

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

D21349
Y/hu

_____AD3d_____

Argued - November 7, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-09051

DECISION & ORDER

In the Matter of Tappan Cleaners, respondent,
v Zoning Board of Appeals of Village of Irvington,
et al., appellants.

(Index No. 5804/07)

J. Henry Neale, Jr., Irvington, N.Y., for appellant Zoning Board of Appeals of Village of Irvington.

McCullough, Goldberger & Staudt, LLP, White Plains, N.Y. (Evan M. Eisland and Mark Giacopelli of counsel), for appellant 53 Main Realty, LLC.

Stephens, Baroni, Reilly & Lewis, LLP, White Plains, N.Y. (Gerald D. Reilly of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Village of Irvington dated March 6, 2007, which, after a hearing, upheld the issuance of a building permit by the Village Building Inspector and granted the application of 53 Main Realty, LLC, for a variance to use combustible solvents in its laundry business, the Zoning Board of Appeals of the Village of Irvington and 53 Main Realty, LLC, separately appeal from a judgment of the Supreme Court, Westchester County (Dibella, J.), entered August 29, 2007, which granted the petition and annulled the determination.

ORDERED that the judgment is reversed, on the law, with one bill of costs, the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits.

December 9, 2008

Page 1.

MATTER OF TAPPAN CLEANERS v ZONING BOARD
OF APPEALS OF VILLAGE OF IRVINGTON

The Supreme Court erroneously determined that the petitioner had standing to challenge the determination of the Zoning Board of Appeals of the Village of Irvington (hereinafter the Board). Notwithstanding the proximity of the petitioner's business to the property owned by 53 Main Realty, LLC, the petition failed to allege any clear noneconomic concerns, and instead implied that the petitioner's challenge was based on a fear of increased business competition. Such an interest is not within the zone of interests protected by the relevant zoning regulations (*see Matter of Sun-Brite Car Wash v Board of Zoning & Appeals of Town of N. Hempstead*, 69 NY2d 406, 415; *Matter of Fox v Favre*, 218 AD2d 655). To the extent that the petitioner asserted potential "safety issues" and a "reduction in value of neighboring properties" in a letter written to the Chairman of the Board, those assertions were conclusory and speculative, and therefore, insufficient to establish standing (*see Matter of Brighton Residents Against Violence to Children v MW Props.*, 304 AD2d 53, 57). Accordingly, the Supreme Court erred in granting the petition and annulling the Board's determination.

In light of the foregoing, we need not address the appellants' remaining contentions.

SPOLZINO, J.P., COVELLO, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court