

James M. Carter and Jane MacDougall v. Town of Warren Zoning Board of Review, et al., C.A. No. PC-2022-06404 (April 25, 2023)

Holding:

Rhode Island Superior Court affirmed the decision of the Town of Warren Zoning Board of Review. The Board approved a dimensional variance and special-use permit for an application to construct an addition to make more room for an existing boat manufacturing facility that would exceed the maximum height allowed.

Link to Decision: <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/22-06404.pdf>

Key Takeaways:

1. The Court determined there was substantial evidence in the record to support the Zoning Board’s Decision to approve the special use application and the findings required to grant a dimensional variance.
2. **The plain language of Section 45-24-41(d)(2) of R.I. Gen. Laws does not prevent the ability of an applicant to benefit from a financial gain if the variance is granted.** See *Lang v. Zoning Board of Review for the Town of Middletown*, No. NC-2011-0302, 2013 WL 1090819, at *7 (R.I. Super. Mar. 13, 2013) (“*Indeed, most variances are likely to confer some financial benefit upon the property owner when granted.*”).
3. The Court makes clear this subsection (45-24-41(d)(2)) is only concerned with whether the hardship is purely a desire for financial gain, and not whether a financial benefit would be the result of granting the variance.

Facts:

Appellee Blount Realty Co, (BRC) owns property at 461 Water Street, Warren, RI where they manufacture transfer vessels for offshore wind farms.

On June 28, 2022 Blount applied to the Town of Warren for a Dimensional Variance to construct a 45-foot roof height extension and a 20-foot extension of its hull shop. The proposed addition would exceed the maximum required height on a legal non-conforming structure in the Town of Warren’s Waterfront Overlay District.

On September 21, 2022, the Warren Zoning Board of Review voted to approve the variance and special-use permit.

Appellants who abut the boat manufacturing property appealed the Decision of the Zoning Board to Superior Court, arguing it should be reversed and nullified because the application didn’t satisfy the criteria for a special-use permit or dimensional variance. Appellants also argued the subject property was improperly merged.

Analysis:

1. Unique Characteristics of the Structure

Appellants argued that Blount Boats’ hardship of needing to expand their boat manufacturing facility to construct two transport vessels concurrently for a new contract they entered into is self-imposed.

The Court was satisfied that the Zoning Board’s finding that the requested relief is not a self-created hardship was supported by substantial evidence in the record. Specifically, the Court noted Ms. Blount’s testimony that the business does not have the covered space to manufacture as required by the American Bureau of Shipping, and therefore the business currently uses tents.

2. Prior Action or Desire for Greater Financial Gain

Appellants argued the applicant is voluntarily taking on additional boat building contracts with the knowledge of the limitations of its property, and therefore, the hardship is due to prior action by the applicant.

The Court explained the plain language of Section 45-24-41(d)(2) of Rhode Island General Laws does not prevent the ability of an applicant to benefit from a financial gain if the variance is granted, citing to *Lang v. Zoning Board of Review for the Town of Middletown*, No. NC-2011-0302, 2013 WL 1090819, at *7 (R.I. Super. Mar. 13, 2013) (“*Indeed, most variances are likely to confer some financial benefit upon the property owner when granted.*”). The Court makes clear this subsection is only concerned with whether the hardship is *purely* a desire for financial gain, and not whether a financial benefit would be the result of granting the variance.

3. More than a Mere Inconvenience

Applying the *Viti* Doctrine, the Court found “*there is an abundance of substantial evidence in the record that the hardship would amount to more than a mere inconvenience if the application were denied.*” The Court specifically cited the fact that specific transfer vessels are required to be built under a controlled covered space by the American Bureau of Shipping.

4. Least Relief Necessary

Appellants argued Blount failed to enter any evidence into the record to suggest the least relief was being requested and that they can continue to operate their business without the requested relief.

The Court found the record supported the Zoning Board’s Decision, that the addition in small in nature, and the relief will allow for the building of transport vessels more efficient and effectively.

5. Merger

Appellants argued the Zoning Board’s decision improperly held that all subject lots in the zoning petition are merged for zoning purposes. The Court determined the Appellees are barred from relitigating the merger by use finding based on collateral estoppel, because this issue was resolved in a previous decision *MacDougall v. Zoning Board of the Town of Warren, et al.*, PM2013-1185, Dec. 15, 2014.

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