

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

D34623
Y/mv

_____AD3d_____

Argued - March 20, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2011-02664

DECISION & ORDER

In the Matter of Zorina Tomich, respondent,
v Hugh H. Lowery, etc., et al., appellants.

(Index No. 16295/05)

James F. Matthews, Huntington, N.Y., for appellants.

Kenneth Cooperstein, Centerport, N.Y., for respondent.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of the Zoning Board of Appeals of the Town of Huntington dated June 23, 2005, as, after a public hearing, denied that branch of the petitioner's application which was for a nonconforming use variance, the appeal is from a judgment of the Supreme Court, Suffolk County (Rebolini, J.), dated January 19, 2011, which granted the petition, annulled the determination, and directed the Zoning Board of Appeals of the Town of Huntington to approve the petitioner's application to the extent reviewed.

ORDERED that the judgment is affirmed, without costs or disbursements.

The Zoning Board of Appeals of the Town of Huntington (hereinafter the ZBA) determined that the petitioner failed to establish that the continuous nonconforming use of the subject property as a multi-family dwelling began prior to the 1934 enactment of the relevant zoning code. Thus, the ZBA denied that branch of the petitioner's application which was for a nonconforming use variance. The Supreme Court properly annulled the determination of the ZBA, as it was without a rational basis and was not based on the evidence in the record (*see Matter of Straub v Modelewski*, 56 AD3d 481, 482; *Matter of Piesco v Hollihan*, 47 AD3d 938; *Matter of*

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MATTER OF TOMICH v LOWERY

Doyle & Doyle v Rush, 241 AD2d 494; *Town of Islip v P.B.S. Marina*, 133 AD2d 81; cf. *Matter of Marzella v Munroe*, 69 NY2d 967, 968).

DILLON, J.P., DICKERSON, HALL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court