

Nicholas and Pamela Gelsomini v. Kate Butcher, et al., C.A. No. WC-2021-0313 (December 19, 2022) <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0313.pdf>

**Holding:**

Rhode Island Superior Court affirmed the Town of New Shoreham Zoning Board of Review’s decision denying the Appellant’s application for a special use permit to demolish their current 809 square foot house and build a 4,143 square foot single-family dwelling.

**Key Takeaways:**

1. The Zoning Board found the proposal was not “*visually and dimensionally compatible with the surrounding area*”. The Court found the record clearly showed the Zoning Board’s Decision to deny the application is supported by substantial evidence on the record.
2. The Town of New Shoreham requires houses exceeding a building footprint of 2,000 square feet to obtain a special use permit and follow a Development Plan Review process.
3. “*The burden is upon the applicant-i.e., the Appellants- to provide an application that meets the standards*”

**Facts:**

Appellants own 617 Off Corn Neck Road in New Shoreham, RI measuring about 6 acres in an RA Zone. Appellants proposed to demolish their existing 809 square foot house to build a 4,143 square foot single-family dwelling, a 1,792 square foot accessory residential structure, a 462 square foot inground pool, and a 64 square foot spa on the parcel.

Section § 306(E) and 406 of the New Shoreham Zoning Ordinances (NSZO) require a special use permit for residential structures in the RA Zone that exceed a building footprint of 2,000 square feet, a living area of 3,300 square feet, a gross area of 5,000 square feet, or a building volume of 45,000 cubic feet. The Ordinance also requires such applications be subject to Development Plan Review by the Planning Board.

On January 26, 2021 Appellants applied for a special use permit from the Zoning Board because the size of the proposed house exceeded 2,000 square feet.

On April 29, 2021 the Planning Board recommended the Zoning Board deny the application because they found the proposal to be inconsistent with the New Shoreham comprehensive plan because the proposal is “*visually intrusive, is in conflict with the traditional New Shoreham development patterns, and will have a negative impact on coastal wetlands of the Great Salt Pond.*”

On June 23, 2021, the Zoning Board voted 5-0 to deny the application.

On July 19, 2021, Appellants appealed the Zoning Board’s decision to Superior Court.

**Analysis:**

Appellants appealed Zoning Board’s decision, arguing it “*was clearly erroneous in the absence of substantial evidence in the record*” and that the proposal met all requirements of the Zoning Ordinance and all findings required to obtain a special use permit.

**Conforming to Section 306(E) and 406(G) of the Zoning Ordinance**

Appellants argued their application satisfied all requirements of section 306(E) and 406(G) of the Zoning Ordinance which requires the construction of new residential structures to conform to certain dimensional standards such as lot coverage and building heights.

The Court determined the Zoning Board considered the requirements of section 306(E) and 406(G) by determining the proposed house exceeded the by-right maximum square footage allowed in almost every category, such as living area, gross area, and volume. The Court found the Zoning Board explained “*a development of the size proposed by Appellants and in the location proposed by Appellants will not serve the purpose of § 406 nor complement the unique island character*”. The Board was specifically concerned about the size, scale, and bulk of the house and how it would be seen from the entire Great Salt Pond area.

The Board cited the intent of § 406 of the Zoning Ordinance is “*to ensure that new residential development is designed and sited in a way that complements, and does not detract from, the island’s natural, historic, cultural, and scenic character, the preservation of which is to the benefit of all residents and visitors.*”

Therefore, the Court found the Zoning Board’s consideration and discussion of whether the application met the requirements of the Zoning Ordinance served as substantial evidence to support the Board’s denial of the application.

**Consistent with Section 514 Performance Standards**

Appellants argued their proposal was not visually intrusive or in conflict with traditional New Shoreham development patterns and therefore conformed to all performance standards in Section 514 of the Zoning Ordinance.

The Court determined that even if the proposal was consistent with section 514 of the Zoning Ordinance, it is “*just one of the many requirements that the Zoning Board must consider*”, and is not the determining factor of whether the Board approves or denies a special use permit.

**Meeting the General Criteria for Special Use Permits**

Appellants argued they met the criteria for a special use permit, and that the Zoning Board focused its denial on the most subjective standards, §401 (A)(1) and (2) which outline the proposed use must be appropriate for the specific site and that the proposed use will not adversely affect the established physical and visual pattern of land use.

The Court found the record clearly indicated the Zoning Board explained the proposal was not able to meet Section §401 (A)(1) and (2) because the proposed house was significantly larger than the houses on abutting properties, the proposal lacked harmony with the other residential

structures in the vicinity, and was not visually or dimensionally compatible with the surrounding area.

As a result, the court found there was substantial evidence on the record to support the Zoning Board's decision to deny the application.

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