STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: September 21, 2018)

TOWN OF COVENTRY,	:	
Plaintiff,	:	
	:	
	:	
v.	:	**C.A. No. KC-2016-1023**
	:	
	:	
FORSONS REALTY LLC, FERRARA	:	
MECHANICAL SERVICES INC. AND	:	
DANIEL FERRARA,	:	
Defendants.	:	

DECISION

MCGUIRL, J. This case is before the Court on the Town of Coventry's (Plaintiff or the Town) action seeking redress for violations of the Town's Zoning Ordinance provision against Defendants Forsons Realty LLC, Ferrara Mechanical Services Inc., and Daniel Ferrara (collectively, Defendants), pursuant to G.L. 1956 §§ 45-24-60 and 45-24-62. Specifically, Plaintiff asks this Court to order the restoration, replanting, and revegetation of a required buffer zone and to order all uses of Defendants' property deemed to be in violation of the Zoning Ordinance, to be removed and abated. Jurisdiction is pursuant to G.L.1956 § 8-2-13.

I

Facts and Travel

A

Travel of the Case

Plaintiff filed its Complaint against Defendants on October 14, 2016. The parties filed their pre-trial memoranda in June of 2017, and a trial as to the instant matter began on December

5, 2017. Originally, the Trial Justice assigned to Kent County met with the parties on September 13, 2017 and assigned the case to the October 2017 calendar. However, because of a lengthy civil matter involving the Court and one of the attorneys involved in this case, this matter was reassigned to the December 2017 calendar. After the conclusion of the trial, the parties requested that they be allowed to submit post-trial memoranda and the Court agreed. The Court asked that any post-trial memoranda be filed by January 19, 2018. The Court also indicated to the parties that oral arguments as to this issue would be held during the last week of January 2018. Neither party submitted any post-trial memoranda by January 19, 2018, and no oral arguments were ever held. As such, this Court put the case down for a number of status conferences over a period of several months.

The Court was originally advised by the parties that they were working on briefs and needed additional time. The parties then noted that they were working towards settling the matter. The Court was told that the parties had reached an agreement but that they now needed the Town Council's approval in order to move forward with the settlement. As such, the parties requested additional time from the Court to obtain the Town Council's approval. The Court was then told that the Town Council was in agreement and that the Town approved the settlement agreement. However, the Court was then advised that they did not want to sign a Consent Order. The parties advised the Court that they would submit the agreement to be included in a Court Order. They believed a Court Order was more useful for enforcement purposes.

On August 3, 2018, after the Court had not heard anything from either party regarding the instant matter, the Court summoned the parties to a status conference. At that time, the Court was told there was, in fact, no agreement. The parties then submitted the case for decision. The

Court subsequently gave the parties one week to file post-trial memoranda and both parties did so on August 10, 2018.

B

Trial Testimony

A trial was held over three days on November 20, 2017, December 5, 2017, and December 7, 2017. This Court also conducted a view of the property. At trial, the Town called seven witnesses and Defendants called three witnesses. Matthew Sarcione, Assistant Planning Director and Acting Zoning Enforcement Officer, testified on behalf of the Town and Robert Joyal, P.E., Town Engineer, testified on behalf of the Town. Rose Ferrara, Daniel Ferrara's wife, testified on behalf of the Defendants as did Daniel Ferrara. Bruce Sandberg, son of Robert Sandberg, Defendants' predecessor-in-title, testified on behalf of the Defendants. In addition, Tyler Albert; Cathy Theroux; Frank A. Denette, III; Rene Claveau; and Diane Salvas all testified as rebuttal witnesses for the Town.

1

Testimony of Matthew Sarcione

Mr. Sarcione—the Town's Acting Zoning Enforcement Officer and Assistant Planning Director—primarily testified to the existence of a buffer zone on the property. Mr. Sarcione testified that he never took any physical measurements of the buffer zone and that in some places on the property, it would have been impossible to have a fifty (50) foot buffer zone. Mr. Sarcione also testified that he used a GIS imagery tool to measure historical buffer zones on the property and that, depending on which historical map he used, the buffer zone along Helen Avenue measured between twenty (20) and thirty (30) feet. This disparity, according to Mr. Sarcione, was likely due to the season in which the aerial image was taken. Furthermore, Mr.

Sarcione acknowledged that the land survey in the Town's file for the property depicted the buffer zone between the building and the Helen Avenue property line as only twenty (20) feet.

During his testimony, Mr. Sarcione also acknowledged that the July 16, 2007, letter from Mr. Peabody was likely a zoning certificate. Mr. Sarcione also testified that it is reasonable for a Zoning Officer to make certain exceptions for an application for a zoning certificate, such as waiving the requirement of an off street parking plan or identification of zoning boundaries. Mr. Sarcione testified that a zoning certificate is the only process set forth in the Zoning Ordinance whereby a landowner can have determinations made regarding legal nonconforming uses. Also, according to Mr. Sarcione, the Zoning Officer is the only person authorized to make such determinations. Mr. Sarcione testified that in issuing zoning certificates, he expects landowners to rely on those certificates, and that it would have been reasonable for the Defendants to rely on the representations of Mr. Peabody. Mr. Sarcione also testified that all of the current uses of the property by the Defendants fell into the uses that were identified by the July 16, 2007 letter from Mr. Peabody.

2

Testimony of Rose and Daniel Ferrara

When it came time to purchase the property, Rose Ferrara testified that the bank financing the purchase of the property required confirmation from the Town of the nonconforming use of the property. Mrs. Ferrara further testified that she sent a request for a zoning certificate to Jacob Peabody—the Zoning Enforcement Officer at the time—on or about June 25, 2007. Daniel Ferrara also testified that he met with Mr. Peabody prior to the purchase of the property and detailed the operations of the business that would take place at the property. In response to the Defendants' request, Jacob Peabody issued a letter dated July 16, 2007,

indicating that Defendants' proposed use of the property was a legal nonconforming use. Defendants testified that had the Town not issued the aforementioned certificate, or had the Town issued a certificate indicating that the use of the property was not authorized or the use was disputed, then they would not have purchased the property. Mr. and Mrs. Ferrara each testified that they relied on the representations made within Mr. Peabody's July 16, 2007, letter when deciding to follow through with the purchase of the property.

As to the clearing and excavation of the buffer zone, Defendants testified that they only cleaned up the property by removing small vegetation and shrubbery, and that they removed no trees in connection with the excavation. Defendants also testified that, given the content of Mr. Peabody's July 16, 2007 letter, they were under the impression that they were only required to maintain as much of the buffer zone as existed in the past. They did not believe they were required to maintain a fifty (50) foot buffer in all areas of the property.

3

Testimony of Bruce Sandberg

Bruce Sandberg testified that he frequented the property during the 1980's—when Sandberg owned the property—and began working for Sandberg Enterprises in 1986. Mr. Sandberg testified that Sandberg Enterprises was a true industrial business, which operations included working on machine parts, repairing vehicles—including heavy duty equipment and vehicles—and operating a site removal operation. Bruce Sandberg further testified that work was conducted both inside and outside the building. He described the multitude of businesses that operated out of the property, which included SanRay Welding, SanRam Inc., Technical Concepts, SanGem, Riverpoint T001, and Sandberg Enterprises. Bruce Sandberg described the use of the property as a "job shop," indicating that the businesses located on the property

performed a wide variety of jobs on heavy duty equipment, and that it was not merely a "machine shop."

4

Abutter's Testimony

Numerous abutters of the property testified as fact witnesses regarding the Defendants' use of the property. The complaints lodged by the neighbors overwhelmingly centered on the fact that the Defendants' business is located in close proximity to the neighbors' residential lots. The neighbors primarily voiced concerns over trucks being parked in the front and rear of the property and work being conducted outside and attendant noise issues. The abutters generally noted that they never, or infrequently, observed Sandberg, Defendants' predecessor-in-title, working outside. For example, Frank Denette testified that he heard increased noise and witnessed increased activity at the Defendants' property following their purchase of it in 2008. This included significant increases in noise in and around the rear of the property and not inside the building. He also testified that Sandberg had kept most of his operations inside the buildings and never exhibited the level of activity the Defendants are presently engaged in. Mr. Denette also testified that while he never measured the width of the buffer zone, he noticed the Defendants cut down the trees and vegetation in the buffer zone at some point. Similarly, Rene Claveau testified that there had been approximately a fifty (50) foot vegetative buffer behind his property until the Defendants removed it by excavation in 2016.

Additionally, Cathy Theroux testified to numerous differences between the activity of Sandberg and the Defendants, emphasizing that Defendants' activities have greatly increased over the years. Theroux further testified that since the Defendants purchased the property, she has not been able to enjoy her backyard due to the constant noise and presence of tractor trailers

and large commercial vehicles parked immediately on the other side of her fence. She testified—and produced photographs—that trucks were often left idling in the rear of her property. Diane Salvas similarly testified that she noticed increased activity on the property—including vehicular activity with large commercial vehicles and tractor trailers—that she had not witnessed during Sandberg's ownership of the property.

Finally, Tyler Albert testified to the increased level of activity over the time between 2011 and 2016 at the Defendants' property. He noted increased noise, activity, and the presence of large vehicles, trucks and tractor trailers, which he did not notice when he first purchased his property. Mr. Albert also testified to the existence of a vegetative buffer at the rear of his property that existed until Defendants excavated it in September 2016. Mr. Albert provided the only testimony as to the width of the buffer zone, noting that it was at least approximately forty (40) feet.[1]

C

Undisputed Facts

The parties stipulated to the following undisputed facts. The property central to this issue is located at 225 Hopkins Hill Road in the Town of Coventry and consists of approximately 5.6 acres of land (the Property). It is located in a residential R-20 Zone which is characterized as "quiet, higher density residential areas of the Town, plus certain undeveloped areas where similar residential development will likely occur in the future." *See* Coventry Zoning Ordinance § 501(A)(4).

[1] While his testimony was not offered as expert testimony, Mr. Albert, upon questioning by the Court, noted that he is an engineer by training.

In 1971, Defendants' predecessor-in-title, Sandberg Enterprises (Sandberg), began operating an industrial business on the Property; prior to this, the Property had been operated as a lace mill. Sandberg applied for a zoning variance to enlarge the floor space of its business and on November 1, 1978, the Coventry Zoning Board of Review (the Board") granted the variance to Sandberg. He thereafter constructed a 50' x 100' building on the premises.

On May 4, 1981, the Coventry Zoning Ordinance (the Ordinance) was adopted. The Ordinance states in pertinent part that, "[t]he use of any land or the erection, modification, enlargement or use of any building, structure or sign shall conform to all applicable provisions of this Ordinance." *See* Coventry Zoning Ordinance, Article 1, § 121. Forsons Realty LLC acquired the premises on July 3, 2008 by Warranty Deed. Prior to purchasing the Property, Defendants sought and received a letter from Jacob Peabody, Associate Planner/Zoning Enforcement Officer, dated July 16, 2007, which states in pertinent part:

> "This property is currently being utilizes [sic] as Sandberg Enterprises. This is a commercial business in a residential zone. The use of this property for commercial welding, machine shop, heavy duty truck repair & heavy duty equipment repair is allowed because this property has pre-existing non-confirming rights to do so. These rights run with the property not the owner; if the property is sold the new owner could continue to use the property for the same activities."[2]

On May 6, 2013, Mr. Peabody issued another letter to Mr. Ferrara regarding "Zoning Issues at 225 Hopkins Hill Road." In the letter, Mr. Peabody notes that, "[t]he issue of parking of large commercial vehicles in the front of [the] shop . . . is continuing to be a problem for the residence (sic) in the area." On September 1, 2016, the Town issued a letter to the Defendants that classified the use of the Property as "a pre-existing non-conforming use . . . of a machine

[2] Defendants contend they relied on the July 16, 2007 correspondence from Mr. Peabody when they purchased the premises. Plaintiff, on the other hand, contends that the document, to the extent that it purports to be a zoning certificate, cannot be relied upon.

shop, welding, heavy duty truck repair, and heavy duty equipment repair." The letter also asked that the Defendants refrain from reducing the existing buffer between the Property and abutting residential lots.

On October 12, 2016, the Town issued a Notice of Violation for the Defendants' alleged clearing of the Property along the lot line between the premises and the rear of properties along Helen Avenue in violation of Article 17, § 1730 of the Zoning Ordinance which requires a minimum fifty (50) foot buffer along property lines for any industrial use adjacent to residential use (buffer zone). The Notice of Violation also asserted that "[n]othing herein shall be construed as a finding by the Town regarding your property being a legal non-conforming use . . . [and] [t]he status of your property under the zoning ordinance remains open as to such issues." On October 14, 2016, the Town filed the Complaint in the instant action seeking to enjoin the Defendants from continuing with any site work, particularly along the buffer zone.

The Town's Complaint was brought pursuant to § 45-24-60 seeking enforcement of zoning violations issued against the premises and pursuant to § 45-24-62 requesting judicial aid in the enforcement of its Zoning Ordinance, including restoration of the 50-foot buffer and reforestation of the same, and such other relief as the Court deems just and necessary. The Defendants' Answer asserted the affirmative defenses of estoppel and that the property constituted a preexisting, legal nonconforming use, and also sought attorneys' fees pursuant to § 42-92-1, and such other relief as the Court deemed just and necessary.

II

Standard of Review

In a non-jury trial, "'the trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184

(R.I. 1984)). '"Consequently, [the trial justice] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences."' *Id.* (quoting Hood, 478 A.2d at 184). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" *Parella*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)). Indeed, the trial court is not required to '"categorically accept or reject each piece of evidence in [its] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his rulings."' *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

III

Analysis

A

Legal Nonconforming Use

This Court will first address the merits of each party's arguments as to whether Defendants' use of the Property is an expansion of the preexisting, nonconforming use. Defendants contend that its use of the Property is permitted because it is a legal, nonconforming use that preexisted the Town's Zoning Ordinance that was enacted in 1981. Specifically, Defendants argue that the evidence presented establishes that the Property has been continuously

used since 1971—ten years prior to the year the Town Zoning Ordinance was enacted—as an industrial machine and repair shop, that all expansion of the use of the Property has been completed with Town's permission, and that the Town affirmatively represented to the Defendants—prior to their purchase of the Property—that their proposed use of the Property was a legal, nonconforming use which would be permitted to continue.

The Town appears to concede that Defendants' operation as a machine shop on the Property is a legal, nonconforming use. In fact, the Town does not address at all in their post-trial memorandum whether the Property's use as a machine shop is anything but a legal nonconforming use. Therefore, whether or not Defendants are permitted to operate an industrial business on the Property is not in dispute. However, the Town maintains that Defendants' use of the Property goes beyond the scope of the legal nonconforming use and constitutes an illegal and unauthorized *extension* and *expansion* of the preexisting, nonconforming uses which took place at the Property prior to the Defendants' acquisition of the Property in 2008. Specifically, the Town argues that Defendants' predecessor-in-title operated almost exclusively inside; whereas, Defendants conduct much of their operation outside. The Town contends that the nature of the work now undertaken by the Defendants is such that it is not solely restricted to within the confines of the building and is thus an expansion of the use permitted on the Property. The Town has shown that the Defendants' expanded use involves numerous additional vehicles—including tractor trailers and other large commercial vehicles—at the site and in greater intensity than their predecessor-in-title had. The Town also notes that Defendants' work now includes operating a commercial, heavy duty truck and trailer inspection station—recognized and licensed by the State of Rhode Island and U.S. Department of Transportation—that was never operated or

undertaken by Sandberg and thus, does not constitute a legal nonconforming use and is in violation of the Zoning Ordinance.

The General Assembly has defined a "nonconformance" in the context of municipal land use regulation as "[a] building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in conformity with the provisions of that ordinance or amendment." *Duffy v. Milder*, 896 A.2d 27, 38 (R.I. 2006) (citing § 45-24-31(49)). "A nonconforming use is a particular use of property that does not conform to the zoning restrictions applicable to that property but which use is protected because it existed lawfully before the effective date of the enactment of the zoning restrictions and has continued unabated since then." *RICO Corp. v. Town of Exeter*, 787 A.2d 1136, 1144 (R.I. 2001) (citing *Town of Scituate v. O'Rourke*, 103 R.I. 499, 503, 239 A.2d 176, 179 (1968); 1 *Anderson's American Law of Zoning* § 6.01 (4th ed. Young 1996); 8A Eugene McQuillin, *Municipal Corporations* § 25.186 (3rd ed. 1996); 4 Arlen H. Rathkopf, *The Law of Zoning and Planning* § 51.01 (1999); E.C. Yokely, *Zoning Law & Practice* § 22-2 (4th ed. 1979)). "For a nonconforming use to be sanctioned, it must be lawfully established *prior* to the implementation of the zoning restriction or regulation." *O'Rourke*, 103 R.I. at 504, 239 A.2d at 180 (emphasis added) (citing § 45-24-31(49)). Our Supreme Court has declared that "the burden of proving a nonconforming use is upon the party asserting it, who must show that the use was established lawfully before the zoning restrictions were placed upon the land." *Duffy*, 896 A.2d at 37 (quoting *RICO*, 787 A.2d at 1144). "The reason for imposing such a heavy burden of proof needed to establish the existence of a nonconforming use is because '[n]onconforming uses are necessarily inconsistent with the land-use pattern established by an existing zoning scheme.'" *RICO Corp.*, 787 A.2d at 1144 (quoting *Toys "R" Us v. Silva*, 89 N.Y.2d 411, 654 N.Y.S.2d

100, 676 N.E.2d 862, 865 (1996)). Accordingly, '"the policy of zoning is to abolish nonconforming uses as speedily as justice will permit.'" *RICO Corp.*, 787 A.2d at 1145 (quoting *Inhabitants of Town of Windham v. Sprague*, 219 A.2d 548, 552-53 (Me. 1966)) (internal quotations omitted).

Our case law has established that "[a] change of use occurs when the proposed use is 'substantially different from the nonconforming use to which the premises were previously put.'" *Cohen v. Duncan*, 970 A.2d 550, 565 (R.I. 2009) (quoting *Harmel Corp. v. Members of Zoning Bd. of Review of Town of Tiverton*, 603 A.2d 303, 305 (R.I. 1992) (quoting *Jones v. Rommell*, 521 A.2d 543, 545 (R.I. 1987))). "Minor repairs, changes or alterations that *do not substantially change the nature* of the use or expand the area of the use are unlikely to be held unlawful." 4 Ziegler § 73:16 at 73–75. (emphasis added). '"Ordinarily a mere increase in the amount of business done in pursuance of a nonconforming use, or a change in the equipment used, does not constitute a change of the use itself."' *Cohen*, 970 A.2d at 565 (quoting *Santoro v. Zoning Bd. of Review of Town of Warren*, 93 R.I. 68, 71, 171 A.2d 75, 77 (1961) (quoting *Salerni v. Scheuy*, 140 Conn. 566, 102 A.2d 528, 530 (1954))). Our Supreme Court has also noted that "it is impossible to formulate a hard and fast rule as to what constitutes a simple extension of an existing nonconforming use and what is a change of that use. Each case must be considered and determined on its own facts." *Santoro*, 93 R.I. at 71, 171 A.2d at 77.

Our analysis of whether a legal nonconforming use exists begins in 1981, when the Town's Zoning Ordinance was enacted. At that time, the Property had been used—since 1971—for various industrial purposes, including but not limited to a repair shop for heavy duty machinery—including trucks—a machine shop, a welding shop, a land removal site, and a job shop. The nature of the business and use of the Property has not changed since Defendants'

predecessor-in-title operated his business on the Property. Rather, it would appear that the only change in operations on the Property has been the volume of business. As to this issue, it is unclear—given conflicting testimony—precisely how much more business is being conducted and how much more of that business is now taking place outside. While we have testimony from a majority of the abutters that operations never took place outside during Sandberg's ownership of the Property, we have conflicting testimony by Bruce Sandberg that Sandberg Enterprises did, in fact, conduct business outside. It seems apparent that business has, to some degree, increased since Defendants' ownership of the Property began. The degree to which that business has increased, however, is not quantitative given the trial testimony. The Court cannot fault Defendants for running a successful business and will not deem permitted industrial operations on the Property an expansion or extension of use in violation of the Zoning Ordinance simply because business is good and has increased.

This Court, however, does recognize that there have been differences—in the form of increased business and activity in general—in the use of the Property. This is not enough to make the use illegal and is not enough to take the use out of the category of legal nonconforming. *See, e.g., Town of W. Greenwich v. A. Cardi Realty Assocs.*, 786 A.2d 354, 362 (R.I. 2001) (finding "It is uncontroverted that before the zoning ordinance was adopted [Defendant] was engaged in mass excavation on the parcel and that the material that was excavated was sold commercially. The fact that a pond resulted from this activity is of no consequence; the landowner has proved . . . that before the zoning ordinance was enacted the land was used for commercial earth removal endeavors. Thus, the nonconforming use has been established and . . . is permitted to continue. It is not limited to the amount of excavation that was being done on the date the ordinance became effective. [Defendant] is vested with a

lawful nonconforming use and is entitled to excavate the resources within the confines of the area that comprises the nonconforming use.") (emphasis added) (internal quotations omitted). However, the Court is not blind to the fact that these changes—this increase in business and activity—has had a negative impact on the neighborhood and on those abutting the Property; the use has increased enough to become a disturbance to those in using their property. This Court recognizes that Defendants need to take steps to minimize the impact their use of the Property has on their neighbors. Given the negative effect on the neighborhood, this Court will order reasonable restrictions on the use of the Property so that the use is fair to the neighbors but also does not negatively impact Defendants' ability to run their business. The parties have agreed to these certain restrictions that they have decided are reasonable to protect the interests of both the abutters and the Defendants' business.

The Town's argument as to vehicle inspections on the Property being an extension of the legal nonconforming use, however, has merit. Defendants are required to show that the industrial uses on the Property began prior to their acquisition of the Property, and continued unabated and unchanged through to the present. *See RICO* 787 A.2d at 1144; *Duffy*, 896 A.2d at 37. There is simply no evidence to suggest that vehicle inspections ever took place on the Property prior to the enactment of the Town's Zoning Ordinance. Rather, Bruce Sandberg testified at trial that Sandberg didn't do heavy duty vehicle or tractor trailer inspections for the State on the Property. This strongly suggests that performing heavy duty vehicle inspections is not a legal nonconforming use and does, in fact, violate the Zoning Ordinance.

B

Equitable Estoppel

Defendants also argue that the Town should be precluded from enforcing its Zoning Ordinance based on the doctrine of equitable estoppel. Defendants maintain that the Town affirmatively represented to them that the Property constituted a legal nonconforming use prior to Defendants' purchase of the Property when the Town's Associate Planner and Zoning Enforcement Officer, Jacob Peabody, sent Defendants a letter in the form of a zoning certificate indicating such. Consequently, Defendants assert that the Planner's actions led them to believe that the Property was a legal nonconforming use and that they relied on such representations when they purchased the Property.

Under the doctrine of equitable estoppel, "a party may be precluded from enforcing an otherwise legally enforceable right because of previous actions of that party." *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 66-67 (R.I. 2005) (citing *Retirement Bd. of the Employees' Retirement System of Rhode Island v. DiPrete*, 845 A.2d 270, 284 (R.I. 2004)). Equitable relief may be an appropriate remedy to estop a municipality where a property owner incurs substantial obligations in good faith reliance on actions or omissions of that municipality. *See Shalvey v. Zoning Bd. of Review of Warwick*, 99 R.I. 692, 210 A.2d 589 (1965). However, equitable relief is "extraordinary" for zoning cases and will not be granted except "in the rare instance where the equities are clearly balanced in favor of the party seeking relief." *Greenwich Bay Yacht Basin Assocs. v. Brown*, 537 A.2d 988, 991 (R.I. 1988). "The elements of equitable estoppel are: 1) relying in good faith, 2) upon some act or omission of the government, 3) has made such extensive obligations and incurred such extensive expenses that it would be highly

inequitable and unjust to destroy the rights which the owner has ostensibly acquired." 4 Arlen H. Rathkopf, *The Law of Zoning and Planning* 65:29 at 65-67 (2018).

Here, it would appear that all of the necessary elements of estoppel are satisfied. Defendants, realizing that the Property was an industrial use in residential zone, sought to obtain a Zoning Certificate from the Zoning Enforcement Officer to confirm that the Property was a legal nonconforming use. Interestingly, this procedure was specifically recognized by the Town's Zoning Ordinance as the proper method to obtain such assurances. The Ordinance defines a zoning certificate as "[a] document signed by the Zoning Enforcement Officer . . . which acknowledges that a use, structure, building or lot either complies with or is legally nonconforming to the provisions of this Ordinance . . . ." *See* Coventry Zoning Ordinance, § 210 (133). As such, the Zoning Enforcement Officer was authorized by the Town to issue a Zoning Certificate which acknowledged that the Property was legal nonconforming use. As it has been established, the letter that the Zoning Enforcement Officer sent to Defendants confirmed that the Property conducted "commercial business in a residential zone," and that "[t]he use of this property for commercial [purposes] is allowed because this property has pre-existing non-conforming rights to do so." Thus, Defendants' reliance on the representation made by the Zoning Enforcement Officer—especially given Mr. Sarcione's testimony regarding the reliability and enforceability of Mr. Peabody's 2007 Zoning Certificate—was reasonable when they purchased the Property.

C

Violation of Buffer Zone Ordinance

It is clear from trial testimony and the photographs introduced into evidence (albeit inconsistent, not clear, and unverifiable photographs) that some clearing of the Property and

buffer zone took place over time. Trial testimony also establishes that Defendants purposefully undertook to clear some vegetation—including trees, land, and soil—from the buffer zone in 2016. The Town argues that this 2016 clearing of the buffer zone between Defendants' property and the adjacent residential properties was in violation of Article 17, § 1730 of the Zoning Ordinance which requires a fifty (50) foot buffer between industrial and residential uses. Section § 1731 of the Zoning Ordinance "sets forth the minimum landscaped buffer by feet in width for different land uses" and indicates that any industrial use must be separated from residential property—either single family, two family or multi-family dwellings—by a fifty (50) foot buffer. The Town contends that the land clearing performed by Defendants reduced and eliminated the required buffer; thus exposing adjoining residential landowners to the activities taking place on Defendants' Property. In response, Defendants contend that a fifty (50) foot buffer never existed on the Property and thus, cannot be enforced now. Defendants argue that they did not clear the buffer zone beyond what previously existed and to require them to now have a fifty (50) foot buffer on certain sections of the Property would in fact require them to enlarge the buffer that previously existed on the Property. Defendants also note that in certain areas of the Property, a fifty (50) foot buffer is in fact impossible and they would have no access to their Property as the entire portion would be considered within the buffer zone. For example, it appears that at one point, only approximately twenty feet of space existed between the main building and the lot line, therefore making a fifty (50) foot buffer technically impossible and impractical.

Before the Zoning Ordinance was enacted, no buffer zone was required. Therefore, because the use of the Property preexisted the Zoning Ordinance, the fifty (50) foot buffer zone requirement is not determinative. Additionally, it is understood that the buffer zone was not fifty (50) feet—at least not continually throughout the Property—at the time Defendants purchased

the Property. However, there is no evidence—aside from a number of unclear and improperly labeled photographs—to show precisely what buffer existed prior to the Zoning Ordinance. Additionally, no measurements were ever taken of the buffer zone that would determine exactly what size the buffer ever was and there was no testimony introduced at trial that indicated the size of the buffer zone at any one time or even now. For example, although the majority of the abutters claim that a fifty (50) foot buffer existed along the Property, Mr. Sarcione testified that, historically, the buffer zone along Helen Avenue measured only between twenty (20) and thirty (30) feet. While this Court acknowledges that the buffer should be restored to its *original* depth, it is unclear what that depth was. There is no question that Defendants cleared and changed the buffer and that the buffer must be restored to some extent. However, the extent to which Defendants excavated the buffer is unclear.

IV

Conclusion

In light of the foregoing, this Court orders the following with regard to the use of the Property and the restoration of the buffer zone. Again, the parties had agreed that these restrictions would not severely impact the business and would minimize the effect on the abutters.

The use of the Property as detailed in Mr. Peabody's July 16, 2007 letter—permitting the "use of [the] [P]roperty for commercial welding, machine shop, heavy duty truck repair & heavy duty equipment repair" as a pre-existing nonconforming use—will be deemed a legal nonconforming use. This use, however, does not include the vehicle inspections currently taking place on the Property. As to the inspection issue, inspections will be permitted on vehicles that come onto the Property for regular service only. Inspections will also be limited by the condition

that no more than three heavy duty trucks or trailers—*i.e.*, vehicles with three or more axles—may be on the Property at any one time for the purposes of an inspection. Further, the right to perform inspections will terminate with the sale of the Property by the current owners and will not run with the land.

No heavy duty vehicles, trucks, or trailers may be parked or placed in front of the Property along the Helen Avenue fence line towards Hopkins Hill Road. Additionally, any vehicles parked at the rear of the Property shall be parked on the Clark Mill Road side of the Property, and specifically, parked no closer than fifty (50) feet to the Helen Avenue property line. Defendants may, however, use the loading dock for active loading and unloading of a vehicle, permitted the vehicle is moved off the loading dock and parked in the appropriate area after active loading and unloading is complete. No vehicles on the Property are permitted to be left idling except for the purposes of (1) vehicle warm up; (2) air brakes; and (3) Regen. If the vehicle is required to idle for a time, it must be done on the Clark Mill Road side of the Property.

Finally, this Court acknowledges the importance and value of maintaining a fifty (50) foot buffer between industrial operations and residential dwellings as is now required by the Zoning Ordinance. Of course, because the use of the Property existed prior to the enactment of the Zoning Ordinance, the fifty (50) foot buffer requirement is not determinative in this matter. In addition, the Court will not require that Defendants maintain a fifty (50) foot buffer where such a buffer never existed or where such a buffer would be impossible given the building's proximity to the lot line. The testimony adduced at trial as to the buffer zone indicated that the buffer was twenty (20) feet adjacent to the building, approximately thirty (30) in most areas, and approximately fifty (50) feet in some areas towards the back of the Property. As such, this Court orders that a fifty (50) foot buffer zone shall be maintained *where it previously existed and where*

possible. Where a fifty (50) foot buffer is impossible, the buffer will be restored at minimum to twenty-five (25) feet, with the exception of the areas of the Property where the building abuts the property line. In those areas only, a buffer zone of twenty (20) feet will be possible. The buffer zone will be restored with a dense planting of appropriate vegetation or landscaping so as to provide a thick screen between the Property and adjacent residential dwellings. Defendants are hereby ordered to restore the buffer zone in a healthy manner by agreement of the parties. The parties are ordered to determine what depth of buffer and type of landscaping is appropriate depending on the ground structures and any environmental impacts. If the parties are unable to come to an agreement, the Court will appoint a master, paid for equally by the parties, to determine the appropriate depth and landscaping of the buffer zone.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Town of Coventry v. Forsons Realty LLC, et al.
CASE NO:	KC-2016-1023
COURT:	Kent Superior Court
DATE DECISION FILED:	September 21, 2018
JUSTICE/MAGISTRATE:	McGuirl, J.

ATTORNEYS:

For Plaintiff:	Nicholas Gorman, Esq. and David M. D'Agostino, Esq.
For Defendant:	Patrick John McBurney, Esq.