

# **Bond Case Briefs**

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## **ZONING & PLANNING - RHODE ISLAND**

### **New Castle Realty Company v. Dreczko**

**Supreme Court of Rhode Island - April 13, 2021 - A.3d - 2021 WL 1377277**

Applicant sought judicial review of zoning board's denial of its request for a special-use permit and dimensional variance from zoning ordinance requiring minimum lot sizes of three acres to build a house and install a septic system on a preexisting nonconforming one-acre lot that contained wetlands.

The Superior Court affirmed the board's decision. Applicant filed petition for writ of certiorari, which was granted.

The Supreme Court held that:

- Substantial evidence did not exist in the record to support zoning board's decision to deny the special-use permit, and
- Substantial evidence did exist to support board's denial of the dimensional variance.

Substantial evidence did not exist in the record to support zoning board's decision to deny special-use permit to install a septic system within 100 feet of wetlands on preexisting nonconforming lot, where applicant had already obtained permits from Department of Environmental Management (DEM) to alter freshwater wetlands and to construct an onsite water treatment system, which showed that applicant had satisfied all applicable DEM regulations with respect thereto absent competent contrary evidence in the record, and reasons espoused by board members for denying the special-use permit, including possible negative impact on wetlands, were all within realm of DEM's expertise, while board members lacked specialized knowledge necessary to refute DEM's decisions.

Substantial evidence supported zoning board's denial of dimensional variance from zoning ordinance requiring minimum lot size of three acres, in order for applicant to construct a house on preexisting nonconforming one-acre lot, which had been conforming under a previous ordinance, where applicant did not satisfy its burden of showing that requested relief was least relief necessary and that there was no other reasonable alternative way to enjoy a legally permitted beneficial use of the property, as applicant was unwilling to consider board members' suggestions of trying to move the house further back, making it smaller, or making just a two-bedroom house, because applicant determined those options to not be marketable or of value to potential buyers.