

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14404
C/hu

_____AD3d_____

Submitted - February 20, 2007

STEPHEN G. CRANE, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2005-09166

DECISION & ORDER

In the Matter of William Thomas Clark, et al.,
appellants, v Town of North Salem, New York,
et al., respondents.

(Index No. 7860/04)

Meiselman, Denlea, Packman, Carton & Eberz, P.C., White Plains, N.Y. (James R. Denlea, David S. Douglas, and Mary Jane E. Wagg of counsel), for appellants.

Stephens, Baroni, Reilly & Lewis, LLP, White Plains, N.Y. (Gerald D. Reilly of counsel), for respondents Town of North Salem, New York, and Zoning Board of Appeals of the Town of North Salem.

Michael Fuller Sirignano, Cross River, N.Y., for respondents John J. Pezzillo and Michele Pezzillo.

In a proceeding, inter alia, pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Town of North Salem dated April 14, 2005, which granted the application of the respondents John Pezzillo and Michelle Pezzilo for area variances, the petitioners appeal from a judgment of the Supreme Court, Westchester County (Dillon, J.), entered August 29, 2005, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

“Local zoning boards are vested with broad discretion in considering applications for area variances, and judicial review of their determinations is limited to whether the action taken was

March 20, 2007

Page 1.

MATTER OF CLARK v TOWN OF NORTH SALEM, NEW YORK

illegal, arbitrary and capricious, or an abuse of discretion” (*Matter of Shokrian v Zoning Bd. of Appeals of City of Long Beach*, 32 AD3d 961, 961). A zoning board’s determination is to be upheld if it has a rational basis (*see Matter of Ifrah v Utschig*, 98 NY2d 304, 308).

We note, as did the Zoning Board of Appeals of the Town of North Salem (hereinafter the Zoning Board), that no appeal was taken from the merger determination of the Zoning Board dated December 9, 2004. Contrary to the appellants’ contention, the Zoning Board properly applied Town Law § 267-b(3)(b) in considering the application of the respondents John J. Pezzillo and Michele Pezzillo for area variances. Its determination granting the area variances had a rational basis and was not illegal, arbitrary and capricious, or an abuse of discretion (*see Matter of Sasso v Osgood*, 86 NY2d 374, 384; *Matter of Shokrian v Zoning Bd. of Appeals of City of Long Beach*, *supra* at 962).

The appellants’ remaining contentions are without merit.

CRANE, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court