

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

D36873  
W/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 15, 2012

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
ANITA R. FLORIO  
THOMAS A. DICKERSON, JJ.

2011-10126

DECISION & ORDER

In the Matter of Adam J. Filipowski, et al., appellants,  
v Zoning Board of Appeals of Village of Greenwood Lake,  
respondent.

(Index No. 1174/08)

Francis L. Filipowski, Rye Brook, N.Y., for appellants.

Fabricant Lipman & Frishberg, PLLC, Goshen, N.Y. (Alan S. Lipman 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 Greenwood Lake dated September 18, 2008, which, after a hearing, denied the petitioners' application for several area variances, the petitioners appeal, as limited by their brief, from stated portions of a judgment of the Supreme Court, Orange County (Ecker, J.), dated August 19, 2011, which, upon granting that branch of the petition which was to annul the determination, and upon remitting the matter to the Zoning Board of Appeals of the Village of Greenwood Lake for findings of fact and a determination on the merits of the application for area variances, inter alia, denied that branch of the petition which was to compel the Zoning Board of Appeals of the Village of Greenwood Lake to issue the requested area variances, and dismissed that portion of the proceeding.

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

Contrary to the petitioners' contention, for the purpose of determining compliance

December 19, 2012

Page 1.

MATTER OF FILIPOWSKI v ZONING BOARD OF APPEALS OF VILLAGE OF  
GREENWOOD LAKE

with the access requirements of Village Law § 7-736(2), it was appropriate for the Zoning Board of Appeals of the Village of Greenwood Lake (hereinafter the ZBA) and the Supreme Court to consider the issues of title to, and the petitioners' right to use, a street designated as Louise Lane (*see Matter of Morando v Town of Carmel Zoning Bd. of Appeals*, 81 AD3d 959, 960; *Matter of Seiden v Zoning Bd. of Appeals of Vil. of Ossining*, 46 AD3d 694, 695; *Matter of Joseph v Romano*, 208 AD2d 926, 926-927).

Additionally, judicial review of an administrative determination is limited to the grounds invoked by the agency in making its decision (*see Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 758; *Matter of Aronsky v Board of Educ., Community School Dist. No.22 of City of N.Y.*, 75 NY2d 997, 1000). Here, the ZBA, relying on Village Law § 7-736(2), denied the petitioners' application solely on the threshold ground that the petitioners were not eligible to apply for area variances due to their failure to demonstrate that their property had access to "a public, Village, county, State or Federal dedicated street, road or highway." Accordingly, contrary to the petitioners' contention, the Supreme Court, upon rejecting that threshold determination, properly declined to reach the merits of the petitioners' application for area variances, and properly remitted the matter to the ZBA to consider and determine the merits of the petitioners' application in the first instance (*see Matter of Kodogiannis v Zoning Bd. of Appeals of Town of Malta*, 42 AD3d 739, 740; *cf. Matter of Gabrielle Realty Corp. v Board of Zoning Appeals of Vil. of Freeport*, 24 AD3d 550; *Matter of James H. Maloy, Inc. v Zoning Bd. of Appeals of Town of Sand Lake*, 168 AD2d 874).

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court