

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

(FILED: November 29, 2024)

RICHARD CARLUCCI and NGA LE :  
Appellants, :

v. :

C.A. No. KC-2024-0349

THE CITY OF WARWICK ZONING :  
BOARD OF APPEALS; ALFRED T. :  
DECORTE, in his official capacity as the :  
Building Official; DAVID OLSEN, in his :  
official capacity as Treasurer for the City :  
of Warwick; and JOSEPH R. KING :  
Appellees. :

**DECISION**

**LANPHEAR, J.** Before this Court is Richard Carlucci and Nga Le’s (the Carluccis) appeal from the City of Warwick Zoning Board of Appeals’ (the Board) decision pertaining to an issued building permit for a deck on Joseph R. King’s (Mr. King) land. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, the Carluccis’ appeal is denied, and the Board’s decision is affirmed.

**I**

**Facts and Travel**

The Carluccis and Mr. King are neighbors in Warwick, each residing on abutting waterfront lots. The Carluccis’ property is located at 153 Charlotte Drive in Warwick, Rhode Island. Mr. King owns the property located at 161 Charlotte Drive, Warwick, Rhode Island. On December 19, 2023, the Building Official for the City of Warwick issued a building permit for the construction of two decks on Mr. King’s property. The Carluccis appealed the issuance of the permit to the Board and a hearing was held on March 12, 2024. At the hearing, counsel for

Mr. King noted that Charlotte Drive is comprised of thirty-one lots, twenty-eight of which have decks. Twenty-six of those twenty-eight lots with decks are nonconforming. After hearing arguments, the Board denied the appeal. (R. Ex. D – Zoning Board Decision at 44-46.) The Carluccis appealed that determination to the Superior Court on April 15, 2024.

## II

### Standard of Review

Section 45-24-69(a) grants the Superior Court jurisdiction to review decisions from local zoning boards. Such review is governed by § 45-24-69(d), which provides:

“The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

“(1) In violation of constitutional, statutory, or ordinance provisions;

“(2) In excess of the authority granted to the zoning board of review by statute or ordinance;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 45-24-69(d).

In other words, this Court “reviews the decisions of a plan commission or board of review under the ‘traditional judicial review’ standard applicable to administrative agency actions.” *Restivo v. Lynch*, 707 A.2d 663, 665 (R.I. 1998) (internal quotation omitted). The Court is “limited to a search of the record to determine if there is *any competent evidence* upon which the agency’s decision rests. If there is such evidence, the decision will stand.” *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285-86, 373 A.2d 496, 501 (1977) (emphasis

added). The Court may not substitute its judgment for that of the zoning board with respect to the weight of evidence, questions of fact, or credibility of the witnesses. *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986). However, this Court conducts a *de novo* review of questions of law. *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 791 (R.I. 2005). The burden is on the applicant “seeking relief . . . to prove the existence of the conditions precedent to a grant of relief.” *DiIorio v. Zoning Board of Review of City of East Providence*, 105 R.I. 357, 362, 252 A.2d 350, 353 (1969).

The Court must consider “the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings.” *Salve Regina College v. Zoning Board of Review of City of Newport*, 594 A.2d 878, 880 (R.I. 1991) (quoting *DeStefano v. Zoning Board of Review of City of Warwick*, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). “Substantial evidence” is defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.” *Caswell v. George Sherman Sand & Gravel Company, Inc.*, 424 A.2d 646, 647 (R.I. 1981).

### **III**

#### **Analysis**

##### **A**

#### **Jurisdiction**

Mr. King asserts the Carluccis lack standing to bring this action. Specifically, he suggests the Carluccis failed to present any evidence at the March 12, 2024 Board hearing which demonstrated that the issuance of the building permit harmed the Carluccis’ property and that they do not qualify as “aggrieved parties” with standing to challenge the issuance of the permit as required by § 200.9 of the Warwick Zoning Ordinance.

Section 200.9 of the Warwick Zoning Ordinance defines aggrieved party as follows:

“(a) Any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of the building official; or

“(b) Anyone requiring notice pursuant to this ordinance.”  
Warwick, R.I. Zoning Ordinance § 200.9 (1994).

The Supreme Court of Rhode Island has defined an aggrieved party as a property owner whose “use . . . naturally would be affected adversely by a decision granting an exception or variance[.]” *Flynn v. Zoning Board of Review of City of Pawtucket*, 77 R.I. 118, 122, 73 A.2d 808, 810 (1950). The applicable restraints on accessory use as defined in Warwick, R.I. Zoning Ordinance § 601.2(A) mandate that any accessory use must be at least ten feet away from any side lots. This setback is clearly required for the benefit of any abutting neighbor. Therefore, Mr. King’s argument that the Carluccis failed to demonstrate harm to the property is without merit. The Carlucci property abuts the King property on the setback side. The Carluccis do have standing as aggrieved parties to bring suit, as any violation of the setback would directly affect them.

This Court has jurisdiction of this controversy as the issues before the Board were matters regulated by the zoning laws and ordinance, not the building code.

## **B**

### **Accessory**

It is undisputed that Mr. King’s property is located in an A-15 district, which the Warwick Zoning Ordinance designates as “low density residential use, comprising not more than one single-family dwelling unit per lot area measuring a minimum of 15,000 square feet.” Warwick, R.I. Zoning Ordinance § 301.3 (2024). It is also undisputed that Mr. King’s property is nonconforming as there are two dwellings on the undersized lot. (R. Ex. D – Zoning Board

Decision at 46.) Therefore, the categorization of the addition of a deck is at the heart of this decision.

The Carluccis claim that the deck is an expansion of a nonconforming lot and is therefore prohibited under §§ 402.5 and 402.6. However, Mr. King and the Board determined that the deck is an accessory and is therefore permissible under § 601.1 if the deck itself is at least ten feet from the side property line as required by § 601.2(A). (R. Ex. D – Zoning Board Decision at 46); (Appellees’ Br. at 1-2.)

“200.3. *Accessory use.* A use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use may be restricted to the same lot as the principal use. An accessory use shall not be permitted without the principal use to which it is related.” Warwick, R.I. Zoning Ordinance § 200.3 (1994).

Section 601 of the Warwick Zoning Ordinance provides:

“Accessory buildings and uses...include but are not limited to home occupations, accessory dwelling units, private garages, carports, vehicle storage, recreational vehicle storage, boat storage, sheds, greenhouses, swimming pools, and antennas. Accessory buildings and uses are subject to all the requirements of this ordinance except as specifically provided for by this subsection as follows.” Warwick, R.I. Zoning Ordinance § 601 (1994).

“601.1. *Accessory building and uses, residential.* Accessory buildings and uses, including private garages, in a residence district are permitted which:

“(A) Are clearly incidental to and customarily associated with the principal use.

“(B) Are operated and maintained under the same ownership and on the same lot as the principal use.

“(C) Do not exceed 20 feet in height for detached buildings . . .

“(D) Do not contain any dwelling units.” *Id.*

Though not enumerated in the ordinance, a deck bears a strong resemblance to the items included in the ordinance’s non-exhaustive list. A deck is certainly for the use of the home and

is a structure on the property that does not contain a dwelling. Furthermore, decks are customarily associated with the use of a home, particularly in this neighborhood, as evidenced by the number of decks attached to homes on Charlotte Drive. For these reasons, this Court finds a deck to be an accessory and therefore permissible under § 601.1.

The deck is 9.97 feet from the neighbor, in violation of the ten-foot setback requirement. (Appellants' Mem. in Supp. of Appeal, at 6 and Ex. F, at 27.) Mr. King claims the violation of 0.03 feet is *de minimis* and therefore within the discretion of the Building Official to grant the permit. There was argument at the hearing that the 0.03 feet may be a rounding error. No evidence was presented to support the claim that there was a rounding error. While the Court finds that this deck is an accessory to the home, that does not excuse the nonadherence to the setbacks listed under § 601.2(A). While the decision of the Board is affirmed, Mr. King is required to build the deck in compliance with the designated setbacks, so that the deck is no less than ten feet from the property line.

#### **IV**

#### **Conclusion**

The decision of the City of Warwick Zoning Board of Appeals is affirmed conditioned on Mr. King ensuring the deck is at least ten feet from the property line.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**COURT:** **Kent County Superior Court**

**DATE DECISION FILED:** **November 29, 2024**

**JUSTICE/MAGISTRATE:** **Lanphear, J.**

**ATTORNEYS:**

**For Plaintiff:** **Joelle C. Rocha, Esq.**

**For Defendant:** **David R. Petrarca, Jr., Esq.  
Justin T. Shay, Esq.  
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