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2001 Survey of Rhode Island Law: Cases: Land Use and Planning

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Land Use and Planning. *Sciacca v. Caruso*, 769 A.2d 578 (R.I. 2001). The planning board for the town of Johnston conditionally granted a landowner of two previously merged parcels of land the ability to re-divide the parcels to their original, pre-merger dimensions. Following this conditional grant, the landowner petitioned the zoning board for a dimensional variance to facilitate building a new home on one of the newly separated lots. The Rhode Island Supreme court reversed the superior court's decision upholding the zoning board's grant of the dimensional variance. In doing so, the court held that the superior court misapplied the law in question and that the variance was improperly granted because the landowner created the very hardship from which variance relief was sought by subdividing her property.

FACTS AND TRAVEL

Gloria Caruso (Caruso) acquired two adjacent residential lots in Johnston, Rhode Island in the 1960s.[1] These lots were then known as Nos. 91 and 92, and at that time were independently buildable, each respectively having the necessary road frontage and overall square footage for a building permit to be issued.[2] Shortly after obtaining the two parcels, Caruso constructed a single-family dwelling on lot No. 91, which she retained as a personal residence.[3] Additionally, Caruso landscaped lot No. 92 and constructed a shed on the premises.[4]

Following Caruso's construction of her house and adjoining shed, the town of Johnston amended its zoning ordinance.[5] In 1979, an amendment was passed "placing both lots [No. 91 and 92] in an 'R-20' residential zoning district that required a minimum total area of 20,000 square feet and minimum road frontage of 120 feet to build a single-family dwelling on any given lot."[6] The new amendment also included a "merger provision," whereby contiguous lots owned by the same entity that failed independently to meet the new minimum frontage and footage requirements were to

1. Sciacca v. Caruso, 769 A.2d 578, 579 (R.I. 2001).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 579. For the text of the amended zoning ordinance see Johnston Town Code § 26-16(a) & (b) (1995).

be merged together into a single parcel.[7] Further, the amended ordinance contained explicit language forbidding the subdivision of contiguous parcels with common ownership when such subdivision would cause the new lot or lots to be below the minimum frontage and footage requirements.[8] Pursuant to the amended ordinance provisions, Caruso's two lots were merged into a single parcel.[9]

In 1997, Caruso determined that she wanted to utilize the undeveloped land on lot No. 92 to build an additional three-bedroom house.[10] Through her builder, Caruso filed an application with the Johnston planning board to have her merged property re-subdivided into its two original pieces, parcels No. 91 and 92.[11] Although Caruso's neighbors never received notice of her application, the planning board "conditionally granted Caruso's request and approved a lot-line change, thereby subdividing the lots and restoring them to their original dimensions."[12]

After obtaining this conditional approval, Caruso submitted an application to the Johnston zoning board, requesting a dimensional variance to build on the smaller of her two lots, No. 92.[13] This lot measured 14,364 square feet and had only 100 feet of road frontage, both of which were below the minimum dimensional requirements set out in the 1979 ordinance.[14] Caruso's neighbors opposed her application, submitting the testimony of a qualified real estate appraiser and consultant that the proposed variance should not be granted because "Caruso would suffer no loss of the beneficial use of her property if the board denied her request for a dimensional variance."[15] In addition, he suggested that any new building built on the small lot No. 92 would unreasonably "'crowd' the lot and lessen the value of the adjoining properties."[16] Caruso did not present any evidence to counter this testimony or otherwise demonstrate that she would have "no 'other reasonable alternative

7. *Id.* at 579, n.1 (quoting Johnston Town Code § 26-16(b) (1995)).
8. *Id.* at 579, n.1 (quoting Johnston Town Code § 26-16(b) (1995)).
9. *Id.* at 580.
10. *Id.*
11. *Id.*
12. *Id.* at 580.
13. *Id.*
14. *Id.* at 579.
15. *Id.* at 580.
16. *Id.* at 581.

way to enjoy a legally permitted beneficial use of the subject property.'"[17]

At its first hearing on October 30, 1997, the zoning board unanimously denied Caruso's petition.[18] However, approximately one month later the zoning board reconsidered the application by its own motion, and granted it on January 29, 1998, by a four-to-one vote, without providing any record of the reasoning underlying this decision.[19] The neighbors appealed the zoning board's decision to the superior court, where its grant of the application was affirmed upon the judge's finding that Caruso "met the threshold showing required for the granting of a dimensional variance ('more than a mere inconvenience')."[20] In upholding the zoning board's decision, the superior court judge held that the planning board's previous decision to grant the conditional lot-line change rendered the merger provisions of the Johnston zoning ordinance irrelevant to review of the case.[21] The neighbors petitioned the Rhode Island Supreme Court for a writ of certiorari, and that petition for review was granted.[22]

ANALYSIS AND HOLDING

In analyzing the case, the supreme court first noted that following its decision in *Viti v. Zoning Board of Review of Providence*,[23] it was firmly established that a request for a "dimensional variance" from dimensional or area restrictions regulating the appropriate use of a particular piece of property required only a showing by the applicant landowner of "'an adverse impact amounting to more than a mere inconvenience.'"[24] However, the court notes that the General Assembly's decision to "comprehen-

17. *Id.* at 581 (quoting R.I. Gen. Laws § 45-24-31(61)(ii) (1994)).

18. *Id.*

19. *Id.* Although the decision was rendered in January, the written decision in the matter was filed on March 5, 1998. *Id.* In this decision, the zoning board provided "no reasons for its ruling, nor did its decision indicate why it had reconsidered its earlier denial of the requested variance." *Id.* at 581.

20. *Id.* at 581.

21. *Id.*

22. *Id.*

23. 166 A.2d 211, 214 (1960).

24. *Sciacca*, 769 A.2d at 582 (citing Gara Realty, Inc. v. Zoning Bd. of Review of South Kingstown, 523 A.2d 855, 858 (R.I. 1987) (quoting DeStefano v. Zoning Bd. of Review of Warwick, 405 A.2d 1167, 1170 (1979)); *Viti*, 166 A.2d at 214).

sively amend Rhode Island's zoning laws in 1991"[25] through the enactment of General Laws § 45-24-41, created a "new, uniform, and comprehensive state-wide zoning plan that revised previous zoning laws in several important respects."[26] One respect in which this newly enacted zoning amendment affects previous zoning law is through its redefinition of the term "more than a mere inconvenience" to mean, for purposes of obtaining a variance, "'that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property.'"[27] The court noted that this redefinition by the General Assembly sounded the "death knell" of its previous interpretation of the *Viti* case, making it more difficult for a property owner to obtain a dimensional variance under the new standard.[28] In addition, the court noted that the 1991 amendment passed by the General Assembly still retains the requirement that a dimensional variance not be granted to "'the owner of a substandard lot where such lot was created by the deliberate conduct of the applicant.'"[29]

Applying these observations to the case at hand, the court concluded that the superior court judge misapplied the standard announced in § 45-24-41(c), and that this misapplication constituted reversible error. The supreme court held that the superior court should have considered both whether Caruso had met her burden proving "'no other reasonable alternative' to enjoying the use of lot No. 92 except by granting the requested variance, [and also] the self-created hardship rule of § 45-24-41(c)(2)."[30] Further, the court held that the zoning board had improperly granted Caruso's variance because they had not taken into account her role in creating

25. *See* 1991 Pub. Laws ch. 307 § 1.

26. *Sciacca*, 769 A.2d at 582-83 (The supreme court notes that the General Assembly "repealed what formerly had been sections 1 through 26 of chapter 24 of title 45 of the General Laws," and that as a result, "those zoning provisions that had authorized municipalities to relieve property owners of particular zoning restrictions by means of a variance, including deviations and dimensional variances, were superceded by § 45-24-41.").

27. *Id.* at 583, n.6 (quoting R.I. Gen. Laws § 45-24-41(d)(2) (1994)).

28. *Id.* at 583; *see also id.* at 582, n. 6.

29. *Id.* at 583, (citing Rozes v. Smith, 388 A.2d 816, 820 (1978) (quoting 3 Robert M. Anderson, *American Law of Zoning* § 18.57 at 299-300 (2d ed. 1977))); *see also* R.I. Gen. Laws § 45-24-41(c)(2) (1994) (requiring the applying landowner to show that the present hardship is not the result of the applicant's prior action before a variance can be granted).

30. *Id.* at 583.

the hardship from which she was seeking relief.[31] Caruso's prior act of petitioning the planning board to have her merged lot resubdivided created a substandard lot requiring a dimensional variance before any building could occur on the premises.[32] "Thus, Caruso sought relief from dimensional zoning requirements that became applicable to her substandard lot only because of her earlier illegal subdivision of the property before the planning board."[33] The supreme court held that the zoning board and the superior court misapplied state law through both their respective acts of granting and of upholding Caruso's requested dimensional variance.[34]

Finally, the court commented on the deficiency of the zoning board's record regarding the basis for its decision in this case. Here, the Johnston zoning board recorded only their decision on the record, and failed to provide the later reviewing courts with a specification of the evidence that the board was considering and whether this evidence meets the requirements for variance relief set forth in § 45-24-41(c) and (d).[35] The supreme court cautioned zoning boards to provide such a record in rendering their decisions, and warned that zoning board decisions made due to "'special knowledge'" by a particular board member of a local area or condition "'will not be upheld . . . unless the record reveals the underlying facts or circumstances the board derived from its knowledge of the area.'"[36]

CONCLUSION

The Rhode Island Supreme Court held that a landowner seeking a dimensional variance from a zoning board must prove, in accordance with the redefinition provided in § 45-24-41(d)(2), that no reasonable alternative exists for the landowner to enjoy a legally permitted beneficial use of his or her property before such a variance can legally be granted. The court emphasized that a dimensional variance cannot be granted to an individual who has created his or her own hardship through prior action, in accordance with

31. *Id.* at 584.
32. *Id.*
33. *Id.* at 584.
34. *See id.*
35. *See id.* at 585.
36. *Id.* at 585 (quoting *DeStefano*, 405 A.2d at 1171).

§ 45-24-41(c)(2). Finally, the court warned zoning boards to clearly note the evidence supporting their decisions on the record to assist reviewing courts in interpreting their findings.

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