member of the Board believed there had been changes to the character of the neighborhood since the initial application was denied.[5]

As a threshold matter, the Court finds that the two applications are of such a substantially similar nature and that if it were not for changed circumstances, the 2010 application would be precluded by the doctrine of administrative finality. See May-Day Realty Corp., 107 R.I. at 237,

[5] Specifically, board member Steven MacGillivray made such comments in justifying his decision. Mr. MacGillivray stated that he believed the neighborhood may have changed over time. While such personal observations are permissible under Perron, that is only true when "the record discloses the nature and character of the observations upon which the board acted." Perron v. Zoning Bd. of Review of Burrillville, 117 R.I. 571, 576, 369 A.2d 638, 641 (1977). This Court finds that Mr. MacGillivray's conclusory statement fails to meet even that relatively low hurdle set forth by the Supreme Court and will ignore it in the current analysis of the Board's Decision.

267 A.2d at 402. As set forth by our Supreme Court in Johnston Ambulatory Surgical Assocs., the zoning board bears the initial burden of determining whether a change in circumstances has occurred during the interval between applications. 755 A.2d at 811. Here, the Board explicitly found that there had been a substantial change in circumstances since the 2006 application. Tr. at 101:25–102:10; 103:1–2. Indeed, it reasoned that the parking plans, the building to be constructed, the new owners, their plans to use the Property, and the neighborhood itself were substantially and materially different from Erfe's application.

This Court is mindful that it ought to afford the Board's judgment great weight and deference. See Pawtucket Transfer Operations, LLC, 944 A.2d at 859 ("Superior Court gives deference to the findings of a local zoning board of review."). In the present case, by addressing the parking and traffic concerns the Board voiced in its 2006 decision, the Defendants remedied one of the primary justifications for the original denial. See Driscoll v. Gheewalla, 441 A.2d 1023, 1028 (Me. 1982) (finding that where "objectionable features of the old plan had been removed" there was a substantial difference between successive applications). Furthermore, the record reveals sufficient evidence to uphold the Board's determination that a change in circumstances had occurred. Not only did the application, an exhibit before the Board, reveal on its face that the Amarants would have double the amount of parking available in the 2006 application, but it was also supported by an expert witness's testimony, which the Board was free to accept.[6] See Murphy v. Zoning Bd. of Review of S. Kingstown, 959 A.2d 535, 542 (R.I. 2008) ("[I]f 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.")

[6] George Durgin testified as a real estate expert on behalf of the Defendants. See Decision at 1.

(citing Bonitati Bros., Inc. v. Zoning Bd. of Review of Cranston, 99 R.I. 49, 55, 205 A.2d 363, 366–67 (1964)).

Further, the fact that ownership had passed from Erfe to the Amarants is a factor to be considered in the changed circumstances arithmetic. The Supreme Court has held that "standing alone, a change of ownership [does not] constitute[] a sufficient change in circumstances to authorize a board of review to reverse a prior decision denying relief." Burke v. Zoning Bd. of Review of N. Providence, 103 R.I. 404, 409, 238 A.2d 50, 53 (1968) (emphasis added). However, that case simply clarified that without more, a transfer of title was not per se changed circumstances. Id. (noting that "petitioner might well have shown a change in circumstance sufficient to except the case from the application of the doctrine of administrative finality"). In the case at bar, the Amarants noted the transfer as but one of a number of changes that had occurred since the earlier application, and, therefore, the Board's decision was properly supported by additional considerations. See id.

Ultimately, and upon review of the entire record, this Court is satisfied that the Board's Decision is supported by competent evidence. The Court notes that its review in this arena "is circumscribed and deferential," Restivo v. Lynch, 707 A.2d 663, 667 (R.I. 1998), and "'limited to the discovery of the necessary competent evidence.'" Id. (emphasis in original) (quoting E. Grossman & Sons, Inc. v. Rocha, 118 R.I. 276, 286, 373 A.2d 496, 501 (1977)). The Court's review reveals that the Board heard competent evidence to support its finding of changed circumstances, given that ownership had changed, the plans were substantially different, and that the Amarants addressed the Board's earlier concerns. Therefore, the Decision of the Board, finding that changed circumstances sufficient to warrant review had occurred, is affirmed.

B

Applicability of Administrative Finality

Additionally, Defendants ask this Court to hold that § 204 of the Ordinance, in conjunction with the Zoning Enabling Act, § 45-24-58, implicitly limits the applicability of the doctrine of administrative finality. The Zoning Enabling Act authorizes towns and cities, through a zoning ordinance, to "establish that a time period of a certain number of months is required to pass before a successive similar application may be filed." Sec. 45-24-58. Section 204 of the Ordinance provides that:

> "(A) Where the Zoning Board, in the case of a special-use permit or variance, denies an application, the Board may not consider another application requesting the same special-use permit or variance which it had previously denied, for a period of at least one year from the date of such denial or withdrawal.
> "(B) The Zoning Board may accept such a repeat application after six months; provided that the application is accompanied by an affidavit setting forth facts, to the satisfaction of the Zoning Officer, showing a substantial change of circumstances justifying a rehearing."

In explaining that § 204 limited the doctrine of administrative finality's applicability, Defendants argued that any other reading would render much of the language of § 204 as mere surplusage.[7]

In Marks v. Zoning Bd. of Review of Providence, the Supreme Court interpreted a similar zoning ordinance provision and its interplay with the doctrine of administrative finality. 98 R.I. 405, 407, 203 A.2d 761, 763 (1964). There, the Court held that the respondent's attempt to bypass the changed circumstances condition precedent based on the language of the zoning

[7] The Supreme Court has stated that it is a "well-settled rule of construction that no phrase or clause is to be rendered surplusage." State v. Clark, 974 A.2d 558, 573 (R.I. 2009) (citing State v. DeMagistris, 714 A.2d 567, 573 (R.I. 1998)).

ordinance was unavailing. Id. The provision at issue in Marks stated that "no application for an exception or variance [from the zoning ordinance] shall be accepted by the Clerk . . . if a petition or application praying for the same [relief] has been denied or the petitioner granted leave to withdraw within the preceding twelve months." Id. (quoting Zoning Ordinance of the City of Providence (rev. 1957), chap. 544, art. V, sec. 103). Ultimately, the Court believed that to allow an applicant to resubmit his application every twelve months "would deprive an earlier decision of finality, tend to uncertainty and impermanence, and subject a final determination reached after plenary hearing to change at the whim of the [Board's] members." Marks, 98 R.I. at 407, 203 A.2d at 764. The Court further reasoned that such a reading of the zoning ordinance "would defeat the premise upon which the doctrine of administrative finality is bottomed." Id.

This Court finds Marks to be particularly instructive in the matter at hand.[8] Indeed, were § 204 of the Ordinance to be the only barrier that an applicant had to overcome in submitting successive applications, then one could simply "come back to the zoning board year after year . . . with the same application and eventually wear down any objectors." Roland F. Chase, Rhode Island Zoning Handbook § 101 n.6 (2006). That scenario is exactly what the Supreme Court sought to avoid through its holding in Marks. See 98 R.I. at 407, 203 A.2d at 764 ("We do not construe [the zoning ordinance] as permitting an owner to ask for a redetermination of identical issues every twelve months." (citing Mayor & City Council of Baltimore v. Linthicum, 170 Md. 245, 183 A. 531 (1936)). Despite minor differences in their language, the substance

[8] See Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 792 (R.I. 2014) ("'courts should adopt the reasoning of earlier judicial decisions if the same points arise again in litigation"' (quoting State v. Werner, 865 A.2d 1049, 1056 (R.I. 2005)).

and effect of the ordinance in Marks and the Ordinance here are the same, as each provides a minimum period of time that must elapse before one can resubmit an application. Therefore, this Court believes that § 204 of the Ordinance should be read in harmony with the doctrine of administrative finality.

Furthermore, at the hearing below, the Board likewise believed that administrative finality first had to be satisfied through a showing of changed circumstances, despite the language of § 204. The Supreme Court has held that "when the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency, or board, charged with its enforcement is entitled to weight and deference, as long as that construction is not clearly erroneous or unauthorized." Pawtucket Transfer Operations, LLC, 944 A.2d at 859–60 (citing Flather v. Norberg, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 n.3 (1977)) (footnote omitted). "This is true even when other reasonable constructions of the statute are possible." Id. at 860 (citing In re Lallo, 768 A.2d 921, 926 (R.I. 2001)).

Here, the Board believed that the application of the rule presented a "jurisdictional issue," in that it was required to make a finding of changed circumstances to grant the requested relief. (Tr. at 102:20.) Therefore, it appears that the Board believed the rule was applicable even in the presence of § 204 of the Ordinance.[9] This Court affords that determination the commensurate weight and deference to which it is entitled. Even so, "a dispute involving statutory interpretation is a question of law . . . ." Rossi, 895 A.2d at 110. It is well settled that "the rules

[9] The town solicitor espoused this view by stating that the Board would need to find that both the requisite period of time had passed and that the new application was substantially different than what had previously been denied. Tr. at 4:10–18.

of statutory construction apply equally to the construction of an ordinance." Mongony v. Bevilacqua, 432 A.2d 661, 663 (R.I. 1981).

This Court believes that the application of the rule does not render the language of § 204 as mere surplusage or meaningless, the construction proffered by Donegal. "If reasonably possible, courts construe a statute so no word, clause, sentence, or phrase is surplusage, superfluous, meaningless or nugatory." 2A Sutherland Statutory Construction § 46:5 (7th ed.) (citing Williams v. William T. Burnett & Co., 296 Md. 214, 462 A.2d 66 (1983)). Rather than the application of administrative finality rendering § 204 as mere surplusage, both the doctrine and the Ordinance serve to encourage administrative economy by summarily dismissing successive appeals where an applicant either fails to meet § 204's time imperative or neglects to make the requisite showing of changed circumstances under the rule. See Marks, 98 R.I. at 407, 203 A.2d at 764; Chase, supra (allowing municipalities to issue time requirements "saves zoning boards the time and effort involved in holding hearings more frequently than the ordinance specifies to determine whether a substantial change of circumstances had occurred"). Reading § 204 and the doctrine of administrative finality in pari materia serves to further their common underlying purpose—to increase efficiency for local zoning boards. See Horn v. S. Union Co., 927 A.2d 292, 295 (R.I. 2007) (provisions should "be read in relation to each other" (internal citation and quotation marks omitted)).

Based upon the foregoing, this Court finds that § 204 of the Ordinance is to be read in harmony with the doctrine of administrative finality. Hence, one who seeks relief must both adhere to the temporal and filing requirements set forth in § 204 as well as make the necessary showing of changed circumstances to comport with the doctrine of administrative finality. See Johnston Ambulatory Surgical Assocs., 755 A.2d at 810 (administrative finality "prevents

repetitive duplicative applications for the same relief, thereby conserving the resources of the administrative agency"). As the Board similarly reached such a conclusion, there was no error of law in its Decision.

IV

Conclusion

After a review of the entire record, this Court finds that the Board's decision to grant the Amarants a special use permit was supported by the reliable, probative, and competent evidence of record. The Board's Decision was not affected by an error of law, and, accordingly, Donegal's substantial rights have in no way been prejudiced. In consideration of the foregoing, this Court affirms the Decision of the Board granting the special use. Counsel shall confer and submit to the Court forthwith for entry an agreed upon form of order and judgment that is consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Donegal Properties, LLC. V. Zoning Board of Review of the Town of Middletown, et al.**
CASE NO:	**NC 2010-0378**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**October 6, 2015**
JUSTICE/MAGISTRATE:	**Stone, J.**
ATTORNEYS:	
For Plaintiff:	**Vernon L. Gorton, Esq.**
For Defendant:	**Christopher J. Behan, Esq.** **J. Russell Jackson, Esq.**