

**Matter of Southampton Assn., Inc. v Zoning Bd. of Appeals of the Inc. Vil. of Southampton**

2010 NY Slip Op 32107(U)

August 5, 2010

Sup Ct, Suffolk County

Docket Number: 002483/2010

Judge: John J.J. Jones

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MEMORANDUM

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I.A.S. TERM  
PART 10

BY: HON. JOHN J.J. JONES, JR.  
Justice

SUPREME COURT, SUFFOLK COUNTY

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 In the Matter of the Application of  
 THE SOUTHAMPTON ASSOCIATION, INC., and :  
 KIMBERLY ALLAN, :  
 :  
 Petitioners, :  
 :  
 For a Judgment Pursuant to Article 78 of the  
 Civil Practice Law and Rules :  
 :  
 -against- :  
 :  
 THE ZONING BOARD OF APPEALS OF THE :  
 INCORPORATED VILLAGE OF SOUTHAMPTON, :  
 and PAUL L. ROBINSON and JOAN ROBINSON, :  
 :  
 Respondents. :  
 -----X

DATE: 5 August 2010  
 SUBMIT DATE: 5/26/2010  
 INDEX NO.: 002483/2010  
 MOTION DATE: 3/15/2010  
 MOTION NO: MD;CDISPSUBJ

Petitioners, The Southampton Association, Inc., and Kimberly Allan, commenced this proceeding pursuant to CPLR Article 78 for a judgment annulling and setting aside the decision of the respondent Zoning Board of Appeals of the Incorporated Village of Southampton (Board) dated December 17, 2009. That decision granted the application of Paul L. Robinson and Joan S. Robinson for a lot width variance from 100 feet to approximately 80 feet for "Lot 1" under a proposed "preferred" plan to subdivide property located at 105 Little Plains Road, Southampton, into two lots. A public hearing was held on the application on October 22, 2009 and continued on November 19, 2009. Thereafter, the decision was voted on and approved at a meeting attended by a quorum of three members of the Board on December 17, 2009.

The subject property is a corner parcel on the west side of Little Plains Road and the north side of Meeting House Lane in Southampton. It is within the R-12.5 Residence District in which the minimum lot area requirement is 12,500 square feet and the minimum lot width requirement is 100 feet. The property has a total area of 26,035 feet. The Robinsons submitted two proposed alternative subdivision designs to the Board. Under the plan preferred by the Robinsons, Lot 2 conforms with the zoning requirements but Lot 1 has a lot width of approximately 80 feet and, therefore, a variance would be needed. Under the alternative plan, no variance is needed, though the lot line dividing the property is not straight but, instead, involves an odd, zig-zag configuration. At the present time, the property contains a house that straddles the two proposed lots. Both proposals foresee the destruction of the existing house and the building of a house on each subdivided lot.

The decision of the Board noted that there are numerous lots along Burnett Street, an east-west road closer to the commercial village area, and along Meeting House Lane which have nonconforming lot widths. In addition, it was noted that "there are some lots in the immediate neighborhood on the west side of Little Plains Road which have nonconforming lot widths." It was also noted that the adjacent lot north of the subject parcel on Little Plains Road has a nonconforming lot width of approximately 80 feet, and the lot adjoining the parcel to the west on Meeting House Lane has a nonconforming lot width of approximately 82 feet. It was determined that under the preferred plan, the width of Lot 1 would be consistent with the lot width of the adjoining lots and numerous other lots in the neighborhood. The Board concluded that "the record does not support a finding that the requested lot width variance would produce an undesirable change in the character of the neighborhood or create a detriment to adjoining or nearby properties or have an adverse impact on neighborhood conditions." The variance was granted to allow the width of Lot 1 on the preferred plan to be 80 feet measured at the front lot line along Little Plains Road, and 79.8 feet measured at the 30-foot minimum front yard setback from Little Plains Road. Although considerable opposition to the proposal was presented to the Board prior to its determination, the decision of the Board does not acknowledge the extensiveness of the opposition but merely notes that it "considered the comments in the record regarding the impact of the requested variance on the neighborhood."

At the hearing before the Board on October 22, 2009, counsel for the applicants noted that an appraisal had been obtained which indicated that the undivided lot had a fair market value of \$1,675,000, whereas each divided lot would have a value of \$1,440,000. Although it was opined that the applicants would sustain a "loss" of \$1,205,000 if the lot were not divided, such allegation does not demonstrate that the applicants would suffer a hardship if their request were not granted, though it does show that the applicants would enjoy a substantial benefit with the variance. Significant local

opposition to the proposal was noted through the submission to the Board by Jay Diesing of a petition allegedly signed by over 170 village residents. Mr. Diesing, who verified the petition in this proceeding as president of The Southampton Association, Inc., also noted that corner lots such as the subject property are generally larger throughout the village, and that other lots south of the subject property on Little Plains Road and east of the property along Meeting House Lane are larger than those on Burnett Street. Mr. Diesing also objected to “carving up lots” within the village. He argued that dividing the property, which is located near an elementary school and the hospital, would add to the traffic flow and create visibility issues. Concerns about increased traffic and noise also were made by William Dexter, whose property is directly across the street from the applicants, and by letter from Sara and Rick Kerns, who argued that corner lots are larger than interior lots in the area and the division of a corner lot will “establish a pattern and have an adverse effect” on the “texture” of the neighborhood, and that it will generate additional traffic and increase density.

At a subsequent meeting on November 19, 2009, additional concerns, such as the increase in the “carbon footprint” of the village, were raised by Walter Skretch. The Board also heard from Nancy Hawke, whose property at 89 Little Plains Road is adjacent to the north of the subject property. Ms. Hawke echoed earlier concerns that the applicants’ analysis of the size of other properties in the area failed to recognize that lots along the south side of Meeting House Lane and the east side of Little Plains Road are substantially larger than those on Burnett Street. According to Ms. Hawke, an analysis of eight lots that are adjacent to and directly opposite the subject property reveals that they vary in size from 12,000 square feet to 22,000 square feet, and that seventy-five per cent of the lots in the neighborhood “are substantially larger” than the minimum allowable lot size. Ms. Hawke also noted that the subject property has increased in value significantly since it was purchased by the Robinsons for \$1,250,000. In addition, it was noted that while her property has 80 feet of frontage, Ms. Hawke’s home was built in 1905 and is designated an historical property. She contended that while other homes in the neighborhood pre-date the zoning code, the granting of a variance would frustrate the goal of the zoning code to provide adequate separation of houses, to create a desired visual look, and to provide light, air and distance between homes. Comments before the Board by resident Chris DeChristifano of 92 Little Plains Road revealed that Burnett Street is a one-way street approximately half as wide as Little Plains Road, which is a two-way street. In addition to other comments made by area residents in opposition to the application, it was noted by Mr. Diesing that although previous representations were made on the record during the October 22, 2009 meeting that the Planning Board had recommended the applicants’ preferred plan, the Village Planning Board did not, in fact, make any formal recommendation on the application.

The comments submitted to the Board in opposition to the application focused on

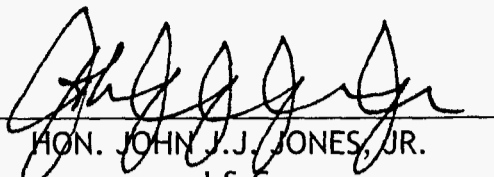
a desire to maintain the subject parcel as one lot and objected to the proposal to divide the lot into two. Nevertheless, it is undisputed that under the applicable zoning designation and consistent with the Comprehensive Plan, the subject parcel could be subdivided into two lots without a variance.

It is well-settled that “a determination of a zoning board should be sustained upon judicial review if it has a rational basis and is supported by substantial evidence” (*Matter of Greenfield v Board of Appeals of Village of Massapequa Park*, 21 AD3d 556, 800 NYS2d 728 [2d Dept 2005], quoting *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 814 NE2d 404, 781 NYS2d 234). Although a demonstration of “practical difficulties” is not required for the granting of an area variance (see *Sasso v Osgood*, 86 NY2d 374, 657 NE2d 254, 633 NYS2d 259 [1995]), a zoning board of appeals is required, pursuant to Village Law § 7-712-b(3), to engage in a balancing test in making its determination whether to grant an area variance, weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted, and considering whether (1) 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) the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance; (3) the requested area variance is substantial; (4) the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) the alleged difficulty was self-created (see *Ifrac v Utschig*, 98 NY2d 304, 308, 774 NE2d 732, 746 NYS2d 667 [2002]).

Extensive opposition to the application was presented to the Board, including concerns over increased traffic in the area, the negative effect of reducing the lot size in an area that contains some large lots, and whether the granting of the requested variance would set an adverse precedent for similar-sized lots in the area. The opponents to the application, however, primarily addressed objection over splitting the subject parcel into two lots and did not focus on the application for a variance to allow a straight-line division between the two separate lots. A review of the decision of the Board reveals that it properly engaged in the required balancing test and addressed the relevant statutory factors. Based on the record before it, the Zoning Board made a determination with a rational basis.

Although petitioners also challenge the participation of Kevin Guidera as Chair of the Village Zoning Board on matters involving the law firm in which his daughter is a member, such participation does not violate General Municipal Law § 809, nor does it involve an appearance of impropriety *per se*. This Court has considered the petitioners' remaining contentions and finds them to be without merit.

Accordingly, the petition is denied and the proceeding is dismissed. Submit judgment.

  
HON. JOHN J. JONES, JR.  
J.S.C.

CHECK ONE:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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