

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC.

SUPERIOR COURT

[Filed: April 8, 2019]

DAVID CLANCY and :
JENNIFER CLANCY, :
Appellants, :
VS. :
ZONING BOARD OF REVIEW of the :
TOWN OF JAMESTOWN and :
RICHARD BOREN, DEAN WAGNER, :
MARCY COLEMAN, TERENCE :
LIVINGSTON and EDWARD :
GROMADA, in their capacities as :
members of the ZONING BOARD OF :
REVIEW of the TOWN OF :
JAMESTOWN and the Jamestown :
Historical Society, :
Appellees. :

C.A. No. NC-2018-0188

DECISION

NUGENT, J. Before the Court is the appeal of David and Jennifer Clancy (Clancys) from the May 22, 2018 decision (Decision) of the Zoning Board of Review of the Town of Jamestown (Zoning Board) denying them dimensional relief to add an addition to their home. The Jamestown Historical Society opposed the Clancys’ application. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts

The Clancys own the subject property described on Assessor’s Plat 7, Lot 22 located at 382 North Road, Jamestown, Rhode Island (Property). Located in a Rural Residential 200 Zone (RR-200), the Property is a substandard lot, consisting of approximately 65,340 square feet.

Decision, May 22, 2018 ¶ 1. The Property is located in the “Windmill Hill Historic District,” which includes six historic farmsteads, an 18th century burying ground, the meeting house, as well as a windmill. *Id.* ¶ 2. Adjacent to the Property’s east side sits the “Jamestown Windmill” (Windmill), which is owned by the Jamestown Historical Society. *Id.* ¶¶ 5-6. The Windmill is open to the public. *Id.* ¶ 7.

The Property holds a small two-floor, single-family house, a free-standing garage, a glass-blowing studio, and another building the Clancys had rented out as a guest cabin in the past.¹ Dating back to 1787, the house is historically referred to as “Miller’s Cottage.” *Id.* ¶ 3. The house has a footprint of 878 square feet and is approximately 31 feet by 22 feet with a smaller attachment of 14 feet by 14 feet. *Id.* ¶ 11. The second floor is 22 feet by 31 feet, but this space is not entirely usable because it is immediately under the gabled roof. *Id.* ¶ 13. The second floor is comprised of only a single bedroom and a separate area for a washer and dryer. *Id.* The Clancys share this bedroom with their daughter and separate their respective areas with a screen partition. *Id.* ¶ 14. The garage is 19 feet deep and 21.5 feet wide, which is less than the standard 23-foot depth of a garage. *Id.* ¶ 17.

The Clancys seek a dimensional variance requesting setback relief from the requirements under Jamestown Zoning Code § 82-302 in order to build an addition and an improved garage 33 feet from the westerly property line and 6 feet from the southerly property line.² The Clancys request said relief to provide their daughter and themselves with separate bedrooms, provide for more living space and storage space, and to make a longer garage. *Id.* ¶ 20. As the footprint of

¹ Although the Clancys had previously rented this space as a guest cabin, David Clancy testified they would no longer rent out the building before obtaining the necessary approval. (Tr. 8:9-14, Jan. 23, 2018.)

² Property in a RR-200 Zone requires a minimum of 200,000 sq. ft. to construct a single-family dwelling, and a minimum front and rear setback of fifty (50) feet, and a minimum side setback of forty (40) feet. *See* Jamestown Ordinance, art. III, § 82-302, Table 3-2.

the existing house is 878 square feet, the addition would add about another 720 square feet. (Tr. at 45-46, Jan. 23, 2018.)

At the first hearing on the Clancys' application on January 23, 2018, David Clancy testified as to the layout of the existing house and their reasons for the requested relief. (Tr. at 5-8.) Given the house's lack of a basement or attic and the garage being "undersized and unusable," David Clancy explained there was barely any room for storage generally and the storage of equipment to maintain the Property. (Tr. at 7.) Moreover, he explained building the addition to the north of the house and away from the property line would require moving the septic system, cutting down a two-hundred-year-old tree, and a much larger driveway. (Tr. at 7-8.)³

The Zoning Board next heard from the Clancys' expert architect, Shahin Barzin (Mr. Barzin), who testified that the proposed renovations would satisfy the Clancys' needs for living space and storage space while maintaining the integrity of the existing cottage. (Tr. at 17-22.) Mr. Barzin explained the garage would be connected to the existing cottage by a sunroom, leading to an area for storing utility equipment as well as a general storage area. (Tr. at 22.) This area would also include a stairway to the Clancys' new bedroom above this storage area. *Id.* The proposed garage would be narrower but longer than the existing garage and would be one foot farther away from the southern property line. *Id.* Mr. Barzin testified that the addition would not further obstruct the view of the Windmill when driving south on North Road because that view is already obstructed by a large tree. (Tr. at 24-26.)⁴ Mr. Barzin explained he planned

³ Jennifer Clancy only testified that the Property contained a six-foot fence that was built around 2006 pursuant to a previously granted request by the Zoning Board. (Tr. at 42-44.)

⁴ The large tree to the north of the house already obstructs the view of the Windmill from North Road and the addition would be behind this tree. Mr. Barzin also testified that the height of the

to use wood planks for the addition instead of using shingles like the existing cottage to preserve the integrity of the existing cottage. (Tr. at 26-27.) The addition, Mr. Barzin noted, could not be moved farther north without also moving the septic system and making a much larger driveway. (Tr. at 31-33.) Mr. Barzin believed this proposal met all of the requirements for a dimensional variance. (Tr. at 33-35.)

Next, the Zoning Board heard from the Clancys' other expert, Jason Iacobucci, an architect providing design and consulting services in historic districts. (Tr. at 47-52.) Mr. Iacobucci believed that the requested relief does not conflict with the Jamestown Comprehensive Plan because the expansion for living space does not alter the single-family residence. (Tr. at 51-52.)

In opposition, the Jamestown Historical Society's expert architect, Ross Cann, discussed the historical significance of Miller's Cottage and the proposed renovations. He presented conceptual drawings for alternative renovation plans which would provide for two bedrooms and a bath on the second floor by moving the existing stairs and adding two dormers to the north side. (Tr. at 55-68.)⁵ Mr. Cann claims this alternative proposal meets the Clancys' needs by adding more "usable square footage" without making extensive renovations to the cottage. (Tr. at 65-68.) Additionally, Mr. Cann submitted his written opinion on behalf of the Society regarding the historical significance of Miller's Cottage in relation to the Windmill and how alterations to the cottage would detrimentally impact the view of the Windmill. (Tr. at 70-72.) Mr. Cann further opined that his alternative proposal would provide the Clancys their requested

addition was the same as the existing cottage, but the addition would be approximately one foot higher because of the Property's three foot grade. (Tr. at 27-28.)

⁵ Mr. Cann did not take changes to the garage into consideration when making the conceptual plans. (Tr. at 64-65.) Furthermore, Mr. Cann stated these drawings should be considered because "minimal relief" is required for board approval. (Tr. at 67-68.)

relief and constitute the least relief necessary. (Tr. at 73.) Mr. Cann acknowledged that the Clancys' prior zoning variance required additions to be made east of the existing structure to preserve the view corridor to the Windmill. (Tr. at 73-74.)⁶ However, Mr. Cann believed the Zoning Board's Decision did not apply to the garage as it was a separate structure and would be in compliance if relocated north and outside the setback. (Tr. at 73-74.)

The Zoning Board then heard from the public. (Tr. at 90.) The Zoning Board had received eighteen letters in support and one letter opposing the Clancys' application. (Tr. at 90; 93.) Nine people spoke in opposition to the application. (Tr. at 91-107.) At the end of the hearing, the Zoning Board continued the matter to the February meeting for the parties to present further evidence. (Tr. at 109.)

A second hearing was held on February 27, 2018. Mr. Barzin then submitted a video of the view of the Windmill when driving south on North Road to show that the Clancys' proposed renovations would have practically no effect on the view corridor of the Windmill because the view was already obstructed by the large tree. (Tr. at 6-8, Feb. 27, 2018.) Mr. Barzin further testified about the issues he found in the alternative plan that Mr. Cann originally provided at the hearing in January. (Tr. at 35-37.) Mr. Barzin testified that Mr. Cann's proposed layout to add usable square footage for the second floor was not functional because of the gabled roof. (Tr. at 36.)

At this second hearing, the Jamestown Historical Society's attorney, Matthew Callaghan, submitted the Jamestown Tax Assessor's records to show that the home was previously a two-bedroom house which the Clancys had subsequently converted into a one-bedroom house. (Tr.

⁶ Previously, in 2003, the Board had granted the Clancys a variance to construct a glass blowing studio on the Property with the stipulation that for the purposes of preserving the view corridor of the Windmill, any future additions would extend easterly and not north or south. *See Decision ¶ 19.*

at 13-14.) Additionally, Mr. Cann provided a PowerPoint presentation detailing his alternative renovation plans for the cottage and showing how the Clancys' proposed renovations would impact the view of the Windmill in comparison with the existing cottage. (Tr. at 14-30.) Mr. Cann testified that the proposed renovations would result in a structure nearly doubled in size. (Tr. at 16-17.) Mr. Cann explained that the renovations detrimentally affect the relationship between the Windmill and Miller's Cottage because it will impair the visitor's view of the surrounding area from the Windmill. (Tr. at 17-18.)

Toward the end of the hearing, Zoning Board member Richard Boren requested the parties to submit additional memoranda addressing whether granting the Clancys' dimensional variance would alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan and whether the relief to be granted would be the least relief necessary. (Tr. at 31-32.) After receiving the parties' memoranda, Mr. Boren explained he would begin drafting the findings of fact for the Zoning Board's Decision stating he would make no conclusions therein and the Zoning Board would vote on the Clancys' application after having a complete discussion at the April meeting. (Tr. at 32-33.) The Zoning Board continued the matter to the April meeting. (Tr. at 33.)

At the April 24, 2018 meeting, the Zoning Board members provided their individual input. (Tr. at 2-6, Apr. 24, 2018.) Mr. Boren then read his prepared findings of fact. (Tr. at 7-16.) Pursuant to the Zoning Board's earlier discussion, Mr. Boren stated that the Clancys' requested variance was not the least relief necessary and that the denial would not amount to more than a mere inconvenience. (Tr. at 16-17.) The Zoning Board voted four to one to deny the Clancys' variance application. (Tr. at 17.)

On May 23, 2018, the Zoning Board's Decision was recorded in the Town of Jamestown Land Evidence Records.⁷ The Decision's findings of fact appear to mirror the same findings that Mr. Boren read prior to the Board's vote. On May 29, 2018, the Clancys timely filed this Complaint.

II

Standard of Review

The Superior Court's review of a zoning board decision is governed by § 45-24-69, 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 board 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).

Under the “traditional judicial review” standard, this Court “lacks authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute [its] findings of fact for those made at the administrative level.” *Restivo v. Lynch*, 707 A.2d 663, 665-66 (R.I. 1998) (quoting *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986)). This Court, “in reviewing the action of a zoning board, must examine the entire record to determine whether ‘substantial’ evidence exists

⁷ The Decision was mailed to the Clancys on April 25, 2018, but it was not recorded until after it was approved by the Zoning Board at the next meeting. The Decision is recorded in Book 921, Page 223 of the Town of Jamestown Land Evidence Records.

to support the board’s findings.” *DeStefano v. Zoning Bd. of Review of City of Warwick*, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979). The Supreme Court interprets “substantial evidence” to mean “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.” *Iadevaia v. Town of Scituate Zoning Bd. of Review*, 80 A.3d 864, 870 (R.I. 2013) (quoting *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)).

“[A] zoning board of review is required to make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review.” *Bernuth v. Zoning Bd. of Review of Town of New Shoreham*, 770 A.2d 396, 401 (R.I. 2001) (quoting *Cranston Print Works Co. v. City of Cranston*, 684 A.2d 689, 691 (R.I. 1996)). The zoning board’s conclusions of law must apply the findings of fact to the statutory requirements for variance relief. *See id.* at 402. When a zoning board fails to include the adequate findings of fact necessary for judicial review, “the court will not search the record for supporting evidence or decide for itself what is proper in the circumstances.” *Irish P’ship v. Rommel*, 518 A.2d 356, 359 (R.I. 1986) (citing *Hooper v. Goldstein*, 104 R.I. 32, 44, 241 A.2d 809, 815 (1986)). If the Decision provides inadequate findings of fact or conclusions of law, this Court should remand the case to the Zoning Board for additional findings of fact or conclusions of law. *See Bernuth*, 770 A.2d at 401.

III

Analysis

The Zoning Board’s Decision provides:

“V. Decision

“49. The hardship from which the applicants seek relief is not due to the unique characteristics of the subject land or structure and not

to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant.

“50. The hardship is not the result of any prior action of the applicants and does not result primarily from the desire of the applicants to realize greater financial gain.

“51. The granting of the requested variance will alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

“52. The relief to be granted is not the least relief necessary.

“53. The hardship suffered by the applicants if the dimensional variance is not granted does not amount to more than a mere inconvenience.” Decision ¶¶ 49-53.

The Decision mirrors the statutory and ordinance requirements for a dimensional variance but it does not provide any explanation as to why the Clancys’ request does not meet these prerequisites. *See* § 45-24-41(d) and (e)(2); *see also* Jamestown Zoning Ordinance §§ 82-606 and 607(2). Our Supreme Court has made clear that judicial review of a zoning board’s decision requires a court to determine

“whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles. Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements. Unless they are satisfied, a judicial review of a board’s work is impossible.” *Irish P’ship*, 518 A.2d at 358-59 (quoting *May-Day Realty Corp. v. Bd. of Appeals of City of Pawtucket*, 107 R.I. 235, 239, 267 A.2d 400, 403 (1970)).

At a minimum, a zoning board’s decision must include “findings of fact and the application of legal principles in such a manner that a judicial body might review a decision with a reasonable understanding of the manner in which evidentiary conflicts have been resolved and the provisions of the zoning ordinance applied.” *Thorpe v. Zoning Bd. of Review of Town of N.*

Kingstown, 492 A.2d 1236, 1237 (R.I. 1985) (citing *May-Day Realty Corp.*, 107 R.I. at 239, 267 A.2d at 403).

A zoning board “must set forth in its decision findings of fact and reasons for the action taken.” *Irish P’ship*, 518 A.2d at 358 (citing *Zammarelli v. Beattie*, 459 A.2d 951, 953 (R.I. 1983)). With findings of fact that only provide a summary of what was presented at the proceedings, this Court “cannot determine what evidence that was presented to the zoning board persuaded it that the requirement[s] of § 42-24-41(d)(2) had been met.” *Bernuth*, 770 A.2d at 402. The Decision provides this Court with no information to assess whether the Board properly applied the variance requirements to these facts when denying the Clancys’ application. Without findings of fact in the Decision that specifically address the variance requirements, this Court is left to infer what evidence was relied upon in denying the Clancys’ variance application. It is well-settled that this Court cannot search the record itself for it is not permitted to “substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact.” Sec. 45-24-69(d). Therefore, this Court remands this case to the Zoning Board to support its conclusions of law with findings of fact that specifically address the requirements for a dimensional variance and why each requirement was or was not satisfied. *Bernuth*, 770 A.2d at 402.

IV

Conclusion

After reviewing the record, this Court finds the Zoning Board’s Decision is in violation of the statutory and ordinance provisions. To meet the statutory requirements for a zoning board’s decision on a variance application, the Zoning Board’s Decision must provide adequate findings of fact and conclusions of law that apply the facts to the requirements for a dimensional

variance under § 45-24-41(d) and (e)(2). Accordingly, this Court remands the Decision to the Zoning Board for findings of fact and conclusions of law. This Court will retain jurisdiction. Counsel shall submit the appropriate Order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: David Clancy and Jennifer Clancy v. Zoning Board of Review of the Town of Jamestown, et al.

CASE NO: NC-2018-0188

COURT: Newport County Superior Court

DATE DECISION FILED: April 8, 2019

JUSTICE/MAGISTRATE: Nugent, J.

ATTORNEYS:

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