

*Pettis Properties, LLC v. The Zoning Board of Review of the City of Providence, et al.*, C.A. No. PC-2021-00356 (January 12, 2023)

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-00356.pdf>

**Holding:**

Rhode Island Superior Court affirmed the decision of the Providence Zoning Board of Review (ZBR). The Providence ZBR voted to bar the Petitioner’s third application for a use variance to construct an electronic billboard based on the grounds of administrative finality. The Board’s decision was based on the conclusion that no material changes were made to the Petitioner’s application since it was last denied.

**Key Takeaways:**

1. The Court found the Providence ZBR made findings of fact that the petitioner’s application for a billboard did not make “internal” or “external” material changes since the application was last denied. The Board voted to bar the petitioner from submitting a third application for zoning relief based on the following findings:
  - a. The redesignation of the location from a C-4 zone to a C-3 Zone was immaterial because the current zone has the same requirements as the prior C-4 Zone.
  - b. Both the 2011 Zoning Ordinance and the current Ordinance prohibit billboards in all zoning districts.
  - c. Relief from the 2011 Ordinance and relief from the current Ordinance entail the same remedy: a use variance for billboards and electronic billboards
2. *Costa v. Gagnon*, 455 A.2d 310 (R.I. 1983) provided guidance to Superior Court regarding their application of the doctrine of administrative finality.
3. The Administrative Finality Doctrine requires that even successors in interest to an owner must establish that a substantial or material change has occurred *Audette v. Coletti*, 539 A.2d 520, 522 (R.I. 1988).

**Facts:**

On May 12, 2011 Petitioner applied to the Providence Zoning Board requesting a use and dimensional variance to build an electronic billboard at 58 Printery Street in Providence, RI. The Board granted the requested relief in July of 2011. In August, 2011, the Board’s Decision was appealed to Superior Court where the Court remanded the application back to the Zoning Board “to make findings and conclusions regarding whether an animated billboard with a changing message was the least relief necessary.” *Charles Orms Associates v. Zoning Board of Review of the City of Providence*, No. PC-2011-5879, 2014 WL 1246535 (R.I. Super. Mar. 14, 2014). Petitioner never rescheduled a meeting with the Zoning Board following the Court’s Decision.

On January 19, 2016, Petitioner filed an application for zoning relief to construct the same billboard, and the ZBR voted unanimously to grant the application. The Decision was appealed to Superior Court, and the Court again found insufficient evidence to support the Board’s conclusion that an electronic billboard was the least relief necessary. The Court did not remand the matter back to the Zoning Board, stating it would be inappropriate and unfair.

In August 2020, for the third time, petitioner applied for a use and dimensional variance to construct an electronic billboard. The Board voted to bar Petitioner’s application based on the grounds of administrative finality, making three findings of fact:

1. *The redesignation of the location from C-4 zone to C-3 zone was immaterial because the current C-3 zone has “substantially the same prerequisites and requirements as the prior C-4 zone.”*
2. *Both the 2011 Ordinance and the current Ordinance prohibit billboards in all zoning districts within the city.*
3. *Relief from the 2011 Ordinance and relief from the current Ordinance entail the same remedy: use variances for billboards and electronic billboards.*

Petitioner appealed this decision to Superior Court.

### **Analysis:**

Petitioner argued the Zoning Board can hear the application for zoning relief because:

1. The Providence Zoning Ordinance has changed since the last application, which now only requires the application to obtain one use variance as opposed to two use variances under the old Ordinance.
2. It has new evidence to support the argument an electronic billboard is the least relief necessary.

The Providence Zoning Board argued there is no “internal” or “external” material changes to the Petitioner’s application.

#### **1. Internal Change**

The Court determined the record is devoid of any internal material change because the Petitioner did not provide any evidence supporting its plan to construct an electronic billboard differs in any substantial way from its previous applications. The Court determined that although the Zoning Ordinance has been changed since the previous application, the relief requested is the same – a use variance.

#### **2. External Change**

The Court determined the petitioner did not meet the burden to show an “external” material change occurred. The Petitioner argued static billboards are no longer feasible as they cost more to operate and maintain compared to an electronic billboard, and wished to submit this evidence to the Zoning Board. The court found this information is not new, as it existed at the times of the previous proceedings for the first two applications for zoning relief.

The court found competent evidence existed on the record to support the Board’s finding.

***\*All information contained on this website and the newsletter associated therewith are intended solely for informational purposes and in no way should be interpreted as providing legal advice.***