

**Matter of Canarick v Zoning Bd. of Appeals of
Inc. Vil. of Sea Cliff**

2007 NY Slip Op 33220(U)

October 2, 2007

Supreme Court, Nassau County

Docket Number: 0567-07/

Judge: Anthony L. Parga

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**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY**

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 13

**In the Matter of the Application of
PAUL CANARICK,**

Petitioner,

INDEX NO. 10567/07
X X X

For a Judgment under CPLR Article 78

MOTION DATE: 8/3/07
SEQUENCE NO. 001

-against-

**ZONING BOARD OF APPEALS OF THE
INCORPORATED VILLAGE OF SEA CLIFF,**

Respondent.

-----X

Notice of Petition. Pet. & Exs.....	<u>1</u>
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Upon the foregoing papers, it is ordered that the application by petitioner for an order annulling a determination by the Zoning Board of Appeals of the Incorporated Village of Sea Cliff ("Zoning Board") dated May 29, 2007 which denied an area variance for subdividing and building is denied.

Petitioner's family has been the owner of the property at issue since 1956. The lot is in a Residence A District: one-family dwellings with a minimum lot size and minimum sideyard, frontage and set back requirements. The code requires frontage lot width at the setback line to be 75 feet. Petitioner's plan A would have one parcel with a 62.45 foot setback and the other parcel would have 66.25 foot width at the

setback line. The deviations would be 16.7% and 11.7% less than the minimum required.

Petitioner's plan B would have one parcel with the width at the setback line to be 63.52 feet, a 15.3% deviation and the other parcel complied with the ordinance requirement of 75 feet for frontage and lot width setback.

Petitioner submitted two alternate plans to subdivide his lot into two building lots to the Village Building Department. Both proposals were disapproved by the Building Department. Petitioner then applied to the Zoning Board of Appeals for variances that if granted would allow petitioner to subdivide and build two homes. The Zoning Board's denial of those variances are the subject of this proceeding.

Petitioner argues that the Board's finding that the character of the neighborhood and property values would be adversely affected to be irrational and not supported by substantial evidence. Specifically, petitioner notes that although entire lots would be in excess of the minimum lot size, the lots would violate the lot width and frontage requirements.

Petitioner's references to other properties in the vicinity that exist as a non-conforming uses is conclusory and not persuasive in this case. The Court finds the respondent's decision to be a reflection of its ability to exercise its discretion in the "strict application of the minimum without fear of chaos" (*Soros v. Board of Appeals of Southampton*, 50 Misc.2d 205, aff'd 27 AD2d 705 (2nd Dept. 1967), app. Den. 19 NY2d 582 (1967)).

Broad discretion is vested in local zoning boards in considering applications for variances and judicial review is limited to determining whether "the board acted illegally or arbitrarily or abused its discretion, or that it merely succumbed to generalized community pressure (citations omitted)" (*Pecoraro v. Board of Appeals*

of *Town of Hempstead*, 2 NY3d 608, 613 (2004); see also, *Matter of Ifrah v. Utschig*, 98 NY2d 304, 308 (2002); *Stone Landing Corp. v. Board of Appeals of the Village of Amityville*, 5 AD3d 496, 496-497, (2d Dept. 2004); *Matter of Ceballos v. Zoning Bd. of Appeals of Town of Mount Pleasant*, 304 AD2d 575 (2d Dept. 2003). "Thus, a determination of a . . . board should be sustained upon judicial review if it has a rational basis and is supported by substantial evidence" (*Ifrah v Utschig, supra*, at 308; see also, *Pecoraro v. Board of Appeals of the Town of Hempstead, supra*, at p. 613; *Sasso v. Osgood*, 96 NY2d 374, 384, n.2 (1995); *Bivona v. Town of Plattekill Zoning Board of Appeals*, 268 AD2d 877, 879 (3d Dept. 2000). "Although scientific or other expert testimony is not required in every case to support a . . . board's determination, the board may not base its decision on generalized community objections." (*Matter of Ifrah v Utschig, supra*, at p. 308, citing *Matter of Twin County Recycling Corp. v. Yevoli*, 90 NY2d 1000, 1002 (1997)).

"In passing on an application for an area variance, a village zoning board is required to 'take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant' " (*Stone Landing Corp. v. Board of Appeals of the Village of Amityville, supra*, at p. 496, 497, quoting Village Law § 7-712-b [3][b]; see also, *Bivona v. Town of Plattekill Zoning Board of Appeals, supra*, at p. 879. "In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect

or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance "(Village Law § 7-712-b[3][b]).

The respondent's decision was not based only on community opposition. The decision concludes that: "The rationale of zoning plans is to create conformance with standards. The standards in the area of the subject property are 75 foot width at the setback line. There was insufficient proof presented to justify a reduction of the standards as regards the subject premises. Any such lowering of standards would obviously be detrimental to and adversely affect the character of the neighborhood. While the Zoning Ordinance cannot require non-confirming lots in existence at the time of its passage to meet new standards, this Board can prevent future erosion of the Ordinance by not permitting the spitting up of conforming lots into substandard ones."

The Zoning Board clearly applied the balancing test set forth at Village Law § 7-712-b(3)(b), and its determination is supported by substantial evidence (*see, Matter of Peroraro v Board of Appeals of Town of Hempstead, supra*, at p. 613; *Matter of Ifrah v Utschig, supra*, at p. 308; *Corigliano v Zoning Board of Appeals of City of New Rochelle*, 18 AD2d 750 (2d Dept. 2005); *Blattner v Zoning Board of Town of Mount Pleasant*, 17 AD3d 760 (2d Dept. 2005); *Ceballos v Zoning Board of Appeals of Town of Mount Pleasant, supra*).

The determination is confirmed and this proceeding is dismissed.

Dated: October 2, 2007.

ENTERED

OCT 09 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Anthony L. Parga
Anthony L. Parga, J.S.C.