

**Youssefia v Capozzi**

2007 NY Slip Op 33629(U)

November 5, 2007

Supreme Court, Nassau County

Docket Number: 1183-06/

Judge: Thomas A. Adams

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,  
Acting Supreme Court Justice

TRIAL/IAS, PART 37  
NASSAU COUNTY

BENJAMIN YOUSSEFIA.

Petitioner(s),

For a Judgment Pursuant to CPLR Article 78

MOTION DATE: 9/24/07  
INDEX NO.: 21183/06

-against-

SEQ. NO 2

NICHOLAS B. CAPOZZI, Mayor, JAMES A.  
TOMLINSON, DAVID N. DI LUCIA, JOHN M.  
DI LEO, and CAROLYN A. WEBER, constituting  
the Board of Trustees of the Incorporated  
Village of Manorhaven,

Respondent(s)

The petitioner's application, pursuant to CPLR article 78, to reverse and annul the respondent's 11/16/06 determination which denied his 4/17/06 application to subdivide his property is determination as hereinafter provided.

The petitioner is the owner of a single family home located on a 9,075 square foot irregularly shaped parcel at 3 Cambridge Avenue, in Manorhaven (Section 4, Block 75, Lots 1-4). The property (see respondent's exhibit 20) has 60 feet of frontage on Archwood Avenue, 117.4 feet of frontage on Cambridge Avenue and abuts what the petitioners' traffic consultant, Alan J. King, described as a "five legged intersection" which is "stop sign controlled on all five approaches" (see respondent's exhibit 11, 9/26/06 hearing transcript p.21,L2-3). It lies within an R-1 Residential District.

On or about 4/17/06 the petitioner filed an application to subdivide the parcel into two lots in order to construct two, new single family homes (see respondent's exhibit 2). One proposed lot (i.e., lot A) would be located on the corner and consist of 4,710 square feet. The other (i.e., lot B) would have 4,370 square feet.

During a 9/26/06 public hearing, the petitioner stressed that the two proposed lots would exceed the 4,000 square foot minimum lot size required in an R-1 zoning district. Moreover, each proposed lot would comply with the applicable forty foot minimum width requirement. However, both lots would, admittedly, be less

than the required one hundred foot deep and therefore require an area variance (see respondent's exhibit 11, p.12, l 3-12).

The petitioner also presented the testimony of a real estate appraiser, Barry Nelson, and the traffic consultant, Mr King. Mr. Nelson opined, in sum, that the construction of two new single family homes in place of the existing one would substantially increase the parcel's market value and corresponding real estate tax revenue and therefore have a positive impact on the surrounding community (see respondent's exhibit 11, p.18, l 15-p.19, l.16). Mr. King's traffic assessment and "trip generation analysis" concluded that during the morning peak traffic period an additional two vehicles of traffic would be generated while, in the evening, three more vehicles would be added because of the subdivision (p. 21, l 18-p.22, l3). Nor, allegedly, would the rate of accidents increase. A review of the Nassau County Department of Public Work's 1/1/03-8/15/06 records reportedly revealed that only two accidents occurred at the intersection during that interval (p. 22, l 4-25).

Finally, a number of neighborhood residents either spoke in opposition to the proposal (pp. 24-29) or submitted written objections (see respondent's exhibits 15-17).

On 6/30/06 the petitioner was notified that his application was denied (see respondent's exhibit 8). The respondent's findings of fact (see respondent's exhibit 1) note, inter alia, the petitioner's failure to apply for area variances and rejected Mr. King's traffic analysis.

The petitioner subsequently filed this proceeding, pursuant to CPLR article 78, seeking to reverse and annul the determination as arbitrary and capricious. It was initially submitted without opposition on 1/19/07. On 2/2/07 the respondent was therefore directed to submit an answer and the administrative record within thirty days. The petitioner was granted leave to renew in the event the respondent failed to comply with that directive (see Castell v City of Saratoga Springs, 3 ad3d 774,775). Ultimately, after a number of consensual adjournments, the present application was filed on 8/22/07.

"Local zoning boards have broad discretion, and judicial review of their decisions is thus limited to determining whether the zoning board's action was illegal, arbitrary, or an abuse of discretion" (Sheibani v Zoning Board of Appeals of Town of Huntington, 40 AD3d 768,769). "Indeed, the Court will substitute its judgment for that of a planning board only when the administrative agency has abused its discretion or has acted arbitrarily or illegally" (Koncelik v Planning Board of the Town of East Hampton, 188 AD2d 469,470). More specifically, "New York case law involving subdivision approval indicates that granting subdivision approval is discretionary" (Bower Associates v

Pleasant Valley, 302 AD2d 259,263; see Village Law §7-728).

The law is also well settled that a planning board may properly consider the impact the proposed subdivision would have on the safety and general welfare of the adjacent areas (see Matter of Peasant Kent Corp., 28 NY2d 396,398; Matter of International Innovative Technology Group Corp. V Planning Board of Town of Woodbury, 20 AD3d 531,533).

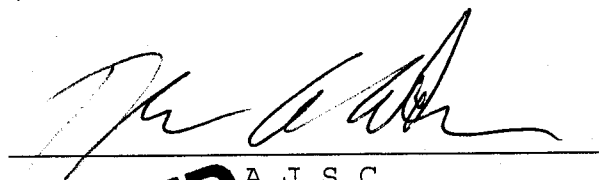
While this includes, inter alia, the impact on traffic patterns (see Matter of Graham v Town of Tully Planning Board, 237 AD2d 923), "a denial must be premised upon clear findings of deleterious changes that adversely affect the adjoining areas" (Matter of Van Euclid Co. v Sargent, 97 AD2d 913,915; Matter of Graham supra at 923). It may not be based upon vague conclusory allegations that the proposed subdivision is not in keeping with the character of the neighborhood (see Matter of Brucia v Planning Board of Town of Huntington, 157 AD2d 657 or "the generalized objections and concerns expressed at the hearings by members of the residential neighborhood" ( Matter of Buckley v Amityville Village Clerk, 264 AD2d 732,735).

Here, the respondent's findings of fact (see respondent's exhibit 1) explicitly rely upon, inter alia, the petitioner's undisputed need for area variances due to the proposed subdivision's failure to satisfy the minimum lot depth requirement (see Village Code §155-13[c]). In view of the petitioner's failure to request either that relief or a waiver (see Village Code §133-25), the proposed subdivision would be nonconforming.

The respondent's 11/16/06 determination denying the petitioner's application can not therefore be accurately characterized as either arbitrary or capricious (see Matter of Terra Homes, Inc. v Smallwood, 247 AD2d 394,395).

Accordingly, the petitioner's application, pursuant to CPLR Article 78, to reverse and annul the respondent's determination as arbitrary and capricious is denied. The foregoing constitutes the order and judgment (see CPLR §7806) of the Court.

Dated: 10-5-07

  
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A.J.S.C.

**ENTERED**

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**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**