SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2220-21

BI 8200, LLC,

Plaintiff-Respondent,

v.

LAND USE BOARD OF THE TOWNSHIP OF LONG BEACH,

Defendant-Appellant.

Argued May 9, 2023 – Decided May 31, 2023

Before Judges Messano and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket L-1690-21.

Cameron W. MacLeod argued the cause for appellant (Gibbons, PC, attorneys; Cameron W. MacLeod, of counsel and on the briefs).

Arnold C. Lakind argued the cause for respondent (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Arnold C. Lakind, on the brief).

PER CURIUM

Defendant Land Use Board of the Township of Long Beach (Board) appeals from the February 17, 2022 Law Division judgment reversing the Board's denial of plaintiff BI 8200, LLC's application for major subdivision approval. The Board had denied the application based on its interpretation of the Long Beach residential zoning ordinance. We have considered the arguments raised on appeal, in light of the record, and applicable legal standards. We reverse.

The salient facts are as follows. Plaintiff owns property located on Long Beach Boulevard, Lot 9.01, Block 13.16, in the Township of Long Beach. On March 2, 2021, plaintiff filed an application before the Board for preliminary and final major subdivision approval to develop six residential lots in residential zone R-50. The plan proposed to subdivide a .65-acre, 28,275-square foot, parcel located between Connecticut Avenue and Rhode Island Avenue. Plaintiff submitted the application believing it conformed to all aspects of the applicable Long Beach residential zoning ordinance, § 205-55(C) (the ordinance). The ordinance required a minimum lot area of 5,000 square feet. Plaintiff's subdivision plan relied on an exception in the ordinance set forth under § 205-55(C)(2)(a)-(b), which permitted a reduced lot size. The exception permitted a 4,500-square foot lot, only if the proposed lot had 50 feet of frontage, and a minimum lot depth of half the block width.

At issue before the Board was whether four of the proposed six subdivision lots conformed with the ordinance's exception, more particular whether they satisfied the required minimum lot depth and lot size requirements. The ordinance provided:

> C. Area and yard requirements. Every lot in the R-50 District shall comply with the following requirements:
>
> . . . .
>
> (1) Subject to Subsection C(2) below, residential lots have a minimum lot area of 5,000 square feet and minimum width of 50 feet at the street line or on the ocean or bay.
>
> (2) Lots on blocks between streets.
>
> (a) On existing blocks between dedicated and accepted streets, residential lots shall have a minimum lot width of 50 feet at the street line or on the ocean or bay and a minimum lot depth of ½ the block width, and the minimum lot area shall be based and computed upon the following formula; provided, however, that in any event, no lot shall be less than 4,500 square feet:
>
> . . . .
>
> $$\text{Formula: } \frac{\text{Block width}}{2} \times 50 = \text{Minimum Lot Area}$$
>
> NOTE: In order to meet the minimum lot area and be consistent with the minimum lot depth, the minimum lot width may necessarily have to

> exceed 50 feet at the street line or on the ocean or bay.
>
> (b) Where the rear property line of a lot is not the median line of the block, the lot area shall be not less than 5,000 square feet.

[Emphasis added.]

Plaintiff sought to apply the square footage exception, § 205-55(C)(2), to four proposed undersized lots and argued the lots met the criteria for the minimum required lot depth. The exception provision, § 205-55(C)(2)(a), required the lot depth to be "[half] the block width." A limiting provision in the ordinance, § 205-55(C)(2)(b), prohibited use of the exception if "the rear property line of a lot is not the median line of the block."

The proposed lots' measurements were: Lot 9.03- 4,500 square feet with 60-foot frontage and 75-foot depth; Lot 9.04- 4,500 square feet with 60-foot frontage and 75-foot depth; Lot 9.05- 5,250 square feet with 70-foot frontage and 75-foot depth; Lot 9.06- 5,015 square feet with 59-foot frontage and 85-foot depth; Lot 9.07- 4,505 square feet with 53-foot frontage and 85-foot depth; and Lot 9.08- 4,505 square feet with 53-foot frontage and 85-foot depth.

The four-corner block, between Connecticut Avenue and Rhode Island Avenue, was irregular because of the disparity in the block widths. Plaintiff's plans demonstrated the block width for the subdivision was 160 feet. As the

subdivision block width was 160 feet, half the block width or the median was 80 feet. Notably, the adjacent properties have a smaller block width of 150 feet.

In its plan plaintiff continued the adjacent properties' rear lot line through its subdivision. Plaintiff asserted that the continued rear lot line was "the median line of the block," and used the different lot depths for calculating each lot's square footage. This resulted in the three lots fronting Connecticut Avenue having a depth of 85 feet, and the three lots fronting Rhode Island Avenue having a depth of 75 feet. The Connecticut Avenue lots included a 10-foot easement. Relevantly, if the Connecticut Avenue lots used a median lot depth of 75 feet to calculate square footage, the proposed lots would not have equaled or exceeded 4,500 square feet. Plaintiff maintained the ordinance intended the median line of the entire four corner block to be the rear lot line; therefore, the lots under 5,000 square feet qualified for the exception.

Board engineer Frank J. Little, Jr., P.E., P.P., C.M.E., reviewed the subdivision application and advised by letter, dated May 5, 2021, four of the properties were nonconforming. Little advised the "rear property lines of the new lots are not proposed at the midline of the block as the lot depths are 75 [feet] and 85 [feet] respectively." Little noted the actual median line of the block was 80 feet, as the block width was 160 feet. Thus, each lot required 80 feet in

lot depth to qualify for the exception. Further, Little opined the undersized lots could not fall within the zoning ordinance exception if the 160-foot block width for the subject property was not used. Therefore, plaintiff could not calculate the block width in a different, unprescribed manner. Little determined without the required block median line of 80 feet, the lots which were not 5,000 square feet were nonconforming, pursuant to § 205-55(C)(2)(b). Little found because lots 9.03, 9.04, 9.07 and 9.08 failed to have 80-foot lot depths, and were not 5,000 square feet, variances were required.

At the subdivision hearing on May 12, 2021, the Board focused on the interpretation of the ordinance language, "a minimum lot depth of ½ of the block width" and "the median line of the block." Plaintiff acknowledged the subdivision would require variances to proceed if the Board found "the median line of the block" was intended to be half the actual block width (half of 160 feet being 80 feet).

The Board reviewed in detail the ordinance and focused on the plain language of the provisions, the submitted plans, and the testimony of multiple experts. Plaintiff presented two experts, professional engineer, Nordan A. Murphy, and professional planner, Jeffrey D. Stiles. The Board engineer, Little, also testified. Murphy opined if "the rear property line . . . [is] the median line

of the block" than the lots each qualified for the exception. Stiles opined: "the ordinance does allow [an applicant]. . . to reduce th[e] lot size when . . . the rear property line of the lots . . . are the median of the block." Stiles opined the statutory intent of the ordinance is "to avoid having a subdivision where one lot is substantially less deep than the adjoining lot behind it and having blocks with non-contiguous rear lot lines," and to avoid a "very irregular shape" when "people put fences up." Stiles further opined the intent was to have consistent rear property lines without any jogging or irregularity. Stiles conceded the actual subdivision block width was 160 feet, but he argued the "vast majority of the block is 150."

During a series of questions, a board member inquired whether it was inconsistent to use the adjacent block width of 150 feet to allow 75-foot depth lots, versus the actual 160 feet width. Stiles, in reply, noted the additional 10 feet allotted to the Connecticut Avenue properties included an easement. The Board questioned Stiles on the propriety of the application as it excluded the 10-foot easement from calculation of half of the lot depth, but then used the actual lot depth to calculate the square footage for properties on Connecticut Avenue.

Little testified the median line was calculated by, "[d]ivid[ing] the width of the tract by two." Little opined the plain language of the ordinance is clear:

the median line of the block must be calculated from the location of the subdivision properties. Little explained: 160 feet in block width, divided by two, yields 80 feet as the median line of the block, which is the required lot depth. Little opined four lots were nonconforming as he interpretated the ordinance required the subdivision lots have an 80-foot depth, half of the block width, to fall within the exception.

During the deliberation process, board members expressed their views on the ordinance interpretation. The Board determined the "median line of the block" as used in the ordinance plainly meant the midpoint of the subdivision's block width. The Board unanimously voted the ordinance required use of half the block width, thus plaintiff was required to "divide [160] . . . evenly into two 80-foot section[s]." The Board found the use of a 75-foot lot depth taken from the adjacent properties, with the alleged goal of continuing the rear property line, contradicted the ordinance's plain meaning and intent. Therefore, the ordinance exception did not apply to the two proposed lots with a 75-foot depth, 9.03 and 9.04, and the two proposed lots with an 85-foot depth, 9.07 and 9.08, as they were deemed nonconforming in depth and square footage. Based on the Board's ordinance interpretation, it could not approve the subdivision without variances. Plaintiff chose not to seek variances for the nonconforming lots.

On June 9, 2021, the Board passed a resolution memorializing its findings. The resolution noted both Murphy and Stiles testified, "the 'median line of the block' meant the common rear property line of the lots within the block." The resolution set forth the Board's factual findings and adopted "the opinion of the Board Engineer [Little] that the median line of the block is the total block width divided by two." The Board also adopted Little's "opinion that a density 'D' variance [was] required whereas five (5) lots [were] permitted but six (6) lots [were] proposed."

Plaintiff filed a complaint in lieu of prerogative writs appealing the Board's denial of its application and specifically challenged the ordinance interpretation. The legal issue framed before the trial judge was whether the Board correctly interpreted the meaning of the "median line of the block." Plaintiff maintained Stiles demonstrated the legislative intent and purpose of "the median line of the block" language. Plaintiff argued Stiles substantiated the ordinance intent was to: promote a single continuous common rear property line, prevent obstructions, and enhance uniformity. Further, plaintiff argued the Board failed to provide reasons for rejecting Stiles's opinions.

The Board argued the plain language of the exception provision is clear on its face, and the ordinance formula makes it obvious the actual block width

is to be divided by two. The Board posited there was no support for plaintiff's argument that the ordinance intended for the continuation of a rear lot line from adjacent properties to be "the median line of the block," i.e., the "midpoint of the block width." The Board argued simply because there is a reduced block width on an adjacent property does not permit a developer to arbitrarily utilize a more favorable continued rear lot line to determine lot depth and to make the subdivision application conforming. A developer is required to use the block width of the subject property; in this case, 160 feet block width. The Board highlighted plaintiff's position was inconsistent because a median lot line on the block width of 150 feet meant plaintiff only had 75 feet in lot depth for each lot's square footage calculation. Instead, plaintiff used the proposed property depth of 85 feet for three properties to satisfy the square footage required, which is not permitted under the ordinance.

In an oral opinion following the hearing, the judge found the median line of the block "clearly means the whole block," and it would be "illogical that just because of the impact of an easement here . . . we would alter on this particular application, that median line of the whole block." The judge found it "an illogical result" to have to reposition the line in the subdivision "five feet south of the existing area and that would then make it not consistent with the backyard

line or the median lot line on the entire block." In addressing uniformity, the judge observed there is a "uniform line down the middle" and a "grid pattern." Disagreeing with the Board's findings, the trial judge stated, "it appears that it would have been inconsistent to require different lot lines or inconsistent lot lines at that point when the overall intent of this ordinance appeared to be taking into consideration the grid pattern that was established already by virtue of the preexisting lots." The judge found "the denial of the subdivision was inappropriate," reasoning "the interpretation of the ordinance as advanced by the plaintiff is reasonable, consistent with the rules of statutory construction and also it's a logical extension of the existing pattern in the existing area." While the judge carefully reviewed the surrounding area for uniformity, the judge failed to provide a detailed review of the applicable ordinance language. The judge reversed the Board and remanded for subdivision approval.

After judgment was entered, plaintiff moved to enforce the judgment and the Board cross-moved for a stay. On June 10, 2022, the judge denied plaintiff's motion and granted the cross-motion staying the matter pending appeal.

On appeal, the Board argues: (1) its decision is entitled to substantial deference; (2) the judge failed to defer to the Board's well-reasoned decision; (3) the judge's interpretation of "the median line of the block" is unreasonable,

improper and unsupported by sound planning principles; and (4) alternatively, if the trial judge is affirmed, remand is required as the trial judge unreasonably eliminated the Board's further review of the subdivision application.

We are "bound by the same standards as was the trial court" when reviewing the validity of a local board's decisions. Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015) (quoting Fallone Props., LLC v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)). Like the trial court, our review of a planning board's decision is limited. Smart SMR of New York, Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 327 (1998). A court "may not substitute its judgment for that of the board unless there has been a clear abuse of discretion." Price v. Himeji, LLC, 214 N.J. 263, 284 (2013). We "give deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious, or unreasonable." Jacoby, 442 N.J. Super. at 462.

"A board acts arbitrarily, capriciously, or unreasonably if its findings of fact in support of [its decision] are not supported by the record, or if it usurps power reserved to the municipal governing body or another duly authorized municipal official." Ten Stary Dom P'ship v. Mauro, 216 N.J. 16, 33 (2013).

Consequently, "courts ordinarily should not disturb the discretionary decisions of local boards that are supported by substantial evidence in the record and reflect a correct application of the relevant principles of land use law." Lang v. Zoning Bd. of Adjustment of N. Caldwell, 160 N.J. 41, 58-59 (1999). Planning boards are provided "wide latitude in the exercise of the delegated discretion" under Municipal Land Use Law due to their particular "knowledge of local conditions." Burbridge v. Mine Hill Twp., 117 N.J. 376, 385 (1990). It is well recognized local board members are more "familiar with their communities' characteristic and interests" and are better suited to decide concerns on local zoning regulations. Pullen v. Twp of South Plainfield, 291 N.J. Super. 1, 6 (App. Div. 1996).

A board in hearing an application for a major subdivision, and interpretating an ordinance, may rely on its knowledge and consider the testimony of experts. A board is entitled to decide questions of credibility and can accept or reject testimony, expert or otherwise. TSI East Brunswick, LLC v. Zoning Bd. of Adjustment of Twp. of E. Brunswick, 215 N.J. 26, 46 (2013). "While a board may reject expert testimony, it may not do so unreasonably, based only upon bare allegations or unsubstantiated beliefs." New York SMSA, L.P. v. Bd. of Adjustment of Twp. of Weehawken, 370 N.J. Super. 319, 338

(App. Div. 2004) (citing Cell South of N.J., Inc. v. Zoning Bd. of Adjustment, 172 N.J. 75, 87 (2002); Kramer v. Bd. of Adjustment, 45 N.J. 268, 288 (1965)).

We review questions of law de novo, including the interpretation of an ordinance. Wyzykowski v. Rizas, 132 N.J. 509, 518 (1993). "[A] planning board's authority in reviewing a site plan application is limited to determining whether the plan conforms with the municipality's zoning and site plan ordinances." Sartoga v. Borough of W. Paterson, 346 N.J. Super. 569, 581 (App. Div. 2002) (citing W.L. Goodfellows & Co. of Turnersville, Inc. v. Wash. Twp. Plan. Bd., 345 N.J. Super. 109, 116 (App. Div. 2001)). As such, we review de novo a board's interpretation of its ordinance, but "recognize the board's knowledge of local circumstances and accord deference to its interpretation." Grubbs v. Slothower, 389 N.J. Super. 377, 383 (App. Div. 2007) (quoting Fallone Props., 369 N.J. Super. at 562).

Specifically, at issue is the interpretation of the ordinance exception provisions: "a minimum lot depth of ½ of the block width," and "the rear property line . . . [shall be] the median line of the block." In interpreting an ordinance, we must follow principles of statutory construction. "Where statutory language is clear, courts should give it effect unless it is evident that the Legislature did not intend such meaning." Bubis v. Kassin, 184 N.J. 612, 626 (2005) (quoting Rumson Estates, Inc. v. Mayor of Fair Haven, 177 N.J. 338,

354 (2003)). Moreover, in determining the meaning of a statutory provision, the language should be viewed for literal significance, unless it is clear such purpose was not intended by the ordinance. See, e.g., In re Distrib. of Liquid Assets upon Dissolution Reg'l High Sch. Dist. No. 1, 168 N.J. 1, 17 (2001); see also Turner v. First Union Nat'l Bank, 162 N.J. 75, 84 (1999). Indeed, our primary purpose in construing a statute is to "identify and implement the legislative intent." Smith v. Millville Rescue Squad, 225 N.J. 373, 389 (2016). We must first consider the plain language of the statute, which is "the best indicator of that intent." Ibid. (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). In doing so, we should "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." DiProspero, 183 N.J. at 492; see also Tumpson v. Farina, 218 N.J. 450, 467 (2014) (reasoning "[e]ach statutory provision must be viewed not in isolation but 'in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme'") (quoting Wilson v. City of Jersey City, 209 N.J. 558, 572 (2012)); N.J.S.A. 1:1-1 (in interpreting statutes, "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the

[L]egislature[,] . . . be given their generally accepted meaning, according to the approved usage of the language").

Applying these principles, we conclude the judge's interpretation of the ordinance language—"median line of the block"—to mean the rear lot line for "the whole block," was erroneous. The judge's interpretation focused centrally on the limiting provision, § 205-55 (C)(2)(b), which provides a property "shall be no less than 5,000 feet" if the "rear property line of the lot is not the median line of the block." The trial judge failed to focus on the plain language of the exception provision, "[half] of the block width," which must be read in conjunction with the limiting provision language "median line of the block." The ordinance language was readily discernable. It was not necessary for the trial judge to rely on a review of the surrounding neighborhood, and to "[consider] . . . the character of each district." The trial judge's interpretation is not supported by the provisions' plain language and is not consistent with the context of the ordinance.

The primary focus of ordinance interpretation is the literal significance of the language. The residential ordinance plainly pertains to lot "area and yard requirements" for the subject subdivision lots under review. The legislative intent is established under § 205-55(C)(1) for "a minimum lot area of 5,000 square feet." The exception for smaller 4,500-square foot lots, under § 205-55(C)(2)(a), applies

to: "[l]ots on blocks between streets" only if, the "residential lots shall have . . . a minimum lot depth of ½ of the block width . . . computed upon the following formula . . . [b]lock width/2x50." The exception's words "minimum lot depth of ½ the block width" are clear. Further, a review of the ordinance in pari materia, reviewing the applicable provisions together, illustrates that for the exception to apply, the proposed lot is required to have a depth of half the block width from the subject lot location. We "read[] [each provision] in context with related provisions so as to give sense to the legislation." DiProspero, 183 N.J. at 492. The exception is limited by § 205-55(C)(2)(b) and does not apply if "the rear property line of a lot is not the median line of the block." The plain language of the exception, read in the context of the ordinance's manifest purpose, establishes half of the block width is the median line of the block width at the subject lot's location. As such, the judge's findings are not in line with the principles of statutory interpretation.

We conclude the Board's interpretation is supported by the plain language of the ordinance. The Board's reliance on the ordinance formula to demonstrate the intent of "the median line of the block" language means the subject lot's block width, divided by two, affords the words their ordinary meaning. No further definition of half the block width is required.

We also "recognize the board's knowledge of local circumstances and accord deference to its interpretation." Grubbs, 389 N.J. Super. at 383. The Board's interpretation was consistent with the overall goal of the residential zoning ordinance. Therefore, the Board's interpretation that the ordinance required the subject lots to have a minimum depth of 80 feet as half of the block width of 160 feet is supported by its knowledge of local conditions, its acceptance of Little's expert opinion, and a review of the plain language of the ordinance. Plaintiff's argument that the intent of the ordinance was for rear property lines running from adjacent properties to be contiguous is wholly unsupported by the ordinance language.

To the extent we have not addressed any other arguments raised, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

The judgment of the Law Division is reversed and the February 17, 2022 order is vacated. The decision of the Land Use Board of the Township of Long Beach is reinstated.

Reversed.