

James Woods v. Harry Hawker, III and Town of Exeter Zoning Board of Review, C.A. No. WC-2022-0240 (March 20, 2023)

Holding:

Rhode Island Superior Court affirmed the decision of the Town of Exeter Zoning Board of Review to grant an application for dimensional variances to construct a single family dwelling on an undersized, pre-existing, non-conforming lot.

Link to Decision: <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/22-0240.pdf>

Key Takeaways:

1. The Zoning Board determined that denying the requested dimensional variances would result in more than a mere inconvenience, because a denial would result in the applicant not being able to build a single-family home on their property due to the size of the parcel not meeting the dimensional requirements of Exeter's Zoning Ordinance.
2. There is no statutory requirement that supplemental notice must be sent when a zoning board hearing is continued to a date certain. See RI Gen Laws § 45-24-41 and *Tramonti v. Zoning Board of Review of City of Cranston*, 93 R.I. 131, 135, 172, A.2d 93, 95 (1961).
3. In straightforward applications, where evidence to support the conclusion of the zoning board is on the record, applicants are not required to submit expert testimony to prove their requested relief does not alter the general character of the surrounding neighborhood.

Facts:

Owner of 0 West Shore Drive, Exeter, RI, applied for a dimensional variance from the Exeter Zoning Board seeking relief from the Town's minimum required street frontage, front setback, side setbacks, and rear setback for the construction of a single family dwelling.

The application was first heard at the April 14, 2022 Zoning Board Hearing. Due to questions from the Board on discrepancies on the survey, the Board continued the meeting to May 12, 2022. Due to additional discrepancies regarding the exact distance of front setbacks, the meeting was again continued to June 15, 2022.

On June 15, 2022, the Zoning Board approved the application for dimensional relief from street frontage, front setback, south side setback, north side setback, and rear setback.

On July 6, 2022, Appellant (neighbor) appealed the decision to Superior Court.

Analysis:

1. Notice

Appellant argued the Zoning Board did not properly notice the May Zoning Board hearing which was a continuation of the April Zoning Board meeting.

The Court disagreed, stating “*there is no statutory requirement that supplemental notice must be sent when a zoning board hearing is continued to a date certain.*” See RI Gen Laws § 45-24-41.

The Court also noted “*appearance before the zoning board is proof that the unnotified party had the opportunity to present facts that would assist the zoning board in the performance of its duties, and*

therefore, such a party waives the right to object to any alleged deficiency of notice.” citing to Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011).

2. Nonconforming Lot

Appellant argued that section § 3.5.4.C of the Exeter Zoning Ordinance required the Applicant to “*establish that his intended residential use of the Property met all requirements of Article II without dimensional relief.*”

The Court disagreed, stating that the Appellant’s interpretation of the Zoning Ordinance would prevent the Applicant from their right to seek dimensional relief for a use that is permitted by-right. The Court determined the property owner of a nonconforming lot is permitted to build a house on the lot as long as the property owner complied with dimensional regulations. If the lot cannot meet the dimensional regulations, the State Zoning Enabling Act expressly grants property owners the right to request dimensional relief, citing RI Gen Laws § 45-24-41(a).

3. General Character of the Surrounding Area

Appellant argued the Applicant failed to present any expert testimony that the relief requested would not alter the general character of the surrounding area, impact surface water runoff, or reduce neighboring property values.

The Zoning Board argued “an ‘*applicant for a straightforward dimensional variance to construct a single family home is not required to present any expert testimony*’ because the Zoning Board is capable of understanding the character of the neighborhood without assistance of an expert” citing *Schofield v. Zoning Board of Review of City of Cranston*, 99 R.I. 204, 208, 206 A.2d 524, 527 (1965). The Court affirmed the Zoning Board’s decision, stating the Zoning Board’s conclusion that the Application would be consistent with the general character of the surrounding area because properties and homes were similar in size to the Applicant’s was supported by the record.

4. Least Relief Necessary

Appellant argued the Applicant did not establish evidence their Application was the “least relief necessary” because they could use the property to access the lake instead of building a house.

The Court’s decision stated that the Appellant’s argument uses the incorrect standard for a dimensional variance. An applicant only has to demonstrate the “*loss of all beneficial use*” if the requested relief is denied when seeking a use variance, not a dimensional variance.

The Court decided the Zoning Board’s determination that denying the application would result in more than a mere inconvenience to the Applicant is well-supported by substantial evidence on the record because the Applicant’s design is a modest two-bedroom home with a footprint of 950 square feet in the center of the property which minimizes the amount of dimensional relief.

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