

Ehrlich v Woodhouse
2007 NY Slip Op 31783(U)
June 18, 2007
Supreme Court, Suffolk County
Docket Number: 0012811/2006
Judge: Denise F. Molia
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**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA,**
Justice

ROBERT EHRLICH,

Petitioner,

CASE DISPOSED: YES
MOTION R/D: 5/30/06
SUBMISSION DATE: 4/20/07
MOTION SEQUENCE No.: 001 MD

For a Judgment Pursuant to Article 78 of the CPLR,

- against -

ATTORNEY FOR PLAINTIFF
Patricia C. Moore
51020 Main Road
Southold, New York 11971
ATTORNEYS FOR DEFENDANT
Smith Finkelstein Lundberg Isler
456 Griffing Avenue, PO Box 389
Riverhead, New York 11901

JERILYN B. WOODHOUSE, CHAIR, KENNETH L.
EDWARDS, MARTIN H. SIDOR, GEORGE D.
SOLOMON and JOSEPH L. TOWNSEND,
CONSTITUTING THE PLANNING BOARD OF THE
TOWN OF SOUTHOLD,

Respondents.

Upon the following papers filed and considered relative to this matter:

Notice of Petition and Petition dated May 8, 2006; Exhibits A and B annexed thereto;
Affirmation in Support dated October 23, 2006; Verified Answer dated June 19, 2006; Affidavit
dated November 30, 2006; Exhibits 1 through 3 annexed thereto; Return of the Southold Town
Planning Board; Petitioner's Memorandum of Law; Respondent's Memorandum of Law;
Petitioner's Reply Memorandum of Law; and upon due deliberation; it is

ORDERED, that the petition of Robert Ehrlich, pursuant to CPLR Article 78, for a
judgment reviewing and reversing a certain determination of the Respondent Southold Town

Planning Board filed April 11, 2006, and directing the granting of the site plan approval for the petitioner's property, is denied.

The petitioner, Robert Ehrlich, is the owner of a corner lot parcel of real property located in the hamlet of Orient, in the Town of Southold. The lot has frontage on New York State Route 25 as well as on Village Lane, a town owned road. The property, which shares five common property lines with two adjacent residential properties, is .28 acres in size and is improved with a 1,929 square foot two story single family residence. The subject parcel is located in a "B" General Business zoning district.

On December 29, 2004, the petitioner applied for a building permit to convert the single family dwelling into a retail shop. The building permit was denied since the proposal first required site plan approval. Thereafter, in February 2005 the petitioner submitted a site plan application to the respondent Board for approval for a shop for the sale of antiques, and arts and crafts of local artists and craftspeople. At the request of the respondent, the petitioner submitted several revised site plans in support of the application. In February 2006 the respondent issued a SEQRA determination that the matter was a Type II action and not subject to environmental review. A public hearing on the application was held on March 13, 2006. The respondent adopted a resolution on April 10, 2006 denying the petitioner's site plan application and providing as follows:

IT IS HEREBY RESOLVED, that the Southold Town Planning Board denies the application for site plan approval dated February 2, 2006, floor plan dated February 3, 2006, and truck turn-around layout plan dated February 3, 2006 prepared and certified by Michael Mapes, Professional Engineer for the following reasons:

1. Pursuant to Town Code Section 100-213 "Transition buffer area", the Planning Board, in its discretion, determines that a 25' minimum buffer is necessary to protect the abutting residential properties due to the uniqueness of the subject property, its close proximity to the surrounding properties and the expected deleterious effects of retail activities on this rural village area. This required minimum buffer area is not depicted on the proposed site plan dated February 2, 2006, nor does the buffer proposed by the applicant satisfy these concerns. Because of the unique shape of the affected parcels, the neighboring property to the south shares 3 property lines with the subject parcel, with structures .5' from the property line. The property to the east is configured such that it conjoins with the subject parcel, sharing boundaries on two (2) contiguous sides, with structures within approximately 20' of the subject property. It is the Planning Board's determination that the proposed double row of 5'-6' Leyland Cypress Hedge will not "provide privacy from noise, headlight glare and visual intrusion to the neighboring properties" as required

by Town Code Section 100-213.

2. Pursuant to Town Code Section 100-251, the Planning Board further finds that the proposed site plan change of existing use and location of parking areas will not “Protect the established character and value of the adjoining properties, both public and private, and of the neighborhood in which they are located” as required by Section 100-251 B.

3. The agent, for the applicant, through testimony in the public hearing on March 13, 2006, has admitted that the proposed use is in actuality a “gift shop” dedicated to typical retail sales, as opposed to the “Antiques, Auction Gallery, Arts & Crafts and accessory retail/storage” use as listed on the site plan application. As per Town Code 100-191, parking calculations for a gift shop would be based on the retail shop requirements which calls for, “at least 1 parking space per 200 feet of gross floor area” in “order to minimize traffic congestion, air pollution and the risk of motor vehicle and pedestrian accidents, and to address aesthetic considerations” as per Town Code 100-190, Purpose. The gross floor area, as indicated within this proposed site plan application, requires a minimum of 10 parking spaces, double the 5 proposed spaces as depicted on the applicant’s plan dated February 2, 2006.

The instant proceeding was subsequently commenced by the petitioner, alleging that the aforesaid decision of the respondent Board was irrational, arbitrary and capricious, and not supported by the evidence submitted and the record before it.

The Court of Appeals has reaffirmed the limited role of the courts in the review of decisions issued by local land use boards as follows:

“As with board determinations on variances, a reviewing court is bound to examine only whether substantial evidence supports the determination of the board. Where substantial evidence exists, a court may not substitute its own judgment for that of the board, even if such a contrary determination is itself supported by the record.”

Retail Property Trust v. Bd. of Zoning Appeals of Town of Hempstead, 98 N.Y.2d 190, 196. (See also, Matter of P.M.S. Ltd. v. Zoning Board, 98 N.Y.2d 683; Matter of Ifrah v. Utschig, 98 N.Y.2d 304)

The reason for the limited scope of judicial review was set forth by the Court of Appeals in Cowan v. Kern, 41 N.Y. 2d 591 at 599, as follows:

“The crux of the matter is that the responsibility for making zoning decisions has been committed primarily to quasi-legislative, quasi-administrative boards composed of representatives from the local community. Local officials generally possess the familiarity with local conditions necessary to make the often sensitive planning decisions which affect the development of their community. Absent arbitrariness, it is for the locally selected and locally responsible officials to determine where the public interest in zoning lies. (McGowan v. Cohalan, 41 N.Y.2d 434, 438, supra.) Judicial review of local zoning decision is limited; not only in our court but in all courts. Where there is a rational basis for the local decision, that decision should be sustained.”

The Planning Board premised the denial of the petitioner’s site plan in part on the absence of a minimum twenty five foot transition buffer with the adjacent residential parcels, as set forth in section 280-94 of the Town of Southold Zoning Code. Although the Planning Board has the ability to accept alternatives to a full buffer area, if, in its discretion, it was felt that the purposes of the transition buffer could be accomplished otherwise, the Board determined that under the instant circumstances, the statutorily suggested minimum transition buffer of twenty five feet was warranted. The Board also determined that the application did not provide the required number of off street parking spaces under the Zoning Code.

Under the circumstances presented, the Court finds that the findings of the respondent Board are rational and supported by the substantial evidence on the record, and are not found to be arbitrary, capricious, or erroneous as a matter of law, or an abuse of discretion. Accordingly, the petition is dismissed.

The foregoing constitutes the Order of this Court.

Dated: June 18, 2007

DENISE F. MOLIA

HON. DENISE F. MOLIA
J.S.C.