

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

D30356
O/kmb

_____AD3d_____

Submitted - February 18, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2010-00785

DECISION & ORDER

In the Matter of Jada Developers, LLC, appellant,
v Zoning Board of Appeals of Town of Wallkill,
respondent.

(Index No. 7450/09)

Fabricant Lipman & Frishberg, PLLC, Goshen, N.Y. (Alan S. Lipman of counsel), for
appellant.

Richard J. Guertin, Middletown, N.Y., for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Town of Wallkill dated December 8, 2008, which, after a hearing, denied the petitioner's application for certain area variances, the petitioner appeals from so much of an order of the Supreme Court, Orange County (Lubell, J.), dated December 4, 2009, as, upon reargument, adhered to the original determination in a judgment dated June 30, 2009, denying the petition and dismissing the proceeding.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The petitioner applied to the Zoning Board of Appeals of the Town of Wallkill (hereinafter the ZBA) for certain area variances that would enable it to construct a single-family home. After a hearing, the ZBA denied the petitioner's application, and the petitioner commenced this proceeding to review the determination. In a judgment dated June 30, 2009, the Supreme Court denied the petition and dismissed the proceeding. The petitioner then moved for leave to reargue

March 8, 2011

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contending, inter alia, that the Supreme Court failed to make a determination as to whether the ZBA properly applied the balancing test set forth in Town Law § 267-b(3)(b).

Upon reargument, the Supreme Court properly adhered to its original determination denying the petition and dismissing the proceeding. Contrary to the petitioner's contention, the ZBA engaged in the required balancing test and considered the relevant statutory factors (*see* Town Law § 267-b[3][b]). Moreover, the ZBA's determination had a rational basis and was not arbitrary or capricious (*see Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613-615; *Matter of Salzano v Zoning Bd. of Town of Wallkill*, 63 AD3d 850, 851; *Matter of Fowlkes v Board of Zoning Appeals of Town of N. Hempstead*, 52 AD3d 711, 712-713).

RIVERA, J.P., DICKERSON, ENG and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court