STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: April 25, 2023]

JAMES M. CARTER and JANE MACDOUGALL,	:	
Appellants,	:	
	:	
VS.	:	**C.A. No. PC-2022-06404**
	:	
TOWN OF WARREN ZONING BOARD OF REVIEW and ANDREW G. ELLIS, in his capacity as Chairman of the Zoning Board of Review and W. BARRETT HOLBY, JR.; JASON J. RAINONE; CHARLES A. THIBAUDEAU; JASON M. NYSTROM; MICHAEL A. ALVES and DAVID J. FRANCIS, in their capacities as Members of the Town of Warren Zoning Board of Review; MARCIA BLOUNT; BLOUNT REALTY CO.; and WATER STREET DOCK CO., INC.,	:	
	:	
***Appellees*.**	:	

DECISION

STERN, J. Before the Court is James M. Carter and Jane MacDougall's (collectively, Appellants) appeal from an October 18, 2022 written decision of the Town of Warren Zoning Board of Review (Zoning Board) approving a Dimensional Variance and a Special Use Permit[1] for real property owned by Appellee Blount Realty Co. (BRC). Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

[1] Blount Realty Co. (BRC) petitioned for a Special Use Permit, but a special use permit was previously approved. Therefore, the application for Special Use Permit in the Board's Decision refers to an amendment to this previous special use of the shipyard to modify the footprint of the area used for the indoor hull shop. *See* Hr'g Tr. 6:1-5.

I

Facts and Travel

By way of background, BRC owns real property located at 461 Water Street, Warren, Rhode Island, designated as Town of Warren Tax Assessor's Plat Map 6, Lots 99, 107, and 114. (Certified. R. (R.) 2.) BRC also owns real property located at 461-489 Water Street, Warren, Rhode Island, designated as Town of Warren Tax Assessor's Plat Map 6, Lots 11, 25, 93, 108, 109, 110, and 111. *Id.* Marcia Blount (Blount) is the director of BRC and president of Blount Boats. (Hr'g Tr. (Tr.) 3:18-19.) Blount Boats manufactures transfer vessels for offshore wind farms located along the northeast coast of the United States. *Id*. at 7:25-8:2. The vessels are large aluminum catamarans that must be built under a heated, covered space. *Id*. at 8:2-6. In addition, the vessels are constructed piecemeal and are assembled at a later stage. *Id*. at 10:10-18. An overhead crane system is used to assist the builders in assembly. *Id*. at 11:7-14.

On or about June 28, 2022, Blount filed an application for Dimensional Variance with the Zoning Board, requesting a forty-five-foot roof height extension and a twenty-foot extension with sloping roof on Lot 99. (R. 32.) On August 25, 2022, Blount filed an amended Petition for Variance, including all eleven lots in the petition. *See id*. at 18. Additionally, on August 30, 2022, Blount submitted a Petition for Special Use pursuant to § 32-54 and 32-57 of the Warren Zoning Ordinance. *Id*. at 14. Specifically, Blount's first application (Application #22-24) requested a dimensional variance to construct an addition that, when completed, would exceed the maximum required height on a legal non-conforming structure in the Town of Warren's Waterfront Overlay District.[2] (R. 17.) Blount's second application (Application #22-35), an amendment to its current

[2] This Decision refers to the Town of Warren, Warren Zoning Board of Review, Combined Decision for Special Use Permit and Dimensional Variance for Applications #22-24 and #22-35.

special use permit modifying the terms of a previously existing special use, requested to further extend the current roof height of its Hull Shop[3] in the Waterfront Overlay District, extending the area allowed for boat manufacturing. *Id.* at 15; Tr. 64:13-16.

A

September 21, 2022: Zoning Board Hearing[4]

1

Applicant's Supporting Testimony

On September 21, 2022, both applications were heard before the Zoning Board at a public hearing and comment. *See* Tr. 2:2-17. Blount requested the variance to build two one-hundred-foot vessels concurrently. (R. 18.) Specifically, Blount sought about six feet of height relief after accounting for the five feet of freeboard that is allowed for being located in a flood zone, bringing the roof height to approximately forty-one feet.[5] (Tr. 4:14-5:4.) Blount explained how Blount Boats manufactures transfer vessels for offshore wind farms in Rhode Island and likely the rest of the Northeast. *See id*. at 7:25-8:2. The vessels being constructed are

---

This Decision will identify each document for citation purposes as "R." followed by its pagination where appropriate.

[3] The "Hull Shop" is the structure where Appellees' business builds and assembles shipping vessels and other vessels.

[4] Andrew Ellis, Chair of the Zoning Board, stated that the Zoning Board visited the site on August 3, 2022 and observed the demarcation of the proposed expansion. (Tr. 8:19-22.) He further acknowledged that the Board recognized and memorialized the lots as being merged for a common use based on a prior decision. *Id.* 9:9-13; 30:25-31:11. He further acknowledged, based on the evidence and the August site visit that the crane system cannot operate on two different planes; it must be continuous and at the same height. (Tr. 22:1-8.)

[5] Matthew Cabral, Zoning and Building Official, testified that the FEMA regulation allows municipalities to set the five-foot free board, which the building in question is equipped with. (R. 3-4; Tr. 62:6-15.) Thus, the actual height of the building would be measured from the top of the free board, which would make the height of the building 41 feet tall, where only 35 feet is allowed. (R. 4; Tr. 62:6-15.)

aluminum catamarans. *Id*. at 8:2-3. Blount testified that the space is needed for Blount Boats to construct its vessels under a more covered space to build the vessels more efficiently. *Id*. at 8:3-6; R. 2. Blount further explained that the American Bureau of Shipping mandates that the vessels must be constructed under a covered space. (Tr. 8:12-15.) According to Blount, the weather forces Blount Boats to produce the vessels piecemeal across various sites on the property, and then move those parts to the Hull Shop for final assembly. *Id*. at 52:20-25. In support of her applications, Blount explained that the hull shop needs "as much height as possible to build as much as . . . we can." *Id*. at 10:11-13. She elaborated that currently, Blount Boats builds vessels under tents and other makeshift coverings. *Id*. at 52:22-53:3. She further explained to the Zoning Board that the additions will also require a modification of the crane system in the Hull Shop, but that even with the height variance, Blount Boats will still not be able to completely assemble the vessels indoors and therefore is the least relief necessary. *Id.* at 56:2-7; R. 2-3.

Julie Blount, a member of Blount Boats, elaborated on portions of Marcia Blount's testimony. *See id*. at 56:13-25. She explained that when building a vessel, there is a lot of laydown space for parts that are going to be attached to a boat and that this space is needed. *Id*. at 56:13-18. When asked by Chairman Ellis whether her testimony is that the amount of space requested, in regard to the height, is the least amount necessary to accommodate the construction process of these vessels, she answered in the affirmative and further explained that even with requested height, an entire vessel still cannot be built indoors. *Id*. at 57:6-11; 57:22-24.

2

Objector's Testimony

Two members of the public spoke in opposition to Blount's applications: (1) Jane MacDougall, an abutting property owner, in her individual capacity; and (2) Attorney Michael

Landry, her representative. *Id.* at 4-5. Attorney Landry testified in opposition to the applications first. *See id*. at 13:11-25. His testimony consisted of objections to the proposed applications related to three specific legal issues. First, he requested clarity as to whether the lots were properly merged. (Tr. 13:1-9.) Second, he argued that there was not sufficient evidence regarding the standards for granting the height variance. *Id*. at 13:10-18. Third, he claimed that the number of lots listed in the application are owned by different entities that are neither named in, nor signatories of, the applications. *Id*. at 13:19-14:8; R. 4.

Attorney Landry also contended that the variances are being sought purely for financial gain. (Tr. 14:15-18.) Blount was purportedly offered grant money and contracts to build the vessels, and that zoning relief is being requested to realize the full value of those contracts. *Id*. at 15:10-19; R. 4. Additionally, he testified that Appellees failed to show that the need for zoning relief is not due to any prior action of theirs or resulting primarily from a desire to realize financial gain. (Tr. 15:20-25.) Attorney Landry maintained that Appellees voluntarily took on contracts and grants with full knowledge of the limitations of their property, and the lack of capacity needed to satisfy their obligations was therefore a "self-imposed hardship." *Id*. at 16:1-6; 17:12-23. He continued to assert that Appellees were choosing to expand their productivity, as the expansion was not a contingency of the contract and thus not requesting the least relief necessary. *Id*. at 19:24-20:3. As such, Attorney Landry asserted—on behalf of his client—there was not substantial evidence to support that "a smaller building wouldn't be sufficient" and "there's no evidence to suggest that even an addition, even if they needed it, that it needs to be the same height as the other building, that it needs to be the same length, that they need a fabrication area." *Id*. at 21:20-25. Additionally, Attorney Landry stated that the application is based on Appellee's preference and they have not provided evidence that the current property is insufficient or more than a mere

inconvenience. *Id*. at 17:2-11; 22:13-23. In support of this assertion, he argued that there was no evidence in the record to suggest that there were no other reasonable alternatives or legally permissible uses on the property. *Id*. at 24:7-14. Finally, Attorney Landry maintained that the Zoning Board's 2016 remand Decision concerning the issue of merger with all individual lots only applied to side and rear yard setbacks, and the Decision does not apply to "lot coverage." *Id*. at 29:15-19.

Ms. Jane MacDougall (MacDougall), an abutting homeowner and resident at 500 Water Street, addressed the Board to ask questions concerning the Appellees' contracts and argued that there should not be any free board allotted to the building. *Id.* at 33:4-18; R. 4. She also asked whether any alternatives have been considered for use at the property where the proposed relief requested for the addition would not be needed. (R. 4.) She stated that her main motivation in objecting to the proposed addition was additional traffic and noise. *Id*.; Tr. 45:7-23.

B

The Zoning Board's Decision

After hearing testimony and public comment, the Board voted unanimously in favor of granting the modification to the Special Use Permit, as well as granting the Dimensional Variance. (Tr. 70:5-6, 74:15-17; R. 5-8.)

Regarding the Dimensional Variance, Vice Chairman of the Board, W. Barrett Holby, Jr. (Holby), determined that Blount Boats had demonstrated a hardship due to the unique characteristics of the subject land and existing structures because it had been shown that the existing building is too small to build the support vessels efficiently that they have under contract. (Tr. 70:12-17.) He further reasoned that the proposed expansion will allow for two transport vessels to be built concurrently. *Id*. at 70:22-25. He also determined that Appellees' hardship is

not a result of any prior action of the applicant and did not result primarily from a desire to realize greater financial gain because the shipyard does not have enough covered property to build this type of vessel. *Id*. at 71:3-14. Holby testified that granting the variance will not alter the general character of the surrounding area and the request conforms to the purpose and intent of the Warren Zoning Ordinance Comprehensive Plan. *Id*. at 71:11-14. He further reasoned that the planning board of Warren, the Warren Town Chamber of Commerce, the State of Rhode Island's maritime has encouraged the Board to approve this project. *Id*. at 71:15-19. Additionally, the proposed addition is taking place on Blount Boats complex and is also close to the Warren Waste Water Treatment Plant, where it should not cause any undue odors to the nearby plant. *Id*. at 72:1-4. It will also provide long-lasting skills and jobs to the people of Warren, Rhode Island.[6] *Id*. at 72:4-6.

Holby also determined that the relief requested is the least relief necessary for the Blount ship building facility to build the transport vessels effectively because the addition is small in nature when looking at Appellees' property in the aggregate. *Id*. at 72:6-10. Furthermore, there will be more space between buildings resulting from the addition, which will make driving and transporting materials easier. *Id.* at 72:11-15. He also asserted that if the Board were not to grant the dimensional variance, the hardship would be much more than an inconvenience because the result would be an increased cost to build these ships in a very competitive market, which would ultimately result in the loss of businesses and jobs in the Warren area. *Id*. at 72:16-21.

Chairman Ellis further elaborated that the dimensions cited by Blount, in addition to the testimony, plans submitted, and site visit are demonstrated to be the least dimensions necessary

[6] Holby refers to people of Warren as "Warrenites." Tr. 72:6.

for the processes required for the assembly, movement, and staging activities necessary to construct these types of vessels. *Id*. at 72:23-73:3.

In relation to the request for a special use permit, Holby determined that Appellees have shown that the special use will be compatible with the neighboring land uses because it is an extension of an already existing building and Appellees have shown that the building is too small to support the vessels efficiently that they have under contract. *Id*. at 65:20-25.[7] He further determined that the special use would not create a hazard in the neighborhood because the use is already underway and Blount Boats has had a shipyard for many years and it is hardly noticeable from the street. *Id*. at 66:10-13. Additionally, traffic patterns would likely not change because there is still the same number of employees and ample parking; the noise would not be a factor because the building will be insulated and the addition will as well, which will result in more work being conducted indoors, ultimately leading to the neighborhood being quieter. *Id*. at 66:17-23.

He also stated that the special use permit would be compatible with the community comprehensive plan. *Id*. at 67:13-14.[8] The Warren Planning Board, Warren Chamber of Commerce, and the State of Rhode Island all showed considerable support. *See id.* at 67:14-21; *See* Appellees' Opp'n Mem., Exs. 4, 5. Holby also stated that the public convenience and welfare will be served for a number of reasons: it will provide long-lasting skills and jobs for the people of Warren; there has been unanimous support by the people of Warren and town officials for

[7] More specifically, he explains that the existing shop is 180-by-60, equaling 10,800 square feet, a nonconforming height of approximately 46 feet, 5 inches. *Id.* at 65:25-66:2. The proposed extension will continue the building envelope at the same height to the southeast, 45 feet by 60-foot width and continue the fabrication shop that is 20 feet wide and 105 feet. *Id*. at 66:2-6. The total building size would be increased to 15,600 square feet and the model of the building will be square and allow for two transport vessels to be built concurrently. *Id*. at 66:6-9.

[8] Chairman Ellis added that the special use is consistent with the comprehensive plan's future land use map for this area, which is a use envisioned by the land use map. *Id*. at 67:22-25.

Blount Boats shipyard and expansion and it is "self-evident" that it will be helping the business build boats more efficiently; and that it will bring money to the Warren Waterfront District. *Id*. at 68:4-12.

C

Zoning Board's Written Decision

On October 18, 2022, the Zoning Board recorded its written Decision unanimously approving the modification of the Special Use Permit and granting the Dimensional Variance. *See* R. 2-8. In the Decision, the Zoning Board approved to (1) approve and modify the existing Special Use Permit and Application #22-35 to add an extension to the current roof height of the Hull Shop in the Waterfront Overlay District, and (2) to approve the Application #22-24 request for a Dimensional Variance to construct an addition that will exceed the maximum required height on a legal non-conforming structure in the Waterfront Overlay District. *Id*. at 4-6.

D

Appeal to the Superior Court

1

Appellants' Arguments

Appellants filed a Complaint to this Court, appealing the Zoning Board's Decision. *See* Docket, PC-2022-06404. Appellants argue that the Decision should be reversed and nullified because the application and proposal did not satisfy the criteria for a special-use permit or dimensional variance. (Am. Compl. ¶ 9.) Appellants assert that Appellees' requested relief did not involve more than a mere inconvenience, and the Appellees failed to adequately consider or pursue more compliant, available alternatives. *Id*. Appellants further argue that the hardship was self-imposed and was derived from a desire to realize financial gain, was not the least relief

necessary, and the Decision was not supported by the evidence. *Id*. They argue that hardship is self-imposed because Appellees' current contracts, as well as potential future contracts, were the driving force behind Appellees' wanting to expand the existing hull shop. (Appellants' Mem. 12.)

They also argue that the relief is not the least relief necessary because Appellees are actively utilizing their current facilities and property to accommodate their business needs and have not provided evidence to suggest their ability to enjoy a legally permitted use of the property is being impaired or inhibited absent the relief requested. *Id*. at 15.

Appellants make an additional argument that the Subject Property was improperly merged according to Town of Warren Zoning ordinance regulations pertaining to "merger" and "lot coverage." (Am. Compl. ¶ 10.) They assert that pertaining to merger, a finding of legal merger is erroneous absent substantive findings of fact or evidentiary support in the record. (Appellants' Mem. 18.) Additionally, Appellants argue the application for relief failed to identify and/or include all owners with an interest in the Subject Property. (Am. Compl. ¶ 11.) The Complaint was later amended on November 10, 2022. *See* Docket, PC-2022-06404.

On November 22, 2022, Appellees Marcia Blount, Blount Realty Co., and Water Street Dock Co., Inc. filed an Answer to Appellants' Amended Complaint. *See id.* Appellees aver that Appellant James M. Carter is not properly a party to this appeal. (Answer 2, ¶ 1.) Appellees further aver that Appellants are barred from relitigating the issue pertaining to subject property's "merger" by use for zoning purposes under the doctrine of *res judicata*. *Id*. at 2, ¶ 2. Lastly, Appellees aver that Appellants lack standing to challenge the owner authorization for the zoning application for the subject property because the owners at issue are parties to this appeal and do not contest that the zoning application at issue was duly authorized by said owners. *Id.* at 3, ¶ 3.

2

Appellees' Arguments

On the other hand, Appellees argue that Appellants have not applied to the appropriate standard of hardship to the dimensional variance at issue and, in any event, that the expansion proposed would satisfy either hardship standard. (Appellees' Opp'n Mem. 10.) Appellees also argue that Appellants misinterpret the dimensional variance standards in a way that would effectively preclude dimensional relief for all business uses and, when the correct standard is applied, there is ample evidence to support the Zoning Board's findings. *See id*. at 18-22. Lastly, Appellees argue that Appellants cannot relitigate the issue of merger that was already resolved against their position in the 2016 Decision, and, in any event, the Zoning Board's finding on merger is correct and entitled to deference by this Court. *See id*. at 23-29.

II

Standard of Review

The Superior Court's review of a zoning board decision 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." Section 45-24-69(d).

In reviewing the decision of a zoning board, "[i]t is the function of the Superior Court to 'examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.'" *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). Substantial 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.'" *New Castle Realty Co. v. Dreczko*, 248 A.3d 638, 643 (R.I. 2021) (quoting *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013)). Furthermore, substantial evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Iadevaia*, 80 A.3d at 870.

This deference to a zoning board's factual determinations "is due, in part, to the principle that 'a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance.'" *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008) (quoting *Monforte v. Zoning Board of Review of City of East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962)).

If the Court determines that the zoning board's "decision was supported by substantial evidence in the whole record," then the zoning board's decision must be affirmed. *Lloyd*, 62 A.3d at 1083. However, if the decision of the zoning board is not supported by substantial evidence, then the Court will remand the matter to the zoning board so that the board may issue a ruling that is complete and susceptible to judicial review. *Irish Partnership v. Rommel*, 518 A.2d 356, 359 (R.I. 1986).

Questions of law are subject to *de novo* review, and "a zoning board's determinations of law, like those of an administrative agency, 'are not binding on the reviewing court'" and "'may

be reviewed to determine what the law is and its applicability to the facts.'" *Pawtucket Transfer Operations*, 944 A.2d at 859 (quoting *Gott v. Norberg*, 417 A.2d 1352, 1361 (R.I. 1980)).

III

Analysis

A

Dimensional Variance Standard

In granting a variance, the zoning board of review shall require that evidence is entered into the record to the satisfaction of the following standards:

> "(1) That the hardship from which the applicant seeks relief is 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, excepting those physical disabilities addressed in § 45-24-30(a)(16);
>
> "(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
>
> "(3) That the granting of the requested variance will not 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; and
>
> "(4) That the relief to be granted is the least relief necessary." Section 45-24-41(d)(1-4).

Furthermore, in assessing the hardship if the requested dimensional variance is not granted, the zoning board of review shall determine if the hardship amounts to more than a mere inconvenience. Section 45-24-41(e)(2). The zoning board of review has the power to grant dimensional variances where the use is permitted by special-use permit if provided for in the special use permit sections of the zoning ordinance. *Id.*

1

Hardship

a

Unique Characteristics of the Structure

As stated above, the hardship must be due to the unique characteristics of the structure and not due to the general characteristics of the surrounding area or economic disability of the applicant. Section 45-24-41(d)(1). Additionally, the hardship must not be the result of any prior action of the applicant and must not result primarily from the desire of the applicant to realize greater financial gain. Section 45-24-41(d)(2); *see also New Castle Realty Co.*, 248 A.3d at 647.

The Court must address the question of whether Blount Boats' hardship was self-created by the executing of contracts to manufacture certain vessels. The Board concluded that it is "usual and customary when running a business, particularly this type of business, that contracts change over time and each vessel is unique, the [Appellee] would have no way of knowing what future contracts [may] be . . . [and] [i]t is perfectly typical that new contracts have terms for manufacturing necessitating alterations to the facilities." (Tr. 49:14-25, R. 6.) Furthermore, Ms. Blount testified that Blount Boats is one of the few shipyards in Rhode Island and they construct numerous vessels, which are contracted for because of the scheduling of building the boats. (Tr. 51:2-10.) She also testified that the space is needed to construct these transfer vessels, mainly due to the aluminum material the vessels are made from, which must be built under a controlled covered space. *Id*. at 8:1-6. This is required by the American Bureau of Shipping. *Id*. at 8:12-15.

Moreover, Appellants' argument that entering into these contracts constitutes a self-created hardship is lacking. This Court may not "substitute its judgment for that of the zoning board if it can conscientiously find that the board's decision was supported by substantial evidence

in the whole record." *Apostolou*, 120 R.I. at 509, 388 A.2d at 825; *see also* § 45-24-69(d). Ms. Blount testified that, currently, the business does not "have the covered space. So we're using, we are working under the tent, as well." (Tr. 52:22-24.) In building the boats and for this work to weld, they "can't take ice and snow. So we are going to have to, to do something . . . when we get . . . out of the fall to protect everything." *Id*. at 54:10-12. The Court is satisfied that the Board's finding—that the requested relief is not a self-created hardship—is supported by substantial evidence, noting that the applications also have overwhelming support from the East Bay Chamber of Commerce and the Rhode Island Ready Program through letters submitted to the Zoning Board prior to its review. *See* Appellees' Opp'n Mem., Exs. 4, 5.

Additionally, Appellants argue that the need to be able to build two boats simultaneously to meet the expectations of Appellees' client is a self-imposed hardship. (Tr. 17:12-17.) Appellants cite to *Alpert v. Middletown Zoning Board of Review* in support of this contention. *Alpert v. Middletown Zoning Board of Review*, No. 2003-0436, 2004 WL 1542238 (R.I. Super. June 28, 2004.) The appeal before this Court today is distinguishable from *Alpert* because it is dubious to equate residential and commercial properties, as each serves different purposes and have differing qualities. In *Alpert*, the applicants alleged there was a sufficient hardship because of the irregular shape and length of a home conforming to the setback requirements. *Id*. at *6. The applicants also contended that such a home would be objectively unreasonable as to both appearance and comfort/luxury. *Id*. The court concluded that an applicant must show "'more than that the varying of the proscribed regulation is for him a preferable alternative to compliance therewith, where compliance might be had, albeit with some inconvenience.'" *Id*. at 7 (quoting *H.J. Bernard Realty Co. v. Zoning Board of Review of Town of Coventry*, 96 R.I. 390, 394, 192

A.2d 8, 11 (1963). The [applicant's] aversion to living in a home of smaller size and of a shape dissimilar to the neighbors is not a sufficient hardship. *Alpert*, 2004 WL 1542238, at *7.

Here, Ms. Blount testified that due to the nature of the vessels being constructed, the space is needed, and is required by the American Bureau of Shipping that these types of vessels be constructed under a covered space. (Tr. 8:3; 8:1-6; 8:12-15; R. 2.) Additionally, Blount testified that the weather forces Blount Boats to produce the vessels piecemeal across various sites on the property, and then move those parts to the Hull Shop for final assembly. (Tr. 52:20-25.) While being able to construct two boats simultaneously may be a feasible result, the factual record illustrates Appellees' motivations, which is the need for more space, as well as adhering to the American Bureau of Shipping's requirement that these specific vessels be built under a covered space.

This is distinguishable from the reasoning set forth by the applicant in *Alpert*, where the applicant admitted, "I really don't want to live in the 20 foot wide house that really looks out of place on the lot. But I would like enough room to have a dining room and a sitting area in front of the house and not have to squeeze one long hall with rooms lined up along the side ." *Alpert*, 2004 WL 1542238, at*6. The factual record and reasoning of the applicant in *Alpert* is not analogous to the record before this Court. On the contrary, Ms. Blount's applications are for more indoor coverage to build additional vessels because they have a contract in place. For this reason, the matter at hand is not synonymous with *Alpert* and is distinguished. Thus, the Court is satisfied that the Board's finding that this is not a self-created hardship under § 45-24-41(d)(1) is supported by substantial evidence in the record.

Appellants further contend that no evidence was entered into the record to suggest that the hardship is due to the uniqueness of the land or existing structure. The Court disagrees and

determines that the Zoning Board's finding was supported by substantial evidence in the record. First, Ms. Blount testified that, due to the nature of these vessels, they are too large to assemble inside. (Tr. 10:13-20.) Currently, the existing structure has a footprint of 180 feet by 60 feet. (R. 18.) As Board Member Holby testified, the existing structure of the building prevents Appellees from building ships concurrently. *See* Tr. 70:17-25. Granting the extension allows two transport ships to be built at the same time and extend the building envelope at the same height. *Id*. at 70: 17-20. In addition, Appellee Blount testified that in raising the height of the structure, it will need to modify the crane system to adhere to this change. *See Id.* at 11:1-21. This Court finds that the record contains substantial evidence in the record to support the Board's contention that the hardship is due to the uniqueness of the existing structure.

b

Prior Action or Desire for Greater Financial Gain under § 45-24-41(d)(2)

An applicant's hardship must also not be the result of prior action of the applicant or for the desire to realize greater financial gain. § 45-24-41(d)(2). Appellants argue that Appellees' hardship results from their "desire to expand is purely for financial gain." (Appellants' Mem. 7; Tr. 14:17-18.)

Appellants also assert that "applicant is voluntarily taking on these contracts and these grants with full knowledge of the limitations of its property, and the capacity to fulfill those obligations." Tr. 15:23-16:1. Additionally, Appellants maintain that the hardship is due to the prior action of Appellees, because Appellees previously entered into a contract in 2021 and took on those contracts knowing the constraints of the facility, which is not sufficient to request this relief. (Appellants' Mem. 12-13.)

Appellees rely on our Supreme Court's decision in *Sciassa v. Caruso* to support their position that their hardship was not due to a prior action or desire for financial gain. *See* Appellees' Opp'n Mem. 19-21. Appellees cite to our decision in *Sciacca* to stand for the proposition that the hardship was not self-imposed or due to a prior action because those labels are employed when one violates an ordinance and applies for a variance to relieve the illegality of the action. *Id*. at 19 (citing *Sciacca v. Caruso*, 769 A.2d 578, 584 (R.I. 2001)). In addition, Appellees assert that our sister court in *Preston v. Zoning Board. of Review of Town of Hopkinton*, 154 A.3d 465 (R.I. 2017) supports their position that if the "hardship is primarily due to a unique characteristic of the subject land or structure, the hardship is not primarily the result of any personal characteristic of the applicant, such as the applicant's 'economic disability' . . ." (Appellees' Opp'n Mem. 21.)

Reading the plain language of Section 45-24-41(d)(2), the subsection does not prevent the ability of an applicant to benefit from a financial gain if the variance is granted. *Lang v. Zoning Board of Review for the Town of Middletown*, No. NC-2011-0302, 2013 WL 1090819, at *7 (R.I. Super. Mar. 13, 2013) ("Indeed, most variances are likely to confer some financial benefit upon the property owner when granted."). Instead, the prohibition in (d)(2) is concerned with whether the hardship is purely a desire for financial gain, or self-created need, not whether a financial benefit would be the result of granting the variance. *See id*.

Turning to the record, the Court determines that the Zoning Board's Decision with respect to § 45-24-41(d)(2) was supported by substantial evidence. The hardship is not due to any prior action of the applicant. Similar to the requirement of § 45-24-41(d)(1), Ms. Blount testified that the existing structure needs more covered space in order to build the vessels more efficiently. (Tr. 8:3-6.) As stated above and testified to in the September 21, 2022 hearing, the vessels are required to be built under a cover pursuant to the American Bureau of Shipping. *Id*. at 8:12-15.

Furthermore, the record supports that the requested variance is not due to a prior action by the applicant, but because it needs further height on their buildings in order to finish them before taking them outside. *Id*. at 10:14-18.

As the Board's Decision highlights, with this type of business, contracts change over time and an applicant would have no way of knowing what future contracts would entail. (R. 6.) While it is true that the variance may result in financial gain for the applicant, it was not the primary desire. In contrast, the variance requested is because Appellees need more coverage in order to complete the new contracts for the vessels due to cover. The record contains sufficient evidence finding that this variance is being not requested solely for greater financial gain, but to allow Appellees to follow American Bureau of Shipping guidelines to fulfill their contracts. (Tr. 8:12-15.) As such, the Court finds that the Board's decision that the hardship is not a result of prior action by the applicant or solely for greater financial gain is supported in the record by substantial evidence.

c

More than a Mere Inconvenience

The Court next determines that there is sufficient evidence to support the Board's determination that the hardship suffered if the dimensional variance is not granted amounts to more than a mere inconvenience. In making such a showing, the landowner needed to show only an adverse impact that amounted to more than a mere inconvenience. *See Sciacca,* 769 A.2d at 582; *see also* § 45-24-41(e)(2). The Board concluded that if the variance was not granted, it would cause an increased cost to build ships in a competitive market and would result in a loss of business and jobs. *See* Tr. 50:6-11; 72:16-21; *see also* R. 7.

Appellants first articulate in their appeal that to meet the more than a mere inconvenience standard, there must be no other reasonable alternative to enjoy a legally permitted beneficial use. (Appellants' Mem. 11-12 (citing Zoning Ordinance § 32-26; *New Castle Realty Co.*, 248 A.3d at 648.).)

In response, Appellees assert that Appellants mistakenly use *New Castle* to articulate their standard. (Appellees' Opp'n Mem. 11.) In Appellees' view, the General Assembly's 2002 amendment reinstated the *Viti* Doctrine, which stated that for "an applicant to obtain a dimensional variance (also known as a deviation), the landowner needed to show only an adverse impact that amounted to more than a mere inconvenience." *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 691 (R.I. 2003) (citing *Viti v. Zoning Board of Review of City of Providence*, 92 R.I. 59, 63, 166 A.2d 211, 213 (1960). In their Reply, Appellants appear to concede that they mistakenly applied the more than a mere inconvenience standard. *See* Appellants' Reply Mem. 2-4 (discussing their position that Appellees have not satisfied the more than a mere inconvenience standard or the least relief necessary standard under *Viti*).

In making such a showing of more than a mere inconvenience, the landowner needed to show only an adverse impact that amounted to more than a mere inconvenience. *See Sciacca,* 769 A.2d at 582; *see also* § 45-24-41(e)(2). The Board concluded that if the variance was not granted, it would cause an increased cost to build ships in a competitive market and would result in a loss of business and jobs. *See* Tr. 50:6-11; 72:16-21; *see also* R. 7.

To begin, this Court agrees with Appellees and determines that the proper governing standard lies in the state statute under § 45-24-41 and not the Warren Zoning Ordinance. It is well-settled Rhode Island law that, "when an ordinance sets out to restate that for which provision is made in the enabling act, any . . . expansion . . . by the zoning ordinance . . . is ultra vires of the

jurisdiction . . . [and] hence void." *Hartunian v. Matteson*, 109 R.I. 509, 516, 288 A.2d 485, 489 (1972) (citing *Coderre v. Zoning Board of Review of City of Pawtucket*, 102 R.I. 327, 230 A.2d 247 (1967)). Therefore, the standard articulated under § 45-24-41(e)(2) governs this matter.

Next, the Court will apply the reinstated *Viti* Doctrine, as Appellants have applied this standard in their reply memorandum. As such, the applicant must show that the hardship amounts to more than a mere inconvenience if their application were denied. *See Lischio*, 818 A.2d at 691.

It has been stated numerous times throughout this Decision that the specific transfer vessels are required to be built under a controlled covered space by the American Bureau of Shipping. (Tr. 8:12-15.) Ms. Blount indicated that the addition will further require the crane system to be modified, which is a necessity for it to work properly. *Id*. at 11:4-9. Furthermore, the Zoning Board acknowledged Appellees' current contracts, as well as future business in the continuation of building these specific type of transfer vessels. *See id.* at 51:20-24; R. 6. Accordingly, there is an abundance of substantial evidence in the record that the hardship would amount to more than a mere inconvenience if the application were denied.

2

Least Relief Necessary

Appellants asserts that Blount failed to enter any evidence into the record to suggest that the requested relief is neither minimal nor reasonably necessary to enjoy a permitted use to which the property is devoted. (Appellants' Mem. 15.) In further support, Appellants state that "Blount has demonstrated that it is actively utilizing adjacent facilities and areas of its property, including the adjacent tent structure, to accommodate their business needs." *Id.* As such, Appellants conclude that there is no evidence that Blount's ability to enjoy a legally permitted use is being impaired. *Id.*

On the other hand, Appellees argue that there is ample evidence to support the Board's finding. (Appellees' Opp'n Mem. 22.) First, Appellees assert that manufacturing transport vessels is a permitted use of its current special use permit. *Id.* Moreover, Appellees urge that the height variance of the hull shop is required to construct these vessels before taking them outside. *Id.* at 22-23.

Under § 45-24-41(d)(4), the relief granted to the applicant must be the least relief necessary. In assessing whether the applicant is requesting the least relief necessary, an applicant must consider reasonable alternatives. *New Castle Realty Company*, 248 A.3d at 641-42. To meet the standard for least relief necessary, the applicant must show that the relief is minimal to reasonably enjoy a permitted use of the property. *Standish-Johnson Co. v. Zoning Board. of Review of City of Pawtucket*, 103 R.I. 487, 492, 238 A.2d 754, 757 (1968). Stated differently, the burden is on the [applicant] to establish that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. *Id.*

The record supports Appellees' position. In the Hull Shop, space is needed for laying down parts during the manufacturing process. (Tr. 56:13-18.) In response, Chairman Ellis asked Julie Blount whether these spatial requirements and Appellees' request for additional space is the least amount necessary to accommodate the construction process of these vessels, where she responded in the affirmative. *Id.* at 57:6-14. Currently, the vessels are too high to assemble from within the Hull Shop, which results in Blount Boats (BB) having to build portions separately and assemble outside. *Id.* at 10:10-18. It has been alluded to multiple times during the hearing before the Zoning Board that temperature is crucial to the manufacturing process of these vessels. *See generally id.* Ms. Blount indicated that the need for heat for these American Bureau of Shipping class vessels cause BB to wait several hours in the morning and/or use different types of heaters to warm up

components. *Id.* at 61:6-11. The lack of space led to BB trying their best to get jobs done when the weather is warm. *Id.* at 61:1-11. The Zoning Board had the opportunity to go on a site visit to observe, first-hand, all practices, needs, and/or concerns of BB in relation to the marked demarcation of the proposed expansion. *See id.* at 8:19-22. The record sufficiently contains substantial evidence that BB has considered many reasonable alternative efforts in building these vessels.

The Zoning Board concluded that the relief requested is the least relief necessary due to the addition being small in nature, and that this relief will allow for the building of transport vessels efficiently and effectively, while allowing the maneuvering of materials to move easier. (Tr. 72:6-10; R. 7.) The Zoning Board also stated that Blount testified that even with the proposed height change, they are still not able to accommodate the complete assembly indoors. *Id*. at 7. Ms. Blount testified that due to the requirement that these transfer vessels be built indoors, the needed height will allow them to build efficiently . . . to the level that they can finish before taking it outside. (Tr. 10:13-20.) Ms. Blount also testified that temperature and weather plays a large factor in their ability to complete work on these transfer vessels. *See id.* at 54. Ms. Blount was even asked directly by a member of the Zoning Board whether the relief they are requesting is the least relief necessary; Ms. Blount answered in the affirmative. *Id*. at 52:4. Therefore, the Court is satisfied that the Zoning Board's conclusion regarding least relief necessary was supported by substantial evidence.

B

Special Use Permit

Next, Appellees applied to amend a special use to add an extension to the current height of their hull shop under § 32-57. (Tr. 65:13-15.) Appellants raise no arguments against Appellees'

special use permit in its memorandum papers. *See generally* Appellants' Mem. For sake of completeness, the Court walks through the necessary elements of special use permits under the Warren Zoning Ordinance.

"A zoning ordinance shall provide for the issuance of special-use permits approved by the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4." Section 45-24-42(a). "A special-use permit relates to a specific use the owner wishes to undertake on the parcel—a use that is not allowed under the ordinance absent zoning board approval. *Lloyd*, 62 A.3d at 1085 (internal citations omitted).

Uses requiring the granting of an amendment of existing special use permit in this ordinance shall be permitted by the Zoning Board of Review, following a public hearing, only if in the opinion of the board, such uses meet the following standards:

> "A. They will be compatible with the neighboring land uses;
> "B. They will not create a nuisance or a hazard in the neighborhood;
> "C. They will be compatible with the comprehensive community plan; and
> "D. The public convenience and welfare will be served." Warren Zoning Ordinance. § 32-30.
>
> "In granting a special use permit, the board may prescribe such conditions and safeguards . . . as it may deem necessary to prevent nuisance [and] promote harmony with the use of nearby property. The disregarding of any conditions or safeguard, when made part of the terms under which a special use permit is granted, shall be deemed a violation of this ordinance." *Id*.

First, the Board concluded that Appellee's special use will be compatible with the neighboring land uses. (R. 5.; Tr. 70:5-7.) Their reasoning was that it is an extension of an existing building that is too small to support the vessels efficiently that they have under contract. (R. 5; Tr. 65:20-25.) In support, the Board relied on the testimony concerning the history of the Subject Property and the Warren Waterfront District. (R. 5.) Here, there is substantial evidence in the record. As

stated before, substantial evidence is "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." *New Castle Realty Co.* 248 A.3d at 643. Here, there is substantial evidence in the record because the Board considered that the amendment is to extend an *existing building*, which is currently too small. (Tr. 65:20-24 (emphasis added).)

Additionally, the Zoning Board also determined that Appellees would not create a nuisance or a hazard in the neighborhood because the use is already an existing use and has been in operation for years. *Id.*; (Tr. 66:10-12.) After taking public comment from Ms. MacDougall and her concerns about noise and traffic (Tr. 45:17), the Board returned to Ms. Blount to hear solutions to these concerns and potential nuisances. They further concluded that they would barely be noticeable from the street and due to the installed insulation, noise will be buffered, which is supported by the testimony of Marcia Blount. (R. 5; Tr. 66:11-13.) Ms. Blount testified that the current hull shop is insulated already on the roof, which has shown a "tremendous decrease in noise" and the addition will also be insulated. (Tr. 60:11-21.) Accordingly, the Zoning Board concluded from testimony during the public hearing there will be no change in the circulation of traffic, change in employees, and there will be ample parking on site; a portion to the rear of the existing office building will be removed, which will also give more room for traffic circulation. (R. 4.); *see also* Tr. 66:14-67:10. All the facts the Zoning Board relied upon show substantial evidence that the Appellees' amendment would not create a nuisance or hazard.

Third, the Zoning Board concluded that Appellees' use will be compatible and consistent with the comprehensive plan land use map. (R. 5.) In support of this conclusion, the board relied on supportive letters of recommendations from the Warren Planning Board, the Warren Chamber of Commerce, and the State of Rhode Island, which stated that Appellees' facility will help the

offshore community, the wind farm industry, and will be good for the Town of Warren and the State of Rhode Island. *Id*.; *see* Tr. 67:13-21; *see also* Appellees' Opp'n Mem., Exs. 4, 5. Chairman Ellis also added that the special use is consistent with the comprehensive plan's future land use map for this area and it is a use envisioned by the land use map. (Tr. 67:22-25.) As such, the Board's decision here was also supported by substantial evidence in the record.

Lastly, the Zoning Board determined that the public convenience and welfare will be served because it will allow for current employees and jobs to remain intact, and will offer long lasting specialty skills and trade. *Id*. at 68:4-6. The Zoning Board recognized that there has been unanimous support for the Blount shipyard and its expansion from the people of Warren, town officials, and that based on this overwhelming support, it is almost "self-evident" that it will be helping the business build boats more efficiently and bring money and jobs to the Warren Waterfront District. *Id.* at 68:6-12; *see also* R. 5.

Thus, this Court finds that there is substantial evidence in the record to support the Zoning Board's decision to approve Appellees' special use.

C

Merger

1

Appellants are Collaterally Estopped from Relitigating Issue of Merger

Appellants aver that the Zoning Board's decision on appeal improperly held that all the lots of Subject Property are merged for zoning purposes. (Appellants' Mem. 16.)

Appellees aver that Appellants are barred from relitigating the merger by use finding based upon collateral estoppel. (Appellees' Opp'n Mem. 27.) Appellees argue that Appellants cannot relitigate the merger issue that was already resolved against their position in the 2016 Decision,

and, in any event, the Zoning Board's finding on merger is correct and entitled to deference. *Id*. at 23. They further argue that MacDougall, Blount, and the Zoning Board were all parties to the first Superior Court appeal, as well as the remand hearing before the Zoning Board, which resulting in the 2016 Decision. *Id.* at 28; (Appellees' Opp'n Mem., Exs. 2, 3); *see generally MacDougall v. Zoning Board of the Town of Warren, et al.*, PM2013-1185, Dec. 15, 2014, Nugent, J. Appellees also argue that the Zoning Board's 2016 Decision became a final judgment when no appeal of the Zoning Board's decision was filed. (Appellees' Opp'n Mem. 28.)

"Under the doctrine of collateral estoppel, 'an issue of ultimate fact that has been actually litigated and determined cannot be re-litigated between the same parties or their privies in future proceedings.' " *George v. Fadiani*, 772 A.2d 1065, 1067 (R.I. 2001) (per curiam) (quoting *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000)). Subject to situations in which application of the doctrine would lead to inequitable results, the Rhode Island Supreme Court has held that courts should apply collateral estoppel when the case before them meets three requirements: (1) the parties are the same or in privity with the parties of the previous proceeding; (2) a final judgment on the merits has been entered in the previous proceeding; (3) the issue or issues in question are identical in both proceedings. *Lee v. Rhode Island Council 94, A.F.S.C.M.E., AFL–CIO, Local 186*, 796 A.2d 1080, 1084 (R.I.2002) (per curiam) (citing *Wilkinson v. State Crime Laboratory Commission*, 788 A.2d 1129, 1141 (R.I. 2002)). The same rule should apply to the decision of a quasi-judicial administrative tribunal as to the judgment of a court. *Department of Corrections of State of Rhode Island v. Tucker*, 657 A.2d 546, 549 (R.I. 1995) (citing Restatement (Second) *Judgments*, ch. 6, § 83 (1982)). In *Tucker*, the Supreme Court indicated that the restatement suggests that such an adjudicative determination will be conclusive

as long as the administrative tribunal grants to the parties substantially the same rights that they would have if the matter were presented to a court. 657 A.2d 546 at 549.

From the facts before us, it is clear—and undisputed—that MacDougall, Blount, and the Board were all parties to the 2016 Decision and the administrative appeal before this Court. *See generally* R. 49-64. Additionally, this Court must determine whether James Carter is in privity with Jane MacDougall. Privity exists where there is "a commonality of interest[s]" such that one party adequately represents the other's interests. *Huntley v. State*, 63 A.3d 526, 531 (R.I. 2013) (citing *Lennon v. Dacomed Corp.*, 901 A.2d 582, 591 (R.I. 2006)).

Here, Carter is the son of MacDougall. (Appellees' Opp'n Mem. 28.) While Carter was not a party to the prior proceeding, there is also nothing in the record that suggests Carter had any involvement and/or participated in the appeal before this Court. He did not attend the public hearing, and the record is devoid of any evidence that he was in attendance at the site visit where both MacDougall and the Zoning Board were present. *See generally* Tr. Carter has not made a single showing that any view taken by him is inconsistent with that of MacDougall. For that reason, Carter is in privity with MacDougall.

Furthermore, the Superior Court appeal, followed by the 2016 Decision constitutes a final judgment on the merits. *Tucker*, 657 A.2d at 549 (citing Restatement (Second) *Judgments*, ch. 6, § 83 (1982) (suggesting that such an adjudicative determination will be conclusive as long as the administrative tribunal grants to the parties substantially the same rights that they would have if the matter were presented to a court.)). While the Rhode Island courts have not specifically answered this issue, this Court finds persuasive the reasoning of the Court of Appeals of Maryland in *Garrity v. Maryland State Board of Plumbing*, 135 A.3d 452, 464-67 (Md. 2016). In that decision, the Court of Appeals of Maryland states that they "have held that an agency decision can

have preclusive effect when that agency is 'performing quasi-judicial functions.'" *Id.* at 465. In further support, the *Garrity* court is of the opinion that the rules of *res judicata* may apply to administrative determinations and looks to the Supreme Court of the United States for guidance. *See id*. (citing *B & B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138, 149 (2015)).

In *B & B Hardware*, the owner of trademark SEALTIGHT has opposed before the Trademark Trial and Appeal Board (TTAB) another corporation's attempt to register the mark SEALTITE, and at the same time had sued that corporation in federal district court for trademark infringement. 575 U.S. at 141. TTAB issued a decision that registration of SEALTITE would result in a likelihood of confusion, where the owner subsequently sought for TTAB's ruling to have preclusive effect in the infringement litigation in federal court. *Id*. at 146. The district court rejected this request, reasoning that the TTAB is not an Article III court. *Id*. at 147. Thus, the relevant question before the Court was whether an agency decision can ever ground issue preclusion, which was answered in the affirmative. *Id.* at 148. (reasoning that [t]his reflects the Court's longstanding view that "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose"); Restatement (Second) *Judgments* § 83(1)) (explaining that "a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court").

Here, as previously stated, on remand, the Zoning Board conducted a hearing that the parties had the opportunity to relitigate the issue of merger, and was followed by the Zoning Board's 2016 Decision, which was a determination of the legal issue of merger, and following this determination, the issue was not further appealed by either party. Thus, the 2016 Decision is a

final judgement for purposes of this appeal. Additionally, the issue in question before this Court is identical to the issue in the previous proceeding. *See* R. 49-64. Thus, it is the view of this Court that Appellants are barred from relitigating the issue concerning the merger of lots of the Subject Property for purposes of zoning.

IV

Conclusion

For the foregoing reasons, the judgment of the Zoning Board as to the approval of Appellees' applications for dimensional variance and special use permit is affirmed, and Appellants are barred from relitigating the issue of merger under the doctrine of *res judicata*. Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	***James M. Carter and Jane MacDougall v. Town of Warren Zoning Board of Review, et al.***
CASE NO:	**PC-2022-06404**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**April 25, 2023**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiffs:	**Matthew J. Landry, Esq.**
For Defendants:	**Stephen J. Antonucci, Esq.; Anthony DeSisto, Esq.; Andrew M. Teitz, Esq.; Peter F. Skwirz, Esq.**