

Karten v. Town of Warren Zoning Board of Review, C.A. No. PC-2020-06734 (R.I. Sup. Court, filed Oct. 28, 2021), <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/20-06734.pdf>, (hereinafter “Karten Opinion”).

Zoning Board Decision: September 14, 2020

Superior Court Decision: October 28, 2021

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

Key Takeaway:

- Zoning Board decisions based on conclusory statements rather than supporting factual findings will not satisfy a prerequisite for judicial review.

Holding:

Providence Superior Court (“the Court”) remanded the Warren Zoning Board’s decision (“the Decision”) to deny a Special Use Permit request because the dissenting board members failed to include sufficient findings of fact or conclusions of law necessary to permit judicial review.

Facts:

Daniel Karten, Marissa Joinson, Tracy Joinson (together the “Appellants”) sought a special use permit (“SUP”) to build a two-family dwelling on a parcel of land zoned A-10 in Warren, RI.

Appellants submitted the SUP so that Tracy and her mother could both reside at the property. After the Warren Planning Board approved the proposal, the Warren Zoning Board (“the Zoning Board”) held a hearing on the issue via Zoom on August 19, 2020.

After hearing arguments, the Zoning Board held a vote, with three members voting in support of the motion (“Supporting Members”) and two voting against (“Dissenting Members”). Because Rhode Island General Law and the relevant Warren Ordinance require four out of five of the board members to support the motion, the SUP application was denied. *See* 45-24-57(2)(iii); *see also* Warren Ordinance 32-21.

Analysis:

In its analysis, the Court relied heavily on the standard set by the RI Supreme Court in *Bermuth v. Zoning Board of Review of Town of New Shoreham*, stating: “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.*” 770 A.2d 396, 399 (R.I. 2001) (emphasis added).

Further, courts must “decide whether the board members resolved the evidentiary conflicts, made the prerequisite factual determinations, and applied the proper legal principles.” *See* Karten Opinion at 9 (quoting *Bermuth* at 401). Findings must be “factual rather than conclusional.” Karten Opinion at 9.

Warren Ordinance Section 32-30 provides that a SUP shall be permitted only if the board finds:

- “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.”

Here, while the Supporting Members laid out support for each of the above standards in their decision, the Dissenting Members did not. First, the Supporting Members found the SUP was compatible with the neighboring land uses because there was a mix of housing types within the general vicinity, including two-family dwellings. Second, no board members found the SUP to pose any threat of nuisance or a hazard in the neighborhood. Third, the Supporting Members stated that the SUP was compatible with the comprehensive community plan *and* served the public convenience and welfare because it encouraged diversity in housing stock and multi-generational living arrangements.

Conversely—and critical to the Courts conclusion—the Dissenting Members’ findings lacked a sufficient factual basis because they were merely conclusory.

For example, one Dissenting Member merely stated that “Laurel Lane does not have two-family dwellings and the one proposed would not seem compatible with the neighborhood,” but failed to provide any evidence to support this finding. Similarly, another Dissenting Member stated he did not find the SUP compatible with the neighboring uses and the comprehensive plan, but failed to state the evidence supporting such conclusions. Moreover, these assertions were in conflict with the supporting evidence provided by the Supporting Members.

Accordingly, because the Dissenting Members failed to sufficiently support their conclusions, and because the Zoning Board failed to resolve evidentiary conflicts, the Court found the Decision failed to satisfy the *Bermuth* standard to permit judicial review. Thus, the Court remanded the Decision for the Zoning Board to make the sufficient findings of fact.

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