

**Matter of Candiano v Planning Bd. of the Inc. Vil. of
Lindenhurst**

2009 NY Slip Op 32809(U)

November 10, 2009

Supreme Court, Suffolk County

Docket Number: 37352-08

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 JOHN
 CANDIANO and GEORGE MAGAGNOLI,

 By: Cohalan, J.S.C.
 Dated: November 10, 2009

Petitioners,

Index No. 37352-08

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

Mot. Seq. #001 - CDISPSUBJ

-against-

Return Date: November 12, 2008
Calendar Dated: March 18, 2009PLANNING BOARD OF THE INCORPORATED
VILLAGE OF LINDENHURST,

Respondent.

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This is an Article 78 special proceeding brought by the petitioners, John Candiano and George Magagnoli, seeking to reverse, annul and set aside a determination and denial by the respondent Planning Board of the Incorporated Village of Lindenhurst (hereinafter Board) Suffolk County, Long Island, New York of an application for approval of a proposed subdivision of one parcel into two (2) parcels on the petitioner's property.

The petitioners are the owners of a residential parcel of real estate described as an oversized developed parcel located on Bay Place between Shore Road on the south and Mound Street on the north in the Village of Lindenhurst, Suffolk County on Long Island, New York (hereinafter Village). This oversized parcel is located in the Residential "C" Zoning District of the Village which permits a single family dwelling on a lot size of 10,000 square feet. Petitioners' property is described as a developed parcel comprising 14,768 square feet in area which petitioners propose to subdivide into two (2) irregularly shaped lots amounting to a lot area of 7500 feet on Lot #1 and 7268 feet on Lot #2 with 75' street frontage rather than the 100' required by Village Code on each parcel facing Mound Street and Shore Road respectively and side yards on Bay Place. The parcel sought to be subdivided is alleged by the petitioners to be unique because it sits on the intersection of three roads with the parcel fronting on Bay Place, its northern border on Mound Street and its southern border on Shore Road with the southerly half of the property (Lot #2) improved with a two story dwelling. The petitioners point out that most parcels in the area are substandard lots and do not have 100' frontage as required by the Residence "C" zoning. The petitioners in their application pointed out that on Mound Street three (3) lots are 75' x 100' parcels and eleven (11) lots are 50' x 100' parcels while on Shore Road six

(6) parcels are 40' x 100', seven parcels are 50' x 100', two (2) others are 59' x 100', and one parcel each is 56' x 100' and 63' x 100' respectively. The petitioners also point out that directly across the street on Bay Place is a 75' x 100' parcel of property. Thus, the main thrust of the petitioners' argument is that the surrounding area is comprised of substandard lots developed with dwellings and that it was community opposition which was the driving force behind the Board's disapproval of the subdivision of this parcel. Moreover, the petitioners argue that given the character of the community, the Board would not be setting a precedent in development by approving this proposed subdivision.

The respondent Board in a three (3) page decision/resolution, dated September 10, 2008, denied the petitioner's request for a two (2) lot subdivision of the parcel. The Board pointed out that, (1) the proposed subdivision would be substandard and require substantial zoning variances; (2) the subdivision as proposed "will not conform to the character of the neighborhood"; and (3) it was concerned about the precedential value of approval of such a subdivision with lots that were not only substandard under the Village Code but substandard as to lot width, lot depth and lot area when compared with its neighbors. In particular, the Board noted not one conforming parcel with street frontage less than 100' had a lot depth of less than 100' whereas petitioners' proposed subdivision would reduce the lot depth of improved Lot #2 to 83.42'.

The petitioners thereafter brought this Article 78 proceeding claiming that the Board exceeded its jurisdiction and that its decision was arbitrary and capricious because rather than focusing on site development issues of traffic, drainage, environmental concerns and the impact on the community, the Board in its determination instead focused its attention on the variance relief which needed to be evaluated by the Village's Zoning Board of Appeals. The Board argues that a significant number of parcels maintain street frontage in excess of 75' and notwithstanding the petitioners arguments, the Board did conduct a review to ensure the orderly development of land and the accompanying services, space, light, noise, traffic and air. The Board also argues that the community opposition raised valid concerns about privacy, views, overbuilding in the neighborhood and overcrowding.

For the following reasons, the petitioners' Article 78 special proceeding is dismissed.

A determination by a town planning board granting or denying an application for site plan approval or a subdivision request is sufficiently final to permit review pursuant to an Article 78 proceeding as stated herein. **Bongiorno v. Planning Board of Bellport**, 143 AD2d 967, 533 NYS2d 631 (2nd Dept. 1988).

The Courts have found "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 NYS2d 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”]).

Further, the Court in **Halpern**, supra, stated:

“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. & Mtge. 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 Ibrah 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 Board conducted a reasoned review of the proposed subdivision application and found that the proposed subdivision was development intense and substandard to its neighbors and would require at least seven (7) variances to sustain an additional buildable lot. When reviewing the determination of the Board the “courts consider substantial evidence only to determine whether the record contains sufficient evidence to support the rationality of the board’s determination.” See, **Kearney v. Kita et al.**, 62 AD3d 1000, 879 NYS2d 584 (2nd Dept. 2009). While a town planning board is not authorized to

interpret the provisions of a local zoning law, the planning board may evaluate the proposed use in light of the zoning code. ***Matter of East Moriches Property Owners Ass'n v. Planning Board of Town of Brookhaven***, AD3d , NYS2d (2nd Dept. 2009); WL3382993; Slip Op. 07632 (NYLJ 10-27-09 p.36). The Court finds that the Board could note the significant deviation required from the Village Code and that Lot #2 with a lot depth of 83.42' would be the only lot development in the Village with less than 100' in depth and the precedent that would be set by such reduction would ruin the character of the Village. To suggest that the Board should ignore critical thinking on the proposed subdivision's requirement of extensive and substantial variances, its impact on the surrounding neighborhood and defer to the Village Zoning Board of Appeals would ignore the very structure and reasoning behind the use of planning boards in the application process. The Court must defer to the Board when the Board's decision is not arbitrary or contrary to law. Clearly, parties can disagree about the need for housing and development and the impact of substandard development rights on surrounding neighborhoods and the character of that neighborhood, but the test is whether or not the Board reached a conclusion on the facts presented or arbitrarily denied an application against the substantial evidence or for impermissible, capricious reasoning. The Court concludes that the Board made an administrative determination based upon sound logic and reason and thus upholds the decision of the Board and the Court will not substitute its judgment for those charged with making those determinations.

The Board stated cogent reasons for the denial of this application to subdivide this substandard parcel of land which sits at the intersection of three (3) streets as contrary to the character of the neighborhood and substandard to its surrounding neighbors. The Board did exactly what it was called upon to do, by reviewing the application for a subdivision of a parcel of land as to its effect on the surrounding community, property values in the area, the intensity of development, and its adherence to the Village Code and the Board found the proposed subdivision wanting. While the petitioners argue that the Board reasoning was flawed and conclusory, the Court finds otherwise. The Board, in its decision, noted that, (1) development of two significantly substandard lots; (2) the neighborhood had two family dwellings by permit and was congested; (3) concerns of air, light, views and privacy because the proposed home on the undeveloped lot would be in a flood zone and it would require being substantially elevated and higher than neighboring homes; (4) arguments as to roof pitch to resolve height difficulties would result in architectural design flaws both unappealing and inconsistent with the neighborhood; (5) overcrowding; (6) decreased buffer zones by substandard development would impact neighboring homes; (7) increased traffic; (8) concentration of population by substandard development; and (9) precedential value of reducing lot depth to less than 100' even if the street frontage issue was waived. See, ***Varveris v. Dietz***, 283 AD2d 435, 723 NYS2d 877 (2nd Dept. 2001). These are all legitimate concerns and issues properly before and subject to the purview of the Board. While the Court might differ with the Board on some of these issues, it is legally improper and impermissible to substitute this Court's opinion on such matters and this Court must defer to the reasoned opinion of the Board called upon to weigh the costs-benefits analysis of such a project.

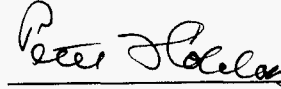
Based upon the entire record before it, and balancing all the factors established, the Board could rationally conclude that the detriment the proposed construction of the second

dwelling on the petitioners' substandard lot on the proposed subdivision of the property into two (2) lots posed to the neighborhood outweighed the benefit sought by the petitioners, and its determination denying the requested relief was not arbitrary or capricious. **Matter of Ibrah v. Utschig**, supra. Accordingly, the petition is denied and the proceeding dismissed.

Settle Judgment

The foregoing constitutes the decision of this Court.

Date November 10, 2009



J.S.C.