Matter of Guldi v Bean
2007 NY Slip Op 30149(U)
February 2, 2007
Supreme Court, Suffolk County
Docket Number: 0025312
Judge: Peter Fox Cohalan
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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY	I.A.S. PART 24
In the Matter of the Application of George O. Guldi Petitioner, For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules, - against - CHRISTOPHER BEAN, FRANK DELGIUDICE, GERARD PIERING, PATRICIA ANN STINCHI, and JOHN WITTSCHEN, CONSTITUTING THE ZONING BOARD OF APPEALS OF THE VILLAGE OF WESTHAMPTON BEACH, Respondents.	By: Cohalan, J.S.C. Dated: August 23, 2006 Index No. 25312-05 Mot. Seq. # 001 - CDISPSUBJ Return Date: November 10, 2005 Calendar Date: August 23, 2006

GEORGE O. GULDI, ESQ. PRO SE Attorney for Petitioner 11 Griffing Avenue Westhampton Beach, NY 11978	RICHARD T. HAEFELI, ESQ. Attorney for Respondents 48F Main Street - P.O. Box 1112 Westhampton Beach, NY 11978

This is an Article 78 special proceeding brought by the petitioner seeking to reverse, annul and set aside a determination and denial by the respondents of an application for approval to erect a proposed accessory second dwelling unit cottage on the petitioner's property.

Petitioner, George O. Guldi, is the owner of a residential parcel of real estate at 9 and 11 Griffing Avenue in Westhampton Beach, Suffolk County on Long Island New York. This parcel is located in the R-1 Residential Zoning District which permits a single family dwelling on a lot size of 40,000 square feet. Petitioner's property is described as a permitted non-conforming use with a two family, two story frame dwelling with a detached two car garage with an attached room. The petitioner's residential house at 9 & 11 Griffing Street has separate entrances, cooking facilities, electric and water service. Petitioner, in his

application, sought a use variance, an area variance and a special use permit seeking to eliminate the two family use of the main dwelling by relocating one of its uses to a proposed detached cottage to be located on the rear of the property. Petitioner's intent was to relocate his elderly father to the cottage with a relocation of the second family use from the main structure to a square foot by square foot transfer to a cottage at the rear of his property. Petitioner argues that he is not seeking a use variance for his pre-existing non-conforming use, but merely a relocation of one of the existing uses of the main house to the proposed cottage to be built on the area behind the main house.

The respondents argue that the petitioner's residence is in the R-1 Zoning District which permits only a single family dwelling but that petitioner's existing two family dwelling within the R-1 district is a non-conforming use not conforming to the use regulations of the R-1 District. Respondents further argue that Section 197-29.C prohibits any enlargement or extension of a non-conforming use to the same lot as is occupied by the non- conforming use. Thus the petitioner is required to obtain a use variance notwithstanding his attempts to argue that it's a "mere relocation" of a use already permitted.

Respondents, in a three (3) page decision dated September 15, 2005, denied the petitioner's request for a use variance to construct a second dwelling/cottage in the rear yard. Petitioner thereafter brought this Article 78 proceeding claiming that the Zoning Board of Appeals of the Village of Westhampton's denial of his application was arbitrary, capricious and legally without merit.

For the following reasons, the petitioner's Article 78 special proceeding seeking to annul the decision of the Zoning Board of Appeals of the Village of Westhampton (hereinafter Zoning Board) is denied and the special proceeding is dismissed.

It is well settled law "that in a proceeding seeking judicial review of administrative action the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary or capricious." ***Flacke v. Onondaga Landfill Systems, Inc.***, 69 NY2d 355, 363, 514 NYS2d 689,693 (1987).

The proper standard for a reviewing court is whether the challenged administrative ruling lacked a rational basis for the action taken and was arbitrary and capricious. As set forth by the court in ***Matter of Halpern v. City of New Rochelle***, 24 AD3d 768, 809 NYS2 98 (2nd Dept. 2005),

> "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis. Under this standard, a determination should not be disturbed unless the record shows that the agency's action was

> 'arbitrary, unreasonable, irrational or indicative of bad faith' (***Matter of Cowan v. Kern***, 41 NY2d 591, 599; *see* ***Matter of Pell v. Board of Educ.***, 34 NY2d 222, 231 ["Arbitrary action is without sound basis in reason and is generally taken without regard to the facts"]).

The ***Halpern***, supra, court went on to state:

> "The Court of Appeals has long recognized the 'settled rule' that 'in reviewing board actions as to variances or special exceptions the courts...restrict themselves to ascertaining whether there has been illegality, arbitrariness, or abuse of discretion' (***Matter of Lemir Realty Corp. v. Larkin***, 11 NY2d 20, 24 [collecting cases]; see ***People ex rel. Hudson-Harlem Val. Tit. & Mtgw. Co. v. Walker***, 282 NY 400, 405 [determination of zoning board of appeals 'may not be set aside unless it appears to be arbitrary or contrary to law'][collecting cases]). The Court of Appeals has continued to articulate the CPLR 7803 (3) standard of review in zoning cases, emphasizing the deference that must be afforded to local officials in making judgments concerning land use in their community (*see* ***Matter of Pecoraro v. Board of Appeals of Town of Hempstead***, 2 NY3d 608, 613 ['courts may set aside a zoning board determination only where the record reveals that the board acted illegally or arbitrarily, or abused its discretion, or that it merely succumbed to generalized community pressure'] ***Matter of Ifrah v. Utschig***, 98 NY2d 304, 308 ['Local zoning boards have broad discretion in considering applications for variances and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion']; ***Matter of Cowan v. Kern***, supra at 599 ['Where there is a rational basis for the local decision, that decision should be sustained']).

The court on review of the petition finds that the respondent Zoning Board did not act in an arbitrary, capricious manner or abused its discretion in denying the petitioner's application for a use variance to transfer from the main house a permitted second family use to a proposed second dwelling or cottage to be constructed on the rear of the property. Petitioner's attempts to argue that he is not seeking a use variance because he is merely seeking to transfer a permitted use from the main house to a second dwelling to be constructed at the rear of his property ignores the fact that he seeks to construct a second dwelling on his property. Clearly, his application, no matter how he attempts to interpret the "transfer of a use", seeks a use variance, among other things, to construct a second dwelling on his non-conforming use in the R-1 Zoning District.

A review of the record presented to the Zoning Board shows that the petitioner's property is a non-conforming use consists of a main dwelling with two family usage and a garage with an attached room, not a second dwelling, at the rear of the property. The determination by the Zoning Board, in a well set forth and reasoned opinion, found that the standards set forth in the Village Code in Section 7-712-b (2) were not met and denied the application. This Court finds that the Village Code sets forth an essential element to satisfy a use variance with proof that the petitioner cannot obtain a reasonable return for his property by complying with the existing provisions of the R-1 District. The fact that the petitioner may maintain his non-conforming use in the R-1 District of a two family dwelling within the main residence indicates that petitioner fails to meet an essential element of a use variance which the Zoning Board noted.

The fact that the petitioner sought to construct a second dwelling in the R-1 District was not lost on the Zoning Board. During its review it noted that adjoining properties had pool houses, a conversion of a cottage to a single family residence and the conversion of a barn to a dwelling but no second dwellings. Clearly the Zoning Board and the neighbors were concerned with the construction of a second dwelling capable of being rented in this summer beach community. The Zoning Board's determination in this case was neither illegal, arbitrary, capricious or an abuse of discretion. Petitioner's remaining contentions are without merit.

Based upon the entire record before it, and balancing all the factors established, the Zoning Board could rationally conclude that the detriment the proposed construction of the second dwelling on the petitioner's property posed to the neighborhood outweighed the benefit sought by the petitioner, and its determination denying the requested relief was not arbitrary or capricious. ***Matter of Ifrah v. Utschig***, supra. Accordingly, the petition is denied and the proceeding dismissed.

Settle Judgment

The foregoing constitutes the decision of this Court.

Date: February 2, 2007

J.S.C.