

*Curci v. Zoning Board of Review of the City of Warwick*, C.A. No. KC-2019-1240 (R.I. Sup. Ct., filed Dec. 2, 2021), <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/19-1240.pdf>.

**Zoning Board Decision:** October 11, 2019

**Superior Court Decision:** December 2, 2021

**783:** Number of days between the decision of Zoning Board and the decision of Superior Court.

**Holding:**

RI Superior Court (“the Court”) affirmed the City of Warwick Zoning Board’s (“the Zoning Board”) decision granting a dimensional variance for a parcel of land not meeting the minimum lot size requirements of the City’s Zoning Ordinance because the Zoning Board based their decision on sufficient factual evidence and applied the appropriate standard.

**Facts:**

SKJR Properties, Inc., Scott B. Jabagjorian, Van H. Jabagjorian, and Brian Jabagjorian (“Appellees”) proposed building a single-family house on a vacant lot (“the Parcel”), zoned Residential A-7.

Warwick Zoning Ordinance Section 302 requires that all lots zoned Residential A-7 are a minimum size of 7,000 square feet. Here, the Parcel was a nonconforming lot by area because it was only 3,764 feet. Thus, Appellees sought a dimensional variance pursuant to Warwick Zoning Ordinance 405.4(D) from the Zoning Board prior to the proposed construction.

On October 8, 2019, after two public hearings on the issue, the Zoning Board voted unanimously to grant Appellee’s dimensional variance. On October 11, 2019, the Zoning board issued its written decision, finding:

- (1) the hardship was due to the unique characteristics of the undersized subject land;
- (2) the hardship was not the result of a prior action and did not result from Appellees’ desire to realize financial gain;
- (3) the granting of the dimensional variance would not alter the general characteristics of the surrounding area; and
- (4) the requested relief was the least relief necessary.

On November 3, 2019, Richard and Gail Curci (“Appellants”), who owned property neighboring the lot in question, filed an appeal in Kent County Superior Court seeking to overturn the decision. Appellants raised two arguments on appeal: (1) the Zoning Board’s decision was based

upon clear error of law because the Zoning Board did not provide a factual basis for the decision, and (2) the Zoning Board erroneously cited to outdated standards of review for a dimensional variance.

**Arguments:**

**1. Clear Error of Law/No Factual Basis for Decision**

First, Appellants argued that the Zoning Board’s decision was based upon clear error of law because there was no factual basis for the decision.

Under R.I. General Law, a dimensional variance will only be granted where the applicant “*has shown by evidence on the record that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations.*” See R.I. Gen. Law § 45-24-31(66)(ii) (emphasis added).

Here, appellants alleged that the record did not provide evidence explaining the hardship, but instead merely attempted to relate the hardship to the characteristics of the Parcel itself. The Court rejected this argument, finding the record provided “ample evidence” for granting the variance. For example, Appellees had established that the hardship was the size of the vacant lot not meeting the 7,000 square feet requirement to build, the hardship existed long before the zoning ordinance was put in place, and the Appellees were not able to expand the size of the lot. Appellees further demonstrated that, without a variance, they would not be able build a residence, and the land would remain vacant and unused.

**2. Outdated Standards of Review**

Second, Appellants argued that the Zoning Board used outdated standards of review. While the Court agreed with Appellants that R.I. General Law § 45-24-41(d) provided the requisite governing standard, this standard is restated in Warwick Zoning Ordinance 906.3(A), which the Zoning Board applied.

Specifically, Section 906.3(A) provides, in relevant part:

“In granting a variance, the board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

- (1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not the general characteristics of the surrounding area, and is not due to the physical or economic disability of the applicant (For handicapped access. See section 304.10) [;]

(2) That said 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 characteristic of the surrounding area or impair the intent or purpose of this zoning ordinance or the comprehensive plan of the city; [and]

(4) That the relief to be granted is the least relief necessary.”

Here, the Zoning Board addressed each standard set forth in Section 906.3(A) and recited the supporting evidence for their findings. Thus, the Court held that the Zoning Board correctly applied the governing statutes for granting a dimensional variance.

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