

Matter of Matsui v Karl
2008 NY Slip Op 33141(U)
September 5, 2008
Supreme Court, Suffolk County
Docket Number: 29077/07
Judge: Peter Fox Cohalan
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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 24

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In the Matter of the Application of
Ronald Matsui
Petitioner,

By: Cohalan, J.S.C.
Dated: September 5, 2008

Index No. 29077-07

For a Judgment pursuant to Article 78 of the
Civil Practice Law and Rules,

Mot. Seq. # 001 - CDISPSUBJ

- against -

Return Date: October 25, 2007
Calendar Date: February 6, 2008

TERRY J. KARL, Chairman, MARVIN L.
COLSON, Vice-Chairman, PAUL M.
DeCHANCE, KERI PERAGINE, EDWARD P.
MORRIS, JR., JAMES WISDOM and MICHAEL:
SCHAEFER, constituting the Zoning Board of
Appeals of the Town of Brookhaven, THE
ZONING BOARD OF APPEALS of the Town
of Brookhaven and the TOWN OF
BROOKHAVEN,

Respondent.

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This is an Article 78 special proceeding brought by the petitioner seeking to reverse, annul and set aside a determination and denial by the respondent, Zoning Board of Appeals of the Town of Brookhaven (hereinafter ZBA), of an application seeking approval of a subdivision of the petitioner's property with lot area, lot frontage, and side yard variances. The Town of Brookhaven (hereinafter Town) is also a respondent.

The petitioner, Ronald Matsui, is the owner of a residential parcel of real estate within the Town's East Setauket Historic District (hereinafter Historic District) consisting of approximately 1.7 acres at 51 Gnarled Hollow Road in East Setauket, Suffolk County on Long Island, New York. This parcel is located in the A-1 Residential Zoning District which permits a

single family dwelling on a lot size of forty thousand (40,000) square feet, i.e. one (1) acre zoning. It is also within the Historic District. Petitioner sought to subdivide his property into two (2) lots with the unimproved subdivided lot #2 containing only 24,041 square feet requiring a lot area variance from 40,000 square feet, a lot frontage variance from 175 to 125 feet, a minimum side yard variance from 25 feet to 23.6 feet and a total side yard variance from 75 feet to 48.7 feet. The petitioner filed his application with the ZBA seeking the four (4) area variances in order to subdivide his property into two (2) lots. The ZBA referred the application to the Town Planning Department which recommended a negative declaration under SEQRA (State Environmental Quality Review Act) since the anticipated subdivision did not have a significant environmental impact. The petitioner's parcel of property is sited within the Historic District where the historical Elnathan Satterly Manor (hereinafter Manor) home is preserved among three (3) sites in the area, i.e. the Manor home, the Captain Smith house and Benner's Farm. As a result the petitioner's application was also reviewed by the New York State Office of Parks, Recreation and Historic Preservation pursuant to §14.09 of the New York State Parks, Recreation and Historic Preservation Law which found that the proposed action by the petitioner would not adversely affect the Manor if screening were provided. The Town Historic District Advisory Committee pursuant to Town Code §85-186 also reviewed the application and recommended against the subdivision of the petitioner's property.

The petitioner claims that in 1988 the Town allowed the Roe Tavern property, a historical tavern and site to be subdivided into five building lots with four of the lots in the area being flag lots with substandard frontage. The petitioner brought this to the attention of the ZBA arguing there is precedent for subdividing a very large parcel even though the parcel may contain a historical building. The petitioner also points to the approval by the New York State Office of Parks, Recreation and Historic Preservation, albeit with the condition of a screen of native shrubs and trees between the new building and the garage of the Manor house. Finally the petitioner points out that 68% of the parcels in the immediate area have frontage equal to or less than the proposed variance requested and 77% of the parcels have a lot area equal to or less than the requested variance in the petitioner's application.

The respondent argues that the petitioner's residence requires a relaxation of the Town Code in four (4) separate areas dealing with lot frontage, lot area, minimum side yard and total side yard variances. The respondent also points out that granting the variances requested in the petitioner's application would cause an undesirable change in the neighborhood, noting that not only is the petitioner's property in the Historical District but it lies in close proximity to two (2) other historic sites directly across from the petitioner's property, i.e. the Benner Farm property and the Captain Smith house.

On August 1, 2007 the ZBA held a public hearing and, on August 29, 2007, the ZBA unanimously voted to deny the petitioner's application. The ZBA issued a formal decision on September 6, 2007 wherein it set forth its findings of fact and conclusions of law denying the application and setting forth its reasons for such action. The petitioner thereafter brought this Article 78 proceeding on September 28, 2007 challenging the ZBA's denial of his application as arbitrary, capricious and against the substantial evidence contained within the record.

The respondent ZBA, in a six (6) page decision, dated September 6, 2007, denied the petitioner's request for the four (4) variances of lot frontage, lot area, minimum side yard and total minimum side yard requested and to subdivide the parcel into two (2) lots to construct a second dwelling on the unimproved smaller lot. The ZBA decided, inter alia,

“The board concludes that the Elnathan Satterly Manor itself is an integral part of the East Setauket Historic District and contributes to the historic nature of the subject neighborhood... and concludes that the creation of a substandard lot via the subdivision of a historic parcel within the East Setauket Historic District whose origins dates to 1760 would absolutely cause an undesirable change and detract from the character of the...district.”

The ZBA noted that while part of the surrounding neighborhood contains residences built in the 20th century and located primarily on adjacent roads (along Caleb Brewster and Satterly Roads, it also noted that the surrounding neighborhood was defined by the presence of these historic homes built in the 18th and 19th century which lie in close proximity to the instant parcel situated on Gnarled Hollow Road and Old Town Road. Finally, the ZBA noted that the petitioner's parcel was purchased in 1981 prior to the upzoning by the Town in 1988 but after the designation of the area as a Historic District in 1977/1978.

For the following reasons, the petitioner's Article 78 special proceeding seeking to annul the decision of the ZBA 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 determination of the impact of a modern home on a substandard lot within an area of parcels containing the historical residences of some importance to the area's heritage and the Town's history rests with the ZBA.

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, in reviewing the petition, finds that the respondent ZBA did not act in an arbitrary and capricious manner or abused its discretion in denying the petitioner's application. In its ninth finding of fact it stated its reasoning:

“The Board concedes that the subject property is partially surrounded by residences built during the 20th Century that are within the B Residence and B-1 Residence Districts, and specifically located along Caleb Brewster and Sattery Roads. However, the Board finds that the character and nature of the surrounding neighborhood is largely defined by the presence of historic structures in close proximity to the subject premises, specifically, Benner’s Farm, Brewster House and other 18th and 19th Century dwellings situated along Gnarled Hollow Road and Old Town Road.”

The ZBA thus concluded that the subdivision of a historic lot and the creation of a substandard lot for a new 21st Century dwelling, not only would destroy the historic parcel in the Historical District but would change the character of the area in the immediate vicinity of the proposed subdivision “largely defined by the presence of historic structures in close proximity.” The determination of the ZBA must be upheld if it is rational, and supported by substantial evidence. ***Khan v. Zoning Board of Appeals of Village of Irvington***, 87 NY2d 344, 639 NYS2d 302 (1996) rehearing den. 87 NY2d 1056, 644 NYS2d 148. The consideration of “substantial evidence” is limited to determining “whether the record contains sufficient evidence to support the rationality of the [Respondent’s] determination.” ***Sasso v. Osgood***, 86 NY2d 374, 633 NYS2d 259 (1995).

A review of the record presented to the ZBA required it to make decisions based upon competing elements and preservation of the Historic District wherein the proposed subdivision was to take place. Its determination in its decision of September 6, 2007 denying the subdivision of a historic parcel of land in a Historic District was neither illegal, arbitrary, capricious or an abuse of discretion. The ZBA set forth a compelling rationale for its decision that the proposed subdivision would adversely affect the character of the neighboring historic parcels concentrated in the area of Gnarled Hollow Road. It is not this Court’s function to substitute its judgment for the judgment of the ZBA, or to weigh the competing interests of a historic district with the proposed subdivision or to re-examine the merits of the application. The Court’s function is to determine whether the ZBA’s actions are grounded in the evidence and the “facts on the ground” or whether the ZBA in an arbitrary and capricious manner dismissed the petitioner’s application out of hand on grounds which failed to set forth a rational basis for its denial.

The Court concludes that the ZBA in weighing the various competing interests for and against the petitioner’s application presented in its fact finding and conclusions of law a rational basis to deny the petitioner’s application. The ZBA concluded that the petitioner’s subdivision application would not only subdivide a historic parcel surrounded by other historic parcels in the immediate vicinity of the petitioner’s property but that the subdivision would place a modern home which required screening in the center of the Historic District. It also noted that it would require a substantial deviation and relaxation of the property requirements of 40% as to lot area, 30% as to lot frontage, 5% as to minimum side yard and 35% as to total side variance. The ZBA’s finding that the four (4) requested variances were a substantial relaxation of the zoning

requirements and involved a historic parcel provides a rational basis for its denial of the petitioner's application. Thus its decision cannot be claimed to be either arbitrary or capricious. Nor should this Court substitute its judgment for the ZBA's decision where the ZBA decision is grounded in the evidence presented at the hearing and is not arbitrary or capricious.

The Court is mindful of the decision in **Matter of Campo Grandchildren Trust v. Colson, et. Al.**, 39 AD3d 746, NYS2d (2nd Dept 2007) [WL 1149241] decided April 17, 2007, in which, as petitioner points out, the Court held that

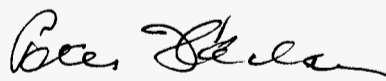
“ A determination of a zoning board of appeals that ‘neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious’ “ (citations omitted)...” and mandates reversal, even if there may otherwise be evidence in the record sufficient to support the determination.”

While petitioner points to some non-conforming lots in the area which received relaxation of area variances, the ZBA noted that this parcel was different and should be treated differently. The parcel in issue was a historic piece which would be subdivided into an original historic conforming piece and a much smaller and substantially non-conforming modern dwelling in an area surrounded by other historic parcels, all located in the immediate area . The ZBA provided a rational basis in considering this historic parcel as well as considering the impact on the “immediate” and adjacent area of historic dwellings and parcels of land. The Court finds that the ZBA did conduct and engage in the required balancing test based upon the evidence submitted in support of and against the application in framing its decision denying the petitioner's application for the proposed subdivision and relaxation of the lot area, lot frontage, minimum side yard and total side yard requirements. See also, **Mattiacco v. Zoning Bd. of Appeals of Village of Pleasantville**, 22 AD3d 758, 804 NYS2d 385 (2nd Dept. 2005).

Based upon the entire record before it, and balancing all the factors established, the ZBA could rationally conclude that the effect of the subdivision and proposed new construction of a second dwelling on a substandard parcel of the petitioner's historic property on the neighborhood containing historic dwellings 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.



J.S.C