

GD Richmond Beaver River I, LLC, et al. v. Town of Richmond Zoning Board of Review, et al., C.A. No. WC-2021-0111 (March 31, 2023)

Holding:

Rhode Island Superior Court reversed the decision of the Town of Richmond Zoning Board denying an application for a special use permit to construct a commercial solar energy system. The Court remanded the matter back to the Zoning Board to grant the requested special use permit.

Link to Decision: <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-0111.pdf>

Key Takeaways:

1. The Court determined the Zoning Board’s Decision to deny a special use permit for a commercial solar energy system was clearly erroneous based on a lack of supporting evidence and by error of law. The Court reversed the decision of the Zoning Board and remanded to the Zoning Board to grant the requested special use permit.
2. *“The mere possibility that adjacent properties might be adversely affected . . . could and should have been guarded against by imposing appropriate safeguards and conditions, rather than by denying the owner an opportunity to use his property for an otherwise conditionally permitted use.”*
3. *“The Zoning Board’s blanket denial and failure to explore a possible mitigating condition was an abuse of discretion.”*

Facts:

On May 15, 2018, Plaintiff’s applied for a special use permit from the Town of Richmond Zoning Board of Review to construct a commercial solar energy system at 172 Beaver River Road, Richmond, RI. The property is in an R-3 zoning district which under the Richmond Ordinances conditionally permits solar energy systems via a special use permit.

The property is 43.67 acres, 18.76 acres of which is proposed to be a solar array.

On December 30, 2019, the Planning Board recommended denial of the Application because they considered the project to be inconsistent with the Town’s Comprehensive Community Plan and the Town’s Zoning Ordinance.

In February 2021, the Zoning Board voted unanimously to deny the special use permit, finding the application to be inconsistent with the Comprehensive Plan and the Town’s Zoning Ordinance.

Plaintiff’s appealed the Zoning Board decision.

Analysis:

1. The Proposed Use will Harm Surrounding Property

The Court found the record before the Zoning Board *“lacked substantial evidence to support the conclusion that a commercial solar energy system on the Property would be ‘inconsistent with the Richmond Comprehensive Community Plan and would be detrimental to the rural, agricultural character of the Beaver River Valley.’”*

The Zoning Board argued the vegetative buffer proposed by the applicant to shield the solar array would be out of place and impede views of the Beaver River. The Board also argued a commercial solar field would adversely impact the Beaver River Valley's eligibility to be included on the National Register for Historic Places.

The Court decided that the record showed the Zoning Ordinance requires a buffer, and that the applicant repeatedly demonstrated they were willing to make alterations to the landscaping of their buffer to the satisfaction of the Zoning Board. The Court found no evidence in the record where the Zoning Board discussed landscaping concerns or considered conditions to ameliorate their landscaping concerns.

The Court found *"the fact that the solar array might impede third-party views is 'of no merit' and was otherwise speculative"*.

As for the Board's finding that the application would have a negative impact on the eligibility of the area as a Historic District, the Zoning Board based their denial on the Planning Staff Report which cited an unnamed source from the Rhode Island Historic Preservation and Heritage Commission who said the project would have a negative effect. Therefore the Court found the Board abused their discretion when denying the special use permit based on unsupported substantial evidence in the record, citing *"a statement from an undisclosed source is not reliable, probative, or substantial and constitutes an unacceptable 'scintilla' of evidence. Cf. Melucci v. Zoning Board of Review of City of Pawtucket, 101 R.I. 649, 653, 226 A.2d 416, 419 (1967).*

2. Noise

The Zoning Board argued the solar system's transformers will emit a constant noise that will result in conditions harming the public health, safety and welfare.

Plaintiff argued the solar project's noise levels would be below the maximum allowable threshold of the Town's noise ordinance. The Plaintiff provided expert testimony that stated the project would not be audible to neighboring landowners and that the Plaintiffs had never experienced issues with exceeding allowable noise thresholds.

The record also showed the Plaintiffs offered to add a condition of approval that the noise shall not exceed a particular decibel level. The Court decided *"In the face of this offer, the Zoning Board's blanket denial and failure to explore a possible mitigating condition was an abuse of discretion."*

3. Stormwater Management

The Zoning Board's decision included what the court considered a speculative concern of *"a failure in the proposed stormwater management system would cause stormwater and sediment to enter the adjacent Beaver River."*

The Court decided *"there is not a scintilla of evidence in the record to support the Zoning Board's speculative concern"*, as the Plaintiff's stormwater management reports, surveys and soil erosion plans were un rebutted.

4. Consistency with Zoning Ordinance

The Town's Zoning Ordinance requires solar energy systems to be within two (2) miles of a utility substation. The Zoning Board argued the word "within" means the entire property containing a solar energy system must be within two miles of a utility substation. Plaintiff argued only the entire solar energy system must be within two miles of a utility substation.

The Court decided "*under the plain and ordinary meaning of the Zoning Ordinance, a commercial solar energy system is permissible if it is within—in or into the range or margin of, either entirely or partially—two miles of a utility substation.*" Because the entire solar energy system is within two miles of a utility substation, the Court found the Board's finding that the application was inconsistent with the Zoning Ordinance was legally unsupported.

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