

*Curtis H. Fisher, et al. v. Zoning Board of Review of the Town of North Kingstown, et al., C.A. No. WC-2022-0134 (February 13, 2023)*

**Holding:**

Rhode Island Superior Court affirmed the decision of the North Kingstown Zoning Board of Review (ZBR) to approve an application seeking four dimensional variances and two special use permits to renovate the former Wickford Elementary School for use as a 39-unit condominium development.

**Link to Decision:** <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/22-0134.pdf>

**Key Takeaways:**

1. Property owners abutting the former Wickford Elementary School argued that redevelopment of the vacant site in its existing three-story footprint would not be economically impossible, and therefore, questioned the development proposal’s two-story addition was the “least relief necessary”.
2. The Court reiterated “*The standard for a dimensional variance **does not require “economic impossibility,” nor does it require that a zoning board close its collective mind to public interest factors and the town or taxpayers’ reasonable interest in the relief requested.***”
3. The Court affirmed the Zoning Board’s approval of all requested relief, finding the decision was supported by substantial evidence on the record, including unrebutted expert testimony of the Petitioner’s engineer, architect, traffic engineer, and freshwater and coastal wetland biologist.
4. The Court stated that the public interest does factor into a zoning board’s determination, citing to the Rhode Island Supreme Court Case *Travers v. Zoning Board of Review of Town of Bristol*, 101 R.I. 510, 514, 225 A.2d 222, 224 (1967) “*to deny the applicant a fuller use of his property and at the same time serve no public interest would be arbitrary and an abuse of discretion.*”

**Facts:**

The former Wickford Elementary School, referred to in the decision as Wickford EL, is located at 99 Phillips Street, sits on 6.12 acres in an area zoned within the Wickford Village Center district, and is owned by the Town of North Kingstown.

The Town issued an RFP for redevelopment of the site which has sat unused and vacant for 15 years. Petitioner, Wickford Schoolhouse, LLC, entered into a Purchase and Sales Agreement with the Town to convert the Wickford EL into a 39-unit condominium development. The applicant also plans to convert the Olde Wickford Theatre into eighteen condominiums and locate 21 of those parking spaces at the Wickford EL property.

On March 30, 2022, the Zoning Board of Review voted 5-0 to approve the four requested dimensional variances, and two special use permits listed below:

1. Dimensional variance of 4,063 square feet from the 7,000 square foot maximum building footprint.
2. Dimensional variance of two stories to bring the building to five stories. The maximum number of stories allowed in the subject district is three.
3. Dimensional variance of 22.32 feet to exceed the maximum building height which is 35 feet.
4. Dimensional variance to allow off-street parking in the front of the building facing Phillips Street, which is prohibited under the Town's Zoning ordinance.
5. Special Use Permit to allow for the gross square footage of 55,540 square feet, exceeding the 4,000 square foot gross floor area limit
6. Special Use Permit to allow a multi-family dwelling in excess of three dwelling units.

On April 19, 2022, Appellants, who include numerous abutters, appealed to Superior Court.

### **Analysis:**

#### **1. Dimensional Variance Standard**

Appellants argue the variances requested by the applicant to exceed the maximum building height, the maximum number of building stories, and the inclusion of parking in the frontage of the parcel facing Phillips Street does not “*relieve a hardship amounting to ‘more than a mere inconvenience,’*” and “*exceed the least relief necessary.*”

The Court found the Zoning Board did not err in its decision in light of substantial, competent, and un rebutted evidence of the record which indicated the Wickford EL sat vacant for more than 15 years, that the development would have a positive impact environmentally, cause no traffic hazard or congestion, and that the proposal complied with the Town's Comprehensive Plan, and that the proposed addition was necessary and supported by the Rhode Island Historical Preservation and Heritage Commission.

#### **2. Economic Impossibility**

Appellants argue that the approval of the Application was in error because no evidence was before the Zoning Board stating it would be economically impossible to keep the development limited to three stories, instead of the requested five stories.

The Courts found “economic impossibility” is not the standard to justify approval of a dimensional variance, stating an application seeking a dimensional variance does not need to show “economic impossibility” to establish that a denial of the requested variance would amount to more than a mere inconvenience:

*“The standard for a dimensional variance does not require “economic impossibility,” nor does it require that a zoning board close its collective mind to public interest factors and the town or taxpayers’ reasonable interest in the relief requested. The proper standard is simply whether there is substantial evidence in the record to support the zoning board’s conclusion—i.e., “relevant evidence that a reasonable mind might accept as adequate” —that the adverse impact to the applicant is more than a mere denial of a personal preference.”*

### **3. Value to Community**

Appellant also argued that the redevelopment plan’s value to the community has nothing to do with the legal standard for determining a dimensional variance. The Court disagreed, stating that the public interest does factor into a zoning board’s determination, citing to the Rhode Island Supreme Court Case *Travers v. Zoning Board of Review of Town of Bristol*, 101 R.I. 510, 514, 225 A.2d 222, 224 (1967) *“to deny the applicant a fuller use of his property and at the same time serve no public interest would be arbitrary and an abuse of discretion.”*

### **4. Front Yard Parking**

The Town Zoning Ordinance prohibits off-street parking spaces to be constructed in-between the building and Phillips Street in this particular district. The Petitioner’s plan included the construction of 24 parking spaces in the front of the building, finding it to be the best location for the three handicap spaces and for circulation for emergency vehicle access. As a result, the Court determined that the Zoning Board did not abuse its discretion in granting the requested relief.

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