

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2616-15T3

VINCENT PISCITELLI and ROSE
MARY PISCITELLI,

Plaintiffs-Appellants,

v.

CITY OF GARFIELD ZONING BOARD
OF ADJUSTMENT; ARLENE PATIRE;
ROBERT COCHRANE; DSJ FAMILY
TRUST; DANIEL P. CONTE, III,
STACEY A. CONTE and JAMIE G.
KRESHPANE, Trustees of the DSJ
Family Trust; and DR. DANIEL P.
CONTE, JR.,

Defendants-Respondents.

Argued May 23, 2017 – Decided July 12, 2017

Before Judges Reisner, Koblitz and Mayer.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, Docket
No. L-20013-14.

Anthony J. Sposaro argued the cause for
appellants.

Alyssa A. Cimino argued the cause for
respondents City of Garfield Zoning Board of
Adjustment, Arlene Patire and Robert Cochrane
(Cimino Law, attorneys; Ms. Cimino, on the
brief).

Charles H. Sarlo argued the cause for respondents DSJ Family Trust; Daniel P. Conte, III, Stacey A. Conte, Jamie G. Kreshpane, and Dr. Daniel P. Conte, Jr.

PER CURIAM

Plaintiffs Vincent Piscitelli and Rose Mary Piscitelli appeal from a February 4, 2016 order dismissing their complaint in lieu of prerogative writs, challenging a resolution by the Garfield Zoning Board of Adjustment (zoning board) granting a land use application filed by defendant DSJ Family Trust.

On this appeal, plaintiffs present the following points of argument:

POINT I

THE APPROVAL OF THIS SITE PLAN, TOGETHER WITH FOUR USE VARIANCES AND SEVERAL BULK VARIANCES WAS ARBITRARY, CAPRICIOUS OR UNREASONABLE

POINT II

THE RESOLUTION ADOPTED BY THE BOARD LACKS THE NECESSARY SPECIFIC FINDINGS NECESSARY TO JUSTIFY GRANTING VARIANCE RELIEF

POINT III

FIVE BOARD MEMBERS WHO WERE EMPLOYED BY THE GARFIELD BOARD OF EDUCATION OR WHOSE IMMEDIATE FAMILY MEMBERS WERE EMPLOYED BY THE BOARD OF EDUCATION WERE DISQUALIFIED FROM HEARING THIS APPLICATION RENDERING THE ACTIONS OF THE BOARD NULL AND VOID

POINT IV

THE EXISTENCE OF A PHYSICIAN-PATIENT RELATIONSHIP BETWEEN A PHYSICIAN-APPLICANT AND BOARD MEMBER OR THEIR IMMEDIATE FAMILY MEMBER CAN CREATE A CONFLICT OF INTEREST REQUIRING DISQUALIFICATION; THE HIPPA PRIVACY RULES DO NOT PREVENT DISCLOSURE OF THAT RELATIONSHIP BY THE PATIENT

POINT V

BOARD MEMBER COCHRANE HAS A CONFLICT OF INTEREST; HIS PARTICIPATION IN THE HEARING PROCESS RENDERS THE BOARD'S DECISION NULL AND VOID

POINT VI

THE REFUSAL TO PERMIT CROSS-EXAMINATION OF THIRTY-ONE MEMBERS OF THE PUBLIC WHO TESTIFIED BY THE OBJECTOR'S COUNSEL VIOLATES DUE PROCESS RENDERING THE BOARD'S ACTIONS NULL AND VOID

Those arguments were previously presented to the trial court and were rejected by Judge William C. Meehan in an oral opinion issued on July 7, 2015, and a comprehensive written opinion dated January 11, 2016. We have reviewed the record, including the transcripts of the zoning board hearings and the proceedings before Judge Meehan. Based on that review, we affirm substantially for the reasons stated in Judge Meehan's oral and written opinions. We also conclude that plaintiffs' appellate arguments are without sufficient merit to warrant further discussion beyond the following brief comments. See R. 2:11-3(e)(1)(E).

The application concerns an unsightly, partially abandoned commercial development located partly in a residential zone and partly in the B-2 business zone. The record suggests that the zoning was outdated. The property had always been the site of commercial, automotive-related uses, and the residential-zoned lot had never been used for residential purposes. At the time of the hearings, the site contained an auto repair shop and former gas station, from which the gas pumps had been removed, a small unused office building, an abandoned loading dock and warehouse formerly occupied by a trucking company, and a parking lot used to store trucks.

Based on expert testimony it found credible, the zoning board granted variances permitting the applicant to build three related commercial uses on the property - a car wash, gas station, and quick lube. We find no basis to second-guess the board's factual findings and credibility determinations, and based on its findings the board's decision was not arbitrary and capricious. See Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296 (1965). We agree with Judge Meehan that the zoning board's resolution was sufficient to support its factual and legal determinations. See Price v. Himeji, LLC, 214 N.J. 263, 301-02 (2013).

We likewise defer to Judge Meehan's findings of fact and credibility determinations concerning an alleged conflict of

interest on the part of board member Cochrane. See Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 483-84 (1974). After holding a testimonial hearing, Judge Meehan concluded that Cochrane was a credible witness, and the allegations supporting the alleged conflict were not true.

The judge also rejected conflict allegations against other zoning board members who worked for the local board of education (BOE) or whose relatives worked there. The allegations arose because Dr. Ken Conte, a member of the BOE, had previously been a part owner of two of the lots, through an individual trust in his name. However, prior to the filing of the current land use application, the property was sold to defendant DSJ Family Trust (DSJ), a separate trust over which Dr. Conte has no control.¹ His adult nieces and nephew are the beneficiaries and trustees of DSJ.

We agree with Judge Meehan that the zoning board members were not disqualified from voting on the application. Plaintiffs' reliance on Sokolinski v. Municipal Council of Woodbridge, 192 N.J. Super. 101, 103 (App. Div. 1983), is misplaced, because the BOE was not the applicant, and the application did not concern BOE property or property owned by a BOE official. Moreover, the connection between DSJ and the BOE was too attenuated to support

¹ DSJ paid \$420,500 for the property. There is no evidence that the price was not fair market value.

a finding of a conflict of interest on the part of the zoning board members. See Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION