STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 8, 2017)

CHARLES ORMS ASSOCIATES, Appellant,	:	
v.	:	**C.A. No. PC-2016-4007**
ZONING BOARD OF REVIEW OF THE CITY OF PROVIDENCE, MARC A. GREENFIELD, SCOTT WOLF, ARTHUR V. STROTHER, VICTOR CAPPELAN, and ENRIQUE MARTINEZ, in their capacities as Members of said Zoning Board, CAPITAL ADVERTISING, LLC, and PETTIS PROPERTIES, LLC, Appellees.	:	

DECISION

LANPHEAR, J. Before the Court is the appeal of Charles Orms Associates (Appellant) from a decision by the Zoning Board of Review of the City of Providence (Zoning Board) granting use and dimensional variances to Capital Advertising, LLC (Capital or Applicant) and Pettis Properties, LLC (Pettis) (collectively, Appellees). Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

Pettis is the owner of an 11,761 square foot vacant lot located at 58 Printery Street in Providence, Rhode Island, otherwise known as Lot 447, Assessor's Plat 2 (the Property). *See* Application for Variance or Special Use Permit at 4, Jan. 19, 2016. The Property is located in a Heavy Commercial C-3 Zone (C-3 District). *See id.*; Art. 5, § 500(C) of the Zoning Ordinance of the City of Providence (hereinafter, the Ordinance).

On May 12, 2011, Capital filed its first Application for Variance or Special Use Permit (First Application) with the Zoning Board seeking relief from Sections 303-use code 68, 305, 603.2, 603.3 and 607.4 of the Ordinance. Exhibit A at 1.[1] Capital sought use and dimensional variances to allow for the construction of a new "V" shaped billboard 112 feet in height, consisting of two sign panels facing in opposite directions, and each billboard face measuring 48 feet by 14 feet. *Id.* at 1-2. Additionally, Capital sought use and dimensional variances seeking relief from the regulations of the Ordinance of the City of Providence (City) governing freestanding signs, maximum sign area, height, and signs that move on billboards. *Id.* at 1; Art. VI, § 603.2 of Providence Zoning Ordinance of 1994 (Ordinance of 1994).

The Zoning Board conducted a duly noticed hearing on July 27, 2011, and—following consideration of all testimony and documentary evidence before it—voted to approve the Application by a four to one vote (First Resolution). Issued on September 20, 2011, this decision is memorialized in Zoning Board Resolution No. 9635. *See* Resolution No. 9635, Sept. 20, 2011. The Appellant then appealed.

On March 21, 2014, this Court affirmed the Zoning Board's decision in part, and remanded in part a specific issue. *Charles Orms Assocs. v. Zoning Bd. of Review of Providence*, 2014 WL 1246535, at *15. The Court specifically found that the Zoning Board failed to make any finding or any conclusion with respect to the request for relief from Art. VI, § 603.2 of the Ordinance, which prohibits "animated signs in which an image changes at a frequency of faster than every thirty (30) minutes . . . ." Art. VI, § 603.2 of the Ordinance of 1994. The Court held that the Zoning Board failed to address "whether the requested relief from [A]rt. VI, § 603.2 of the Ordinance is the least relief necessary to alleviate the Applicant's hardship." *Charles Orms*

[1] The Court observes that although the First Application is dated May 13, 2011, it is date-stamped as having been reviewed on May 12, 2011. *See* First Application at 1.

Assocs., 2014 WL 1246535, at *14. Thereafter, on January 19, 2016,[2] Capital filed an application (Second Application) for the limited purpose of eliciting a determination from the Zoning Board as to "whether the digital portion of the requested relief is the least relief necessary . . . ." *Id.*

Over two years after the Court's prior decision, the Zoning Board conducted a duly noticed *de novo* hearing at which the Zoning Board properly reviewed Capital's Application on the specific issue on remand. *See* Resolution No. 2016-25, Aug. 3, 2016. At the hearing, the Zoning Board heard testimony in favor of the Application from Thomas Badway, a principal member of the ownership group of the Property, and Mary Burns and Edward O'Sullivan, both of Capital. *See id*. Badway specifically testified that the Property has been in his family since the early 1970s and how the Property is unfit for the erection of a building. Burns testified that of the over 200 billboards her company maintains, only six are electronic billboards, and she is not interested in building a traditional billboard. (Exhibit 8: Tr. 99, 109-110, July 13, 2016.) O'Sullivan expressed concern regarding the potential profitability of a shorter interval of time displayed on the billboard.

Also, prior to the hearing, the Zoning Board received and considered two letters in opposition to the proposed electronic billboard; a letter from Dean Weinberg, President of Summit Neighborhood Association, and a letter from Brent Runyon, Executive Director of the Providence Preservation Society. Weinberg expressed concern about the Application and its potential to inhibit goals of the North Main Street commercial district. Runyon also expressed similar concerns and felt that the relief sought is not the least relief necessary.

[2] Oddly, although this matter was remanded, a new zoning application appears to have been filed. *See* Certification of Zoning Records at 6, Sept. 12, 2016, which shows an application date-stamped on January 19, 2016. As they both appear to apply to the original application as approved and then remanded, they are referenced as "the Application" herein.

The Zoning Board unanimously voted to grant Resolution No. 2016-25 dated August 3, 2016 (Second Resolution). The board found "that the proposed electronic billboard is the least relief necessary to relieve the hardship posed by the Property. . . ." *See* Resolution No. 2016-25 at 3. Thereafter, the Appellant filed a timely Second Appeal with this Court of the Zoning Board's Second Resolution that granted the Application for a variance of the Ordinance.

II

Standard of Review

Section 45-24-69(a) provides this Court with the specific authority to review the decision of a zoning board. This Court's review is governed by § 45-24-69(d), which provides:

> "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).

Judicial review of an administrative action is "essentially an appellate proceeding . . ." *Notre Dame Cemetery v. R.I. State Labor Relations Bd.*, 118 R.I. 336, 338, 373 A.2d 1194, 1196 (1977); *see also Mauricio v. Zoning Bd. of Review of Pawtucket*, 590 A.2d 879, 880 (R.I. 1991). The Superior Court may not substitute its judgment for that of the zoning board if it conscientiously finds that the board's decision was supported by substantial evidence. *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978). The reviewing court "examines the

record below to determine whether competent evidence exists to support the tribunal's findings." *New England Naturist Ass'n, Inc. v. George*, 648 A.2d 370, 371 (R.I. 1994) (citing *Town of Narragansett v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local 1589*, 119 R.I. 506, 380 A.2d 521 (1977)). Thus, this Court's review of a zoning board's factual findings is undertaken to ensure that a reasonable mind might accept them as adequate to support a conclusion. *See Lischio v. Zoning Bd. of Review of N. Kingstown*, 818 A.2d 685, 690 n.5 (R.I. 2003); *Caswell v. George Sherman Sand & Gravel Co.*, 424 A.2d 646, 647 (R.I. 1981).

III

Analysis

The Appellant asserts that the Applicant's delay in requesting a *de novo* hearing from the Zoning Board to only "address whether the requested relief from [A]rt. VI, § 603.2 of the Ordinance is the least relief necessary to alleviate the Applicant's hardship" resulted in the expiration of the Applicant's original variance. *Charles Orms Assocs.*, 2014 WL 1246535, at *14. Furthermore, the Appellant contends that the decision of the Zoning Board in the Second Resolution was clearly erroneous, affected by errors of law, and arbitrary and capricious in granting the variance sought by Applicant to construct an electronic billboard with messages changing every ten seconds, which violates the Ordinance.

In response, the Appellees contend that the First Resolution remains a valid approval; therefore, the Zoning Board's Second Resolution was lawful. Appellees assert the Zoning Board was empowered to grant the resolution, and it is supported by the record. Specifically, Appellees maintain that with respect to the granting of the use variance, (a) the Zoning Board possesses the authority to grant variances; (b) the Zoning Board's consideration of the limited issue presented by the Application was proper in light of the Court's directive; and (c) the competent evidence supports the Zoning Board's grant of the Second Resolution.

A

Delay

The Appellant asserts that the First Application expired following the Applicant's delay in requesting a *de novo* hearing regarding the remanded issue of "whether the requested relief from [A]rt. VI, § 603.2 of the Ordinance is the least relief necessary to alleviate the Applicant's hardship." *Charles Orms Assocs.*, 2014 WL 1246535, at *14. In support of this proposition that the Appellees' First Application expired due to the Applicant's delay, the Appellant cites Ordinance Art. 19, § 1902(D). Section 1902(D) of the Ordinance provides as follows:

> "Any variance or special use permit granted or authorized by the board shall expire six (6) months after the date of the filing of the resolution in the office of the board unless the applicant shall, within the six (6) months, obtain a legal, complete building permit for the project and proceed with construction of the proposed improvement (. . .); or, within the six (6) months, obtain a legal building permit and a certification of occupancy when no construction is required. The board may, upon written request and for cause shown prior to the expiration of the initial six-month period, renew the variance or special use permit . . . None of the six-month periods shall run during the pendency of any Superior or Supreme Court actions concerning the grant."

Appellant contends that since the Applicant's time on the First Resolution began to run on March 21, 2014, the date of the Court's first Decision, the variance expired on September 21, 2014, as no extension was requested. The Appellant cites to § 45-23-63.1 of the "Tolling of Expiration Periods" statute referenced in the Zoning Board's Second Resolution. The Appellant explains that § 45-23-63.1 does not apply to the application under review, because the Second Resolution does not meet the three criteria found therein.[3] This Court agrees; however, the appropriate tolling statute for the current matter is § 45-24-61.1, not § 45-23-63.1, which only applies to "cases of development plan review."

[3] Section 45-23-63.1 of the "Tolling of Expiration Periods" statute is applicable to tolling "cases of subdivision of land, . . . cases of land development projects, . . . [and] cases of development plan review." Sec. 45-23-27(a)(1-3).

Initially enacted in 2009, § 45-24-61.1 operates to toll approvals issued in accordance with local zoning land development, such as the Zoning Board's First Resolution. Pursuant to § 45-24-61.1(a) (2014), "all periods pertaining to the expiration of any approval issued pursuant to the local ordinances promulgated under this chapter shall be tolled until June 30, 2015." The current iteration of § 45-24-61.1(c) states that "[t]he tolling shall apply only to approvals or permits in effect on November 9, 2009, and those issued between November 9, 2009, and June 30, 2017, and shall not revive expired approvals." Since the Zoning Board's First Resolution was issued between November 9, 2009 and June 30, 2017, said Resolution would be tolled until June 30, 2017. Thus, the Applicant's relief afforded to the Appellees has not expired.

With respect to Article 19, § 1902(D) (formerly § 906) of the Ordinance, § 45-24-61.1, the Court finds § 45-24-61.1 supersedes the conflicting tolling statute of the Providence zoning code as the ordinance is inconsistent with the state statute. *Munroe v. Town of E. Greenwich*, 733 A.2d 703, 708 (R.I. 1999); *City of Cranston v. Hall*, 116 R.I. 183, 186, 354 A.2d 415, 417. Section 1902(D) of the Ordinance was enacted by a local municipality, while §§ 45-23-63.1 and 45-24-61.1 were enacted by the General Assembly. Additionally, the Court understands that the home rule amendment "grant[s] to the people of [the] several cities and towns the right of self-government in all local matters and endow[ed] each of our municipalities with the power 'to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government . . .' not inconsistent with the State Constitution and the laws enacted by the General Assembly . . . ." *Munroe*, 733 A.2d at 708; *Hall*, 116 R.I. at 186, 354 A.2d at 417. "[N]othing in those grants has an inhibiting effect on the General Assembly's overriding power to legislate even on local matters as long as it does so in a general act applicable to all cities and towns alike and does not affect the form of government of any city or town." *Hall*, 116 R.I. at 186, 354 A.2d at 417; *see also Town of Lincoln v. Lincoln Lodge No. 22*, 660 A.2d 710, 719 (R.I. 1995). "[T]he

enabling legislation applies equally to all cities and towns and is, therefore, an act of general application that supersedes a controverting home rule charter provision." *Munroe,* 733 A.2d at 708; *Hall,* 116 R.I. at 186, 354 A.2d at 417.

Furthermore, the Appellant cites § 45-23-37 and argues that the tolling period provided in § 45-23-63.1 is not applicable to the three categories outlined in § 45-23-37.[4] In pertinent part, § 45-23-37, applicable to §§ 45-23-25 through 45-23-74, applies to all cases of subdivision of land, all cases of land development projects, and all cases of development in plan review. Although the statute provides three applicable instances, § 45-23-63.1 is applicable to tolling approvals; the Application is limited to approvals arrived at pursuant to § 45-23, Subdivision of Land. Here, both the First Resolution[5] and the Second Resolution are granted approval in accordance to § 45-24, Zoning Ordinances, not § 45-23, Subdivision of Land.

The Court finds the relief afforded to the Appellees through the First Resolution has not expired because the Zoning Board's approval was issued in accordance to § 45-24-61.1 during the tolling period between November 9, 2009 and June 30, 2017, not § 906 of the Providence Zoning Code, nor § 45-23-63.1[6].

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[4] Section 45-23-27 titled "Applicability" provides that "(a) Sections 45-23-25 – 45-23-74 and all local regulations are applicable in all of the following instances: (1) In all cases of subdivision of land, including re-subdivision, as defined in § 45-23-32, all provisions of §§ 45-23-25 – 45-23-74 apply; (2) In all cases of land development projects, as provided for in § 45-24-47 of the Zoning Enabling Act of 1991, where a municipality has allowed for the land development projects in its local zoning ordinance; and/or (3) In all cases of development plan review, as provided for in § 45-24-49 of the Zoning Enabling Act of 1991, where a municipality has established, within their zoning ordinance, the procedures for planning board review of applications."

[5] Curiously, it should be noted that the original zoning approval of September 2011 expired in six months unless a building permit was issued. This Court's prior decision was issued in June 2014 and was not brought before the Zoning Board for over two years. The Court will not pass upon this matter as the issues discussed below are dispositive.

[6] While the tolling statute preserves the rights of the Applicant here, the substantial delay in moving this case forward on remand gives this Court pause. Arguably, after the 2014 decision, the Applicant could have constructed a sign without the self-illumination and changing displays.

B

Zoning Board Decision

The Appellant maintains that the Zoning Board's Second Resolution is (a) erroneous; (b) affected by errors of law; and (c) arbitrary and capricious in granting the variance sought by Applicant to construct an electronic billboard with changing messages which is expressly prohibited by the Ordinance. The Appellees argue the Zoning Board possesses the authority to grant variances; the Zoning Board's consideration of the limited issue was proper in light of this Court's directive; and the evidence found in the record supports the Zoning Board's grant of the Second Resolution.

1

The Travel

The Superior Court, in its 2014 Decision, remanded this case to the Zoning Board with the specific instruction to address "whether the requested relief from [A]rt. VI, § 603.2 of the Ordinance is the least relief necessary to alleviate the Applicant's hardship." *Charles Orms Assocs.*, 2014 WL 1246535, at *14.

To place this zoning controversy in its proper perspective, the Application requested permission to construct a large billboard, in a C-3 District, with variances from several restrictions:

- Pursuant to Ordinance 607.4, the maximum height of a structure in this zone is 35 feet, but with special approval could be increased by an additional 25% (therefore to 43.75 feet). The Application is for a sign with a height of 112 feet, or more than twice the limit.

Waiting may have resulted in exhausting some of the objectors, applying before a board with four different members and, perhaps, new conditions in the area.

- Pursuant to Ordinance 607.4, the maximum area of a sign is 64 square feet, but with special approval may be increased by 15% (therefore to a maximum of 73.6 square feet). The Application is for two adjacent signs with a total area of 1440 square feet, or nineteen times the permissible limit.
- As if that weren't enough, the sign(s) proposed is electronic, that is, self-illuminated. The entire display will change once every thirty seconds. Signs that move are expressly prohibited by Ordinance 603.3. Further, all billboards are prohibited by Ordinance 1200(F)(2).

2

The Standard to be Applied

To obtain a deviation from zoning prohibitions, if at all, the Applicant must leap a very high hurdle. It must establish before the Zoning Board that they are denied of all beneficial use of the property. Sec. 45-24-41(d)(1).

The Applicant must also establish that the requested relief is the least relief necessary to the hardship under § 45-24-41(c)(4), *See* Roland F. Chase, *Rhode Island Zoning Handbook* § 157 at 227 (3d ed. 2016) ("Even when it decides that an applicant has satisfied the applicable standard for a variance, the zoning board of review must tailor the variance so that the relief granted is the least relief necessary under the circumstances.").[7] In other words, "in granting variances, [a zoning board] should not authorize a greater degree of relief than is necessary to achieve a beneficial use." *Standish-Johnson Co. v. Zoning Bd. of Review of Pawtucket*, 103 R.I. 487, 493, 238 A.2d 754, 757-58 (1968). Rather, the relief should be the minimal amount necessary for a

[7] The "least relief necessary" was pronounced by our Supreme Court in *Lischio*, 818 A.2d at 691. Although the statute was modified in 2016, the same standard was set forth before and after the amendment. Sec. 45-24-41(c)(4), as amended by P.L. 2002, ch. 218 and § 45-24-41(d)(4), as amended by P.L. 2016, ch. 527, § 4.

reasonable enjoyment of the use to which the property is proposed to be dedicated. *See id.* at 492, 238 A.2d at 757.[8] Logically then, relevant evidence should be provided to the Zoning Board for it to come to the conclusion that the relief awarded is the least relief necessary.

3

Application of the Standard to the Evidence Presented

The record demonstrates that the Zoning Board received testimony and submissions from three persons on behalf of the Applicant. Specifically, this included testimony from the Applicant represented by Attorney Badway, and from Ms. Mary Burns and Mr. Edward O'Sullivan of Capital who intend to finance, construct, and market the billboard.[9] When it began to discuss the least relief necessary, the Zoning Board seemed to have an understanding that one of the six advertisements which would be shown on the billboard would be given to the City (Tr. 140, 141, July 13, 2016.). The Zoning Board then found that the proposal constituted the least relief necessary to alleviate the Appellees' hardship.

While clearly this is a small and awkwardly sized lot, no experts were presented by the Applicant as to the potential uses of the real estate. No expert was called, only witnesses from companies which had a direct financial interest. The only market opinion, if one was ever given, was the opinion by the sign salesperson and the owner of the company. Though Ms. Burns testified, "I'm not a big operator," Tr. 110, July 13, 2016, there was no testimony of whether another use would be profitable. Capital merely indicated that they would not finance anything

[8] *Standish-Johnson* also involved a billboard, but only 47.5 feet long. Our Supreme Court refused to interfere with the zoning board's refusal to grant variances. Obviously, the instant case involves a height limitation, use variances, and a self-illuminated, changing sign.

[9] There was testimony and letters from opposition groups including the City's Planning Department. These parties asserted that the billboard was a traffic hazard, would harm the surrounding residential areas, was a prohibited use, and was not the least relief necessary. Tr. 129-135, July 13, 2016.

short of this. There were no competitors, no smaller uses, and no other uses discussed. There was no evidence that other uses or smaller signs were even studied.

The Zoning Board concluded that the owner of the Property had not found any billboard company interested in having a non-electronic billboard on the Property. While that may be true, there is no indication that he ever inquired of any other sign company or any other type of business. *See id.* at 93-97, 111-12. Mr. Badway testified concerning the cost factor of erecting a non-electronic sign and the cost of changing the sign manually, but provided no numbers or sources for his conclusions. *Id.* at 111-12. Reliable, probative, and substantive evidence is lacking. *See* § 45-24-69(d)(5).

In the 2016 Resolution, each of the findings of fact specific to this proposal focused on the economic viability of the project: the costs, the market, the economics. Resolution No. 2016-25 at 4. At hearing before the Zoning Board and in its Second Resolution, little else is discussed. As our high Court has held:

> "Additionally, to obtain a variance, an applicant must demonstrate by *probative evidence* that a literal application of the terms of the ordinance would deprive him of all beneficial use of his property. *Coupe v. Zoning Board of Review of Pawtucket*, 104 R.I. 58, 59, 241 A.2d 821, 822 (1968). '[A] mere showing of a more profitable use that would result in a financial hardship [to the owner] if denied does not satisfy the requirements of our law.' *Rhode Island Hospital Trust National Bank v. East Providence Zoning Board of Review*, 444 A.2d at 864.
>
> "We have also held that statements of economic unfeasibility that are mere conclusions and are unsupported by financial statements or cost data do not constitute probative evidence. *See Goodman v. Zoning Board of Review of Cranston*, 105 R.I. at 684-85, 254 A.2d at 746. To be entitled to a zoning variance, a landowner must show 'that the present return on the property [is] so low that to require its continued devotion either to its present use or to others permitted under the ordinance would be confiscatory. Without such a showing, [a] naked assertion of economic unfeasibility is meaningless.' *Id*. at 685, 254 A.2d at 746." *Gaglione v. DiMuro*, 478 A.2d 573, 576 (R.I. 1984).

Chase concluded in his treatise that a desire to realize a greater financial gain is not a valid consideration for a change of use application. Roland F. Chase, *Rhode Island Zoning Handbook* § 173 at 167-68.

Even though this case was remanded for a specific purpose, there was no reliable evidence presented to conclude if a billboard was necessary, if the billboard must be self-illumated (electronic), or if the billboard's messages must change every thirty seconds.

4

A Remand is Inappropriate

This proposal has serious implications well beyond the surrounding small industrial neighborhood. The Applicant has gotten two bites at the apple, and the objectors in the surrounding neighborhoods have shown their steadfast opposition.

Out of respect to the Zoning Board and this Court's obligation to defer to the Zoning Board in the first instance, this Application was previously remanded to the Zoning Board to make a significant finding, recognizing that the Zoning Board is empowered to weigh evidence, make factual conclusions, and determine credibility.[10] When the evidence was completely lacking, such as the need for the sign to be so high, so large, or to be self-illuminating and changing, this Court cannot infer that the Zoning Board considered these issues, nor is it appropriate to do so in an appellate proceeding. This Court need not remand again (arguably, it may be improper to do so when the Applicant allowed three years to lapse in the prior interim). Here, sufficient evidence was not presented for the Zoning Board to conclude, in accordance

[10] For example, the Zoning Board surprisingly held that this sign would not be an impediment to traffic flow on Route 95, based on the conclusions of a RIDOT employee, when contrary evidence had been submitted, and this Court accepted that finding. When the Zoning Board dismissed the City planner's conclusions as speculative, this Court paused, but did not question.

with our state's law, that the electronic billboard was the least relief necessary to alleviate the Applicant's hardship. There was no showing that any alternatives were considered.

It is widely settled in the State of Rhode Island that the authority to remand a case should not be exercised in circumstances which would allow a party another opportunity to present a case when the evidence presented initially is inadequate. In *Roger Williams College v. Gallison*, 572 A.2d 61 (R.I. 1990), the Rhode Island Supreme Court found that the trial justice erred in remanding the instant action for further evidentiary hearing after a full evidentiary presentation was already made by the petitioner and the remonstrants failed to present persuasive and competent evidence on issues. *Id.* at 63. The Court quashed an order remanding the action to the Zoning Board of Review holding that a trial justice's authority should not be exercised in such circumstances "as to allow remonstrants another opportunity to present a case when the evidence presented initially is inadequate." *Id.* at 62. *See also R-N-R Assocs. v. Zoning Bd. of Review of Providence*, 100 R.I. 7, 12, 210 A.2d 653, 656 (1965) (although board made no express finding on question of unnecessary hardship, remand would serve "no useful purpose" since record was devoid of any legally competent evidence upon which board reasonably could have found deprivation of all beneficial use); *Macera v. Cerra*, 789 A.2d 890, 895 (R.I. 2002) (where the Court would normally remand for additional fact finding, remand was unnecessary in circumstances where additional fact finding would serve no useful purpose).

Remanding this case is now inappropriate and would be unfair.

IV

Conclusion

After a thorough review of the entire record, this Court finds that the Zoning Board's decision which granted the Appellees' Application for variances to construct a 112 foot illuminated billboard with changing messages constituted an abuse of discretion; was not based

on the reliable, probative, and substantial evidence of the record; was affected by an error of law and was clearly erroneous. Substantial rights of the Appellant have been prejudiced. Accordingly, this Court sustains the appeal and reverses the Second Resolution, dated August 3, 2016, of the Zoning Board. For the reasons stated, this case shall not be remanded. Counsel may submit further orders, suitable for recording, to effectuate this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 8, 2017**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
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For Defendant:	**John O. Mancini, Esq.** **Nicholas J. Goodier, Esq.** **Lisa Dinerman, Esq.**