

David A. Caldwell, Jr. and Ernestine Mercurio v. Zoning Board of Review of Narragansett of the Town of Narragansett, et al., No. WC-2018-0005 (March 15, 2022), <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/18-0005.pdf>

Zoning Board Decision: December 18, 2017

Superior Court Decision: March 15, 2022

1,538: Number of days between the decision of Zoning Board and the decision of Superior Court.

Key Takeaways:

- Development of a parcel that does not conform to a municipality’s zoning ordinance must meet each and every prong of the standards for zoning relief.
- The burden to prove each standard of zoning relief rests with the applicant for zoning relief.
- “More than a mere inconvenience” means there is no other reasonable alternative to enjoy a legally permitted beneficial use of one’s property *Lischio v. Zoning Board of Review of Town of North Kingstown, 818 A.2d 685, 691 (R.I. 2003)*
- “If expert testimony before a zoning board is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for a zoning board to reject such testimony.” *Murphy v. Zoning Board of Review of Town of South Kingstown, 959 A.2d 535, 542 (R.I. 2008)*

Holding:

RI Superior Court (“the Court”) affirmed the Zoning and Platting Board of Review of the Town of Narragansett (Board) decision denying the Appellants request for a front-yard setback variance and a special use permit to construct a home in the Narragansett Coastal Resources Overlay District. The Court found the Board’s decision was supported by substantial evidence, and was not clearly erroneous, arbitrary, or capricious, or an abuse of discretion.

Facts:

The owner of a parcel of vacant land measuring 9,157 square feet in Narragansett applied to construct a single-family home. The land is located in an R-10 Residential Zoning District which requires lots to be 10,000 square feet, is within the Special Flood Hazard Area Overlay District, as well as the Coastal Resources Overlay District which requires a Special Use Permit for the construction of a home.

Section 4.4 of the Narragansett Zoning Ordinance defines Coastal Resources Overlay Districts to extend inland 200 feet from coastal features. As a result, the Appellants applied for a 175.5-foot

variance from the coastal features and a Special Use Permit to construct a home in this district. The proposed home also required a variance from the front-yard setback requirement.

On November 16, 2017, a public hearing was held for the applicant to present its case before the Zoning Board where expert witnesses on residential construction, engineering, wetlands biology, and real estate appraisals testified.

On December 18, 2017, the Zoning board issued a written decision stating that based on the findings of fact and the testimony presented, the relief requested by the applicant was not the least relief necessary. The relief requested was denied unanimously by the Zoning Board.

On January 2, 2018, Appellants appealed the Board's Decision, arguing that the board's decision was clearly erroneous in view of the evidence of the whole record.

Arguments:

- 1. Appellants argued the board abused its discretion by failing to acknowledge that the constraints of the lots present a hardship and that dimensional relief is required to construct any dwelling on the parcel.**

Under R.I. General Law, the Zoning Board is empowered to grant a dimensional variance to applicants meeting the following standards: See R.I. Gen. Law § 45-24-41(d)(e)

- (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 § 45-24-41(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.

The Board heard testimony from Craig Carrigan (Carrigan) a registered professional engineer in Rhode Island who stated the need for the dimensional variance was to obtain a better setback from the coastal feature which included a rip-rap wall. The Court found the Board understood

some dimensional relief would be required to construct a home on the property. The Court also found the Board denied the application because the applicant failed to demonstrate the relief was the least relief necessary and not because the applicant failed to prove that the hardship from which the applicant seeks relief is due to the unique characteristics of the land.

2. Appellants argued the zoning board cannot cite to a prior owners' lack of caretaking as a reason for denial

The Court found the Board did not cite self-created hardship or the prior owner's lack of caretaking as a reason for denying Appellants' request for a dimensional variance.

An abutter did speak at the Zoning Board hearing, arguing that the landowner of the parcel in-scope neglected their land which led to its current day limitations to development. The Court found the Board did not use the argument of the abutter as a basis for denial.

3. Appellants argued the Board's decision was clearly erroneous in view of the evidence of the whole record and specifically that the Board based its decision on one factor.

The Appellants argued they demonstrated they asked for the least relief necessary because any structure would require an encroachment into the Coastal Overlay Zone and the front yard setback.

The Court disagreed, citing the Planning Board's Project summary which explained the front-yard setback variance of the proposed house only served the purpose to allow the Appellant a larger home than the undersized lot should support. Additionally, CRMC Staff Geologist commented in CRMC's recommendation that "the dwelling footprint is larger than many of the surrounding dwellings" and "the dwelling should be reduced in size to the absolute minimum." Staff comments also stated the project is not the least variance necessary from either the front yard-lot line or the coastal feature, and that the variances do not enhance the protection of environmentally sensitive features. The Court also noted the expert witnesses in the field of residential construction and the expert witness in the field of wetland biology both testified at the Zoning Board that the size of the house could be reduced, which evidenced the Appellants did not seek the least relief necessary.

The Court found the Appellants failed to demonstrate why a smaller house was not a reasonable alternative, and that the record is devoid of evidence indicated the proposed project was the

minimum size necessary. The Court found the Appellants would have only suffered a mere personal inconvenience if the relief wasn't granted.

4. Appellants argued the Board failed to address the Special Use Permit

The Court found that the Board could not grant a special use permit unless a project that requires dimensional relief is granted the least relief necessary. The special use of allowing a home in the Coastal Resource Overlay District could not exist without obtaining dimensional relief. Because the applicant did not meet the legal burden of demonstrating the project met the least relief necessary, the evidence did not support the board in granting a special use permit.

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