

Peter DelPonte v. Johnston Zoning Board of Review, et al. No. PC-21-07059 (October 24, 2022)  
<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-07059.pdf>

**Holding:**

Rhode Island Superior Court upheld the Town of Johnston Zoning Board of Review’s approval of a dimensional variance for the Petitioner seeking to construct an addition on a single-family dwelling. The Court found the Zoning Board did not act arbitrarily, and the Petitioner’s requested relief is reasonably necessary for the full enjoyment of his property.

**Key Takeaways:**

1. The Petitioner argued they needed more space in their home due to an additional occupant, the home’s design was awkward and inefficient, and that they needed laundry facilities on their living level. The Court found that standing alone those factors may not amount to “more than a mere inconvenience,” but taken together, the Zoning Board did not act arbitrarily.
2. The Zoning Board’s written Decision and the Hearing transcript contained sufficient factual determinations and referenced the proper legal standard for dimensional variances.
3. A municipality’s Zoning Board enjoys judicial deference. “This Court’s mandate is not to second-guess the Zoning Board but rather to “examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.”” *Lloyd*, 62 A.3d at 1083 (quoting *Apostolou*, 120 R.I. at 507, 388 A.2d at 824).

**Facts:**

Petitioner planned to expand his 1,800 square foot, single family residence on a 24,000 square foot parcel in Johnston, RI. Because the subject lot is in an R-40 Zone, requiring a minimum lot size of 40,000 square feet, the Petitioner sought a dimensional variance from the lot size restriction for his addition.

The Petitioner sought to build an extension on his house to accommodate cohabitating with a new partner. The existing home is an L-shaped ranch. The addition would “fill in the negative ‘dead space’” and create a new bed room and walk-in closet, and allow the relocation of laundry appliances from the basement to the first floor.

The rear-yard neighbor’s counsel argued before the Zoning Board the Petitioner did not meet the requirements to obtain dimensional relief.

The Zoning Board voted 5-0 to approve the Petitioners request for dimensional relief after hearing arguments from the Petitioner and counsel from the abutting neighbor.

The abutter appealed the Zoning Board’s decision to Superior Court. The Superior Court’s review of a zoning board decision is governed by § 45-24-69(d).

**Analysis:**

**1. Adequacy of Findings and Conclusions**

The Appellant argued the Zoning Board’s Decision lacked “adequately articulated findings and conclusions.”

The Court found the Zoning Board’s written Decision and the Hearing transcript contained sufficient factual determinations and referenced the proper legal standard for dimensional variances found in §§ 45-24-41(d) and (e)(2). The findings in the Board’s written decision provided facts supporting a hardship, that the applicant did not seek financial gain, that the character of the area would not be impacted, and the least relief necessary was sought.

**2. General Character of the Surrounding Area**

Appellant argued the Zoning Board’s Decision was clearly erroneous because necessary expert testimony wasn’t established to find the addition would not conflict with the character of the neighborhood.

Citing *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 690 n.5 (R.I. 2003), the Court decided that no expert was required to determine that a dimensional variance for road frontage would adversely impact the surrounding area because a single-family residence is an allowed use on the subject parcel, and the petitioner is seeking a small addition within the town’s current setback and height limits.

**3. Least Relief Necessary**

Appellant argued the Zoning Board’s decision was clearly erroneous because sufficient evidence wasn’t shown that the relief sought was the least relief necessary.

The Court disagreed, finding the record showed the Zoning Board found that the addition did not require the structure be expanded closer to any neighbor and cited the review conducted by the Town Planning Department raised no objection and agreed that the proposed addition necessitated the least possible variance to expand the structure.

**4. More than a Mere inconvenience**

Appellant argued the Petitioner didn’t provide sufficient evidence that they would suffer an adverse impact more than a mere inconvenience if their dimensional variance was denied.

The Court found that standing alone, the Petitioner’s need for more space due to an additional occupant in the home, the awkward and inefficient design of the home, and the benefit of laundry facilities on the living level arguably may not amount to “more than a mere inconvenience,” but taken together, the Zoning Board did not act arbitrarily, and Petitioner’s requested relief is reasonably necessary for the full enjoyment of his property.

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