

D.F.I Building and Development L.L.C v. Town of Johnston Zoning Board of Review, C.A. No. PC-2019-5045 (R.I. Sup. Ct., filed Jan. 18, 2022),
<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/19-5045.pdf>

Zoning Board Decision: March 12, 2019
Superior Court Decision: January 18, 2022

1,043: Number of days between the initial decision of Zoning Board and the decision of Superior Court.

Holding:

Rhode Island Superior Court (“the Court”) reversed the Town of Johnston Zoning Board’s (“the Zoning Board”) decisions denying a dimensional variance for a parcel of land not meeting the minimum lot size requirements of the Town’s Zoning Ordinance because the decisions lacked the necessary factual findings.

Facts:

D.F.I Building and Development L.L.C (“Plaintiff”) proposed building a single-family house on an unimproved lot (“the Parcel”), zoned Residential R-15.

A Johnston zoning ordinance requires that all lots zoned Residential R-15 be a minimum size of 15,000 square feet. Here, the Parcel was a nonconforming lot by area because it was only 13,000 square feet and did not contain the minimum frontage required. Thus, Plaintiff sought a dimensional variance from the Zoning Board prior to the proposed construction.

On February 28, 2019, the Zoning Board voted unanimously to deny the Plaintiff’s dimensional variance. On March 12, 2019, the Zoning Board issued a written decision (“First Decision”), finding the application did not seek the least relief necessary. *See* R.I. Gen. Law § 45-24-41(d)(4) (requiring zoning boards of review to include findings on the record that the relief to be granted is the least relief necessary when granting a dimensional variance).

On September 4, 2020, the Court remanded the case to the Zoning Board for findings of fact to support the Board’s denial of Plaintiff’s application.

Accordingly, on December 3, 2020, the Zoning Board held another hearing. Without considering any additional evidence, the Zoning board again denied Plaintiff’s application (“Decision on Remand”). This time, however, the Zoning Board denied the application because the applicant was primarily seeking greater financial gain. *See* § 45-24-41(d)(2) (requiring

zoning boards of review to include findings on the record that the hardship for which a dimensional variance is sought does not result primarily from the desire of the applicant to realize greater financial gain when granting a dimensional variance).

Plaintiff appealed, bringing the question before the Court of whether the Zoning Board's two decisions denying his application for dimensional relief were arbitrary, capricious, and an abuse of discretion.

Analysis:

The Court concluded that both of the Zoning Board's decisions denying Plaintiff's application were arbitrary, capricious, and an abuse of discretion for the following reasons.

First, the Zoning Board ignored the Court's order on remand to make findings of fact in support of its First Decision, which denied Plaintiff's application on the basis that the application did not seek the least relief necessary.

Second, the First Decision was made without the necessary findings of fact.

Third, the Decision on Remand provided an entirely different ground for denial—namely, that Plaintiff's application *was made primarily for greater financial gain*. In reaching this new conclusion, however, the Zoning Board failed to provide notice or hear any additional evidence. Moreover, at the initial hearing—and in direct contravention of the Decision on Remand—one Zoning Board Member specifically stated that the *application was not made primarily for greater financial gain*.

Fourth, like the First Decision, the Decision on Remand was made without the necessary findings of fact.

Accordingly, the Court granted the Plaintiff's appeal and ordered the Zoning Board to grant the Plaintiff's application, plus costs.

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