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Town of Foster must pay developer's legal fees

December 13, 2007 - Rhode Island

A little-known Rhode Island statute might allow builders and developers to recover their legal fees from municipal boards that turn down applications, and then have their decisions overturned on appeal.

That's the word from lawyer John Shekarchi, a longtime member of the Rhode Island Builders Association and a past local director. He cited a September 28th Superior Court ruling that overturned a 2005 decision by the Foster Zoning Board of Review, which had denied an application for a dimensional variance for a single-family house lot.

In her decision, judge Judith Savage ruled not only that the town panel had no criteria on which to deny the variance, but also that the plaintiff could recover legal fees from the town under Rhode Island General Law 42-92-2(4), the Equal Access to Justice Act.

"As the Zoning Board was not substantially justified when it denied the request for dimensional variances, the appellant may be entitled to an award of reasonable litigation expenses under the Equal Access to Justice Act."

In a separate decision, judge Savage ordered the Town of Foster to reimburse the plaintiff's legal fees.

The Equal Access to Justice Act allows for the awarding of up to \$125 an hour in fees, and more if the circumstances warrant. It is intended to protect small businesses with assets of under \$500,000 when they prevail in court after being subject to improper or incorrect government rulings.

Shekarchi represented the plaintiff in the Foster case, Cobble Hill Development LLC, his own company.

"As a lawyer and developer, it is frustrating when these local boards continually deny our proposals for no legal basis. Out of this frustration, I searched and found a way to make them pay our attorney's fees for their irrational and unjustified denial," Shekarchi told The Rhode Island Builder Report.

"The irrational denial of permits will only hinder our industry. This case has opened an avenue for us to hold these cities and towns liable for their actions. Without consequences, they will continue to delay, hinder and frustrate our members' attempts to build homes."

Shekarchi added that he and several other lawyers who are RIBA members are looking for legal ways to hold municipal board members personally responsible when their panels unreasonably deny applications.

Paul Eno is the owner and editor-in-chief of New River Press, Woonsocket, which produces the The Rhode Island Builder Report .