

SUPREME COURT OF NEW HAMPSHIRE

Rochester City Council v. Rochester Zoning Board of Adjustment

194 A.3d 472 (N.H. 2018) · No. Strafford No. 2017-0501 · Decided September 7, 2018

SUMMARY

The Supreme Court of New Hampshire affirmed the superior court's decision upholding a zoning board's grant of a variance for expansion of a manufactured housing park. The court held that the variance grant implicitly included a finding of unnecessary hardship, that specific findings were not required absent a request, and that the record supported the hardship determination. The court also upheld the denial of motions to expand the record because alleged bias and conflict issues were not raised before the zoning board at the earliest possible time.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, C.J.; Hicks, J.; Bassett, J.; Hantz Marconi, J.
JURISDICTION	New Hampshire
DECIDED	September 7, 2018
DOCKET	Strafford No. 2017-0501
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Rochester City Council appealed the superior court's order affirming the Rochester Zoning Board of Adjustment's grant of a variance permitting Donald and Bonnie Toy to expand a manufactured housing park.
STANDARD OF REVIEW	The Supreme Court upholds the superior court's decision unless it is unsupported by the evidence or legally erroneous. In reviewing a zoning-board decision, the superior court determines whether, on the balance of probabilities, the decision was unlawful or unreasonable; factual findings properly before the court are prima facie lawful and reasonable, and review asks whether evidence exists upon which the board could reasonably base its decision. The trial court's decision on whether to admit additional evidence is reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.

PARTIES

Rochester City Council v. Rochester Zoning Board of Adjustment,
Donald Toy, Bonnie Toy

TOPICS

zoning

municipal law

judicial review of agency action

administrative law

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a zoning board's grant of a variance implicitly includes a finding of unnecessary hardship when the board does not expressly make that finding in its written decision.
2. Whether the superior court properly reviewed the implied hardship finding under a deferential standard.
3. Whether the superior court abused its discretion by reviewing the existing administrative record instead of taking additional evidence or remanding for clarification.
4. Whether the City Council preserved its argument that the ZBA impermissibly considered the wisdom of Rochester's zoning ordinance.
5. Whether the evidence supported a finding of unnecessary hardship under RSA 674:33, I(b)(5).
6. Whether the superior court unsustainably exercised its discretion by refusing to expand the record with evidence of alleged ZBA-chair bias or conflicts of interest.

HOLDINGS

1. A zoning board's grant of a variance carries with it an implicit finding of unnecessary hardship, even when the board's written decision does not expressly address hardship.
2. The absence of specific findings regarding unnecessary hardship was not error because no party requested specific findings and the record was sufficient for judicial review.
3. The evidence was sufficient to support the ZBA's implied finding of unnecessary hardship under RSA 674:33, I(b)(5).
4. The superior court properly declined to address the argument that the ZBA impermissibly considered the wisdom of the 2014 zoning ordinance because the issue was not adequately raised before the ZBA.
5. The superior court did not unsustainably exercise its discretion by refusing to admit evidence of alleged ZBA-chair bias, conflicts, or improper motives when those issues were not raised at the earliest possible time.

KEY QUOTATIONS

"The trial court does not sit "as a 'super zoning board.'"" (slip op. at 4)

"The ZBA's grant of a variance carries with it an implicit finding of hardship." (slip op. at 4-5)

“The ZBA’s failure to explicitly make a finding regarding unnecessary hardship was not an error” (slip op. at 5)

“For these reasons, we conclude that the trial court did not unsustainably exercise its discretion in denying the plaintiff’s motions to expand the record.” (slip op. at 9)

FACTUAL BACKGROUND

Donald and Bonnie Toy owned Addison Estates, a 14.5-acre manufactured housing park with 25 approved lots, and sought to expand it onto neighboring Lot 54-1, a 22-acre parcel. Rochester's 2014 zoning ordinance eliminated manufactured housing parks as permitted uses anywhere in the city. Lot 54-1 had an irregular configuration, wetlands, difficult topography, and proximity to other manufactured housing parks; the proposed expansion would add 14 age-restricted units. The ZBA granted the variance despite not expressly addressing unnecessary hardship in its written decision.

PROCEDURAL HISTORY

The Toys applied for a variance to expand Addison Estates onto an abutting lot after Rochester's zoning ordinance eliminated manufactured housing parks as permitted uses city-wide. The ZBA granted the variance, and denied the City Council's motion for rehearing. The superior court affirmed, declined to permit expansion of the administrative record, and held that the record supported an implied finding of unnecessary hardship. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Lone Pine Hunters’ Club v. Town of Hollis, 149 N.H. 668, 669-70 (2003)
- Cook v. Town of Sanbornton, 118 N.H. 668, 671 (1978)
- Thomas v. Town of Hooksett, 153 N.H. 717, 724 (2006)
- Smith v. Lillian V. Donahue Trust, 157 N.H. 502, 508 (2008)
- Kalil v. Town of Dummer Zoning Bd. of Adjustment, 155 N.H. 307, 310, 312 (2007)
- McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171, 174 (2005)
- Peter Christian’s v. Town of Hanover, 132 N.H. 677, 683-84 (1990)
- Fox v. Town of Greenland, 151 N.H. 600, 604 (2004)
- Taylor v. Town of Wakefield, 158 N.H. 35, 38 (2008)
- Bayson Properties v. City of Lebanon, 150 N.H. 167, 172 (2003)
- New Hampshire Department of Corrections v. Butland, 147 N.H. 676, 679 (2002)