

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

D28950
H/kmg

_____AD3d_____

Argued - October 12, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2009-07915

DECISION & ORDER

In the Matter of Neil Townsend, et al., appellants,
v Zoning Board of Appeals of City of Rye,
respondent.

(Index No. 2151/09)

Friedman, Harfenist, Kraut & Perlstein, LLP, Purchase, N.Y. (Jonathan Kraut, Neil Torczyner, and Leo Napior of counsel), for appellants.

Harris Beach PLLC, White Plains, N.Y. (Kristen K. Wilson of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the City of Rye, dated December 11, 2008, which, after a hearing, denied the petitioners' application for a variance to permit the legalization of a six-foot-high fence to the extent the fence bordered on Boston Post Road, the petitioners appeal from a judgment of the Supreme Court, Westchester County (Cacace, J.), entered July 13, 2009, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The petitioners are the owners of certain premises located on Roger Sherman Place, bordering on Boston Post Road and Playland Parkway, in Rye, New York. The Zoning Board of Appeals of the City of Rye granted the petitioners' application for a variance to permit the legalization of a six-foot-high fence to the extent the fence bordered on Playland Parkway, but denied the application to the extent the fence bordered on Boston Post Road.

November 9, 2010

Page 1.

MATTER OF TOWNSEND v ZONING BOARD OF APPEALS OF CITY OF RYE

The record in this case demonstrates that the respondent engaged in the requisite balancing of interests and considered the appropriate factors pursuant to General City Law § 81-b in determining the petitioners' application for an area variance with respect to the height of the fence bordering Boston Post Road (see *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 612-613; *Matter of Crilly v Karl*, 67 AD3d 793; *Matter of Allstate Props., LLC v Board of Zoning Appeals of Vil. of Hempstead*, 49 AD3d 636; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 773-774). The respondent's conclusions are not irrational or arbitrary and capricious (see *Matter of Ifrah v Utschig*, 98 NY2d 304, 308; *Matter of Sasso v Osgood*, 86 NY2d 374, 386; *Matter of Tsunis v Zoning Bd. of Appeals of Inc. Vil. of Poquott*, 59 AD3d 726; *Matter of Merlotto v Town of Patterson Zoning Bd. of Appeals*, 43 AD3d 926, 929).

DILLON, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court