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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-5285-15T1

ROBERT FISHER and
SANDRA FISHER,

Plaintiffs-Appellants,

v.

BOARD OF ADJUSTMENT OF
THE TOWNSHIP OF JEFFERSON
and ESCO PRODUCTS, INC.,

Defendants-Respondents.

Argued December 19, 2017 - Decided January 18, 2018

Before Judges Hoffman, Gilson, and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Morris County, Docket No.
L-3035-15.

Robert Fisher, appellant, argued the cause pro
se.

Kurt G. Senesky argued the cause for
respondent Board of Adjustment of the Township
of Jefferson (Schenck, Price, Smith & King,
LLP, attorneys; Kurt G. Senesky, of counsel
and on the brief).

Bernd E. Hefeale argued the cause for
respondent Esco Products, Inc. (Bernd E.
Hefeale Counsellors at Law, attorneys; Bernd
E. Hefeale on the brief).

PER CURIAM

Plaintiffs Robert and Sandra Fisher appeal from a June 20, 2016 order of the Law Division affirming a decision by defendant Board of Adjustment of the Township of Jefferson (Board) approving variance applications on behalf of defendant Esco Products, Inc. (Esco). We affirm.

Esco is the contract purchaser of property located at 95 Chamberlain Road in the Township of Jefferson (Township). Esco sought to purchase the property, with its existing building, parking lot, and driveways, to manufacture custom optics for military, automotive, medical, and communications customers. The existing building on the property operated as an office, warehouse, and storage facility for a company that distributed and installed office furniture and equipment. Esco proposed no physical changes to the building, driveways, or parking lot and proposed no additional construction on the property.

The property is located in the Township's Office and Professional (O) Zone. The O Zone encourages "non-retail and low-traffic generating employment centers" and "serves as a transitional zone between existing and proposed business and commercial development and surrounding residential land uses." Twp. of Jefferson, N.J., Ordinance § 490-15(A) (2015). Permitted uses in the O Zone include: "[o]ffice buildings for professional,

executive, engineering or administrative purposes[;] . . .
[s]cientific, engineering or research laboratories devoted to
research, design or experimentation and processing and fabricating
incidental thereto[;] . . . banks[;] . . . hospitals[;] . . .
[and] restaurants." Id. § 490-15(B).

While Esco believed its proposed use of the property was permitted in the O Zone, Esco was sensitive to the concerns raised by the neighboring residential property owners. To address those concerns, Esco presented several expert witnesses who testified as to all aspects of its optics business. Esco even submitted environmental testimony and an Environmental Impact Statement (EIS) before the Board, notwithstanding that Esco did not intend any disturbance of the property that would, or could, have an environmental impact.

Esco required two variances for its proposed use: a use variance, as the property was located in the O Zone; and a "c" variance, N.J.S.A. 40:55D-70(c), as the amount of land between the existing building and the nearest residential boundary line did not meet the required length for a planted buffer in accordance with the Township's ordinance. Planting a buffer as required by the Township's ordinance would have created a potential fire hazard to the existing building. Therefore, Esco proposed the planting of trees at a safe distance from the building, along with a pledge

to plant additional trees if recommended by the Township Planner, Board Engineer, or Township Forester.

The Board held seven public hearings regarding Esco's application. Esco presented expert witnesses who testified regarding the nature of Esco's operation, the environmental impact that the proposed use would have on the area, the engineering and planning aspects of Esco's application, the zoning concerns raised by neighboring property owners, and the past use of the building. According to the testimony before the Board, the use proposed by Esco was less intense than the use of the property by the previous owner, as there would be less noise, fewer employees, and reduced traffic on the property.

During the Board's hearings, neighboring property owners were given an opportunity to articulate their concerns regarding the proposed use. The neighboring property owners, including plaintiffs, raised issues regarding chemical and fire safety, and expressed concern related to increased noise, light, and traffic that would be generated by Esco's proposed use of the property. Plaintiffs also retained an expert who testified during the Board's hearings in opposition to various planning aspects of Esco's application.

At the conclusion of the hearings, the Board granted Esco's variance requests subject to specific conditions. The Board adopted a detailed resolution of approval on November 9, 2015.

On December 23, 2015, plaintiffs filed a complaint in lieu of prerogative writs challenging the Board's approval of Esco's application. The matter was tried before Assignment Judge Stuart Minkowitz. After considering the written submissions and the arguments of the parties, Judge Minkowitz issued a comprehensive twenty-two page written decision affirming the Board's approval of Esco's application and dismissing plaintiffs' complaint. Judge Minkowitz entered an order memorializing his decision on June 20, 2016.

On appeal, plaintiffs raise the following issues:

POINT I

THE APPROVAL OF ESCO'S USE VARIANCE WAS TOTALLY INCONSISTENT WITH THE JEFFERSON TOWNSHIP MASTER PLAN, ZONE PLAN, AND ZONING ORDINANCE.

POINT II

ESCO DID NOT MEET THE REQUIRED STATUTORY AND CASE LAW BURDEN OF PROOF AS TO THE POSITIVE CRITERIA FOR A USE VARIANCE.

POINT III

ESCO DID NOT MEET THE REQUIRED STATUTORY AND CASE LAW BURDEN OF PROOF AS TO THE NEGATIVE CRITERIA FOR A USE VARIANCE.

POINT IV

THE BOARD'S APPROVAL OF THE USE VARIANCE IS IMPROPER AND INVALID BECAUSE IT CONSTITUTES ZONING BY VARIANCE.

POINT V

THE BOARD TOTALLY IGNORED THE TESTIMONY OF PROFESSIONAL PLANNER MICHAEL PESSOLANO.

POINT VI

THE BOARD TOTALLY IGNORED THE TESTIMONY OF THE NEIGHBORING PROPERTY OWNERS AS TO THEIR VALID OBJECTIONS AS WELL AS THE NUMEROUS EXHIBITS WHICH THEY SUBMITTED.

POINT VII

THE BOARD TOTALLY IGNORED THE JEFFERSON TOWNSHIP ENVIRONMENTAL IMPACT STATEMENT ORDINANCE.

POINT VIII

ESCO DID NOT EVEN ATTEMPT TO MEET THE REQUIRED STATUTORY AND CASE LAW BURDEN OF PROOF FOR A "C" VARIANCE FOR RELIEF FROM BUFFER ORDINANCE SEC[TION] 490-15 AND/OR 490-16.

Plaintiffs presented these exact eight arguments to Judge Minkowitz, who considered and rejected them in a thorough and well-reasoned written decision dated June 20, 2016. After reviewing the record, including the hearing transcripts and exhibits, we affirm for the reasons stated by Judge Minkowitz. We add only the following comment.

"[W]hen a party challenges a zoning board's decision through an action in lieu of prerogative writs, the zoning board's decision is entitled to deference." Kane Props., LLC v. City of Hoboken, 214 N.J. 199, 229 (2013). "[Z]oning boards, 'because of their peculiar knowledge of local conditions[,] must be allowed wide latitude in the exercise of delegated discretion.'" Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) (alteration in original) (quoting Kramer v. Bd. of Adjustment, 45 N.J. 268, 296 (1965)). A zoning "board's decisions enjoy a presumption of validity, and a court may not substitute its judgement for that of the board unless there has been a clear abuse of discretion." Ibid. If "the decision of the Zoning Board was not arbitrary, capricious, or unreasonable, it must be sustained." TSI E. Brunswick, LLC v. Zoning Bd. of Adjustment, 215 N.J. 26, 47 (2013).


We reject plaintiffs' argument that the Board's approval of a use variance was inconsistent with the Township's master plan, zone plan, and zoning ordinance. The judge found the Board's resolution reconciled the master plan with Esco's planned use as the proposed use is similar to the previous office and storage use on the property, and that "high-tech fabrication and manufacturing operations" by Esco are "similar to activities that would take place in 'scientific, engineering or research laboratories and

fabricating incidental thereto, which are permitted in the [O] Zone.'"

The Board's resolution was sufficient, and its credibility determinations are worthy of our deference. See Klug v. Bridgewater Twp. Planning Bd., 407 N.J. Super. 1, 12-13 (App. Div. 2009). There is substantial credible evidence to support the Board's findings, and the decision to grant the application was not arbitrary or capricious. Id. at 13-14; see also Kramer, 45 N.J. at 296.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION