

John and Jill Hayes v. Charlestown Zoning Board of Review, et al., C.A. No. WC-2020-528
(October 26, 2022)

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/20-528.pdf>

Holding:

Rhode Island Superior Court affirmed the Charlestown Zoning Board of Review’s decision to approve a dimensional variance for petitioner seeking to demolish an existing one-story single-family dwelling and build a three-story home on the existing foundation which encroaches into the front and side-yard setback areas.

Zoning Board Decision: November 17, 2020

Superior Court Decision: October 26, 2022

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

Key Takeaways:

1. The Court found the Zoning Board’s decision was supported by substantial evidence on the record. The Board found the petitioner’s proposal to build a larger home on their existing foundation as to not further encroach upon neighbors or a coastal feature met the statutory requirements to obtain dimensional relief.
2. The Supreme Court has provided examples of when a proposal would alter the general character of a surrounding area. See *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 693 (R.I. 2003) structures that are “*massive or out of place*” or a variance that would “*eliminate the front yard or sidewalk in a residential neighborhood.*”
3. “*If the mere fact that a proposal invaded the setbacks violated the character of the surrounding area—such invasion being the very reason for the dimensional variance—no dimensional variance could ever be granted.*”

Facts:

Property owners on West Beach Road in Charlestown, Rhode Island sought to demolish their existing one-story ranch-style house measuring 1,564 square feet, on a prior nonconforming substandard lot, to construct a three-story 2,800 square foot home. The petitioner’s application to the Zoning Board requested six feet of relief from the front-yard setback requirement and seven and a half feet of relief from the side-yard setback requirement.

The property is located within 50 feet of coastal wetlands which requires the project be approved by CRMC. The property is also located in a flood zone, and as a result, the petitioner proposed to fill in the basement to be compliant with FEMA requirements.

The petitioner’s application was heard at the Zoning Board on September 15th, October 20th, October 29th, and November 17th of 2020.

Petitioner provided testimony from James Houle as an expert witness in real estate appraisal and Scott Rabideau as an expert coastal biologist. Abutters opposing the dimensional relief (Appellants) provided testimony from Ashley Sweet as an expert in community planning, land planning, and zoning.

On November 17, 2020, the Zoning Board voted 4-1 to approve the application. Abutters appealed, contending (1) the Zoning Board's decision failed to make the factual determinations and/or apply the proper legal principles, (2) petitioner must obtain a Special Use Permit, (3) the decision is clearly erroneous in light of the record, and (4) Zoning Board members abused their discretion.

Analysis:

1. Adequacy of the Zoning Board's Finding

Appellants argued the Zoning Board's decision failed to make the factual determinations and/or apply the proper legal principles, and that there is no evidence on the record that the Board approved the written decision.

The Court disagreed, finding the Acting Chairwoman of the Board stated her reasoning on the record and the Recorded Letter of Approval provided sufficient factual findings and legal conclusions to facilitate judicial review. The Zoning Board's Recorded Approval Letter included the proper standards from Rhode Island General Laws and provided factual detail.

2. Special Use Permit or Dimensional Variance

Appellants provided testimony to the Zoning Board from Ashley Sweet as an expert in community planning, land planning, and zoning. Ms. Sweet testified that the Petitioner's proposal necessitated a Special Use Permit, not just a dimensional variance based on her interpretation of the Charlestown Zoning Ordinance which states "*A pre-existing nonconforming use of a building, structure, or land may be added to, enlarged, expanded or intensified by an additional footprint of not more than 50 percent in excess of the existing floor area, land or intensity used only if such addition, enlargement, expansion or intensification is approved by the issuance of a special use permit by the Zoning Board of Review.*"

The Court disagreed, determining that the subject property was conforming by use, and therefore the application only required dimensional relief from the Zoning Board. The language cited by Ms. Sweet only required the enlargement of nonconforming *uses* to obtain a Special Use Permit, and since the subject property was a conforming single-family use, the proposed expansion did not trigger the need for a Special Use Permit.

3. Hardship

Appellants argued the Petitioner's lot is not unique, as it is typical of the surrounding parcels in the neighborhood and that even if the lot depth and narrowness rendered the parcel unique, it is not related to the applicant's requested relief. Appellants also argued the hardship was self-created by demolishing their existing structure.

The court disagreed, finding substantial evidence existed in the record establishing the petitioner’s hardship is due to the unique characteristics of the parcel. The record showed the proposed structure was on the existing foundation to avoid further encroachment on neighbors and on the coastal feature, and that the “requested relief flows directly from the hardships.”

Regarding a self-created hardship, the Court decided “all variances arise from an applicant’s desire to make some change to their property...If that fact alone mandated denial of a dimension variance request, no application could ever be granted.”

4. Character of Surrounding Area

Appellants argued the granting of requested relief would alter the general character of the neighborhood because there are no three-story houses on the petitioner’s side of West Beach Road.

The Court used the standard for altering the general character of a surrounding area used by the Supreme Court in *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 693 (R.I. 2003) where they used examples such as “structures that are ‘massive or out of place’ or a variance that would eliminate the front yard or sidewalk in a residential neighborhood.”

Therefore, the Court did not substitute their judgement for the Zoning Board, which credited the Petitioner’s proposal for utilizing the existing footprint, with no further encroachment of any setback area.

5. Least Relief Necessary

Appellant argued the Zoning Board member provided two alternative proposals: (1) to reduce the size of the top floor and (2) to build within the setbacks by partially utilizing the existing foundation.

The Court found the Zoning Board “relied on substantial evidence in the record that Petitioner’s Application represented the least relief necessary and that alternative proposals were otherwise unreasonable.” The Court noted the alternative to reduce the size of the top floor would not reduce the variance requested, as the petitioner’s proposal did not exceed the Town’s height limitations, and that reducing the size of the top floor would have “no ameliorating effect on the requested setback relief.”

6. Zoning Board Member’s Conduct.

Appellant argued that one Zoning Board member “demonstrated impermissible bias” against the Appellant’s expert witness Ms. Sweet. Appellant argued the Zoning Board member used “raucous vigor and tone” to help the Petitioner and to discredit the witness.

The Court found no evidence the Zoning Board member was personally conflicted, and that

“There is no prohibition against a zoning board member engaging in such questioning generally, or against this order of questioning specifically.”

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