

Matter of Rallye Motors, LLC v Durkin

2011 NY Slip Op 30251(U)

January 25, 2011

Supreme Court, Nassau County

Docket Number: 17473/10

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

In the Matter of the Application of

RALLYE MOTORS, LLC,
Petitioner,

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

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 17473/10
Motion Seq. No.: 01
Motion Date: 11/11/10
XXX

- against -

JOHN DURKIN, Mayor, MARSHALL E. BERNSTEIN,
Deputy Mayor, MARTA GENOVESE, LISA ABERLE and
CRAIG WESTERGARD, Trustees, constituting the
members of the Incorporated Village of Roslyn Board
of Trustees,

Respondents,

The following papers have been read on this application:

	Papers Numbered
Notice of Verified Petition, Petition and Exhibits	1
Petitioner's Memorandum of Law	2
Verified Answer	3
Affirmation in Opposition and Exhibit	4

Upon the foregoing papers, it is ordered that the application is decided as follows:

The Petition by Rallye Motors, LLC ("Rallye Motors") for a judgment pursuant to Article 78 of the CPLR annulling respondents John Durkin, Mayor, Marshall E. Bernstein, Deputy Mayor, Marta Genovese, Lisa Aberle and Craig Westergard, Trustees, constituting the

members of the Incorporated Village of Roslyn's Board of Trustees' ("Board of Trustees") determination dated August 17, 2010, which denied its application for site plan approval to its building located at 1600 Northern Boulevard in the Incorporated Village of Roslyn, New York, is denied and this proceeding is dismissed.

Petitioner Rallye Motors owns the 7.84 acre property at 1600 Northern Boulevard in the Incorporated Village of Roslyn where it operates a new and pre-used Mercedes Benz automobiles sale and service business in two separate buildings – a 32,476 square foot service department and an 11,791 sq. ft. showroom. The buildings were built in 1987 by a renowned architect, Ulrich Franzen.

In 2009, petitioner Rallye Motors applied for a building permit to construct a four level (three above ground and one beneath) parking garage; to replace an existing canopy located between the service department building and the showroom with a larger one; to construct a new two-story addition to the showroom; and, to replace the facades on the service department and showroom buildings. The Village of Roslyn's Building Inspector denied that application on the grounds that all structures required site plan approval; the proposed parking garage is not a permitted use in the R-1 zoning district so a use variance was required; the proposed parking garage of 45,542 square feet x 3 levels equaled 136,626 square feet on a 209,591 square foot lot netting an F.A.R. of .651 but the maximum allowed F.A.R. in an R-1 district is .35 so a F.A.R. variance was required; and, the proposed parking garage was in the Hillside Overlay Protection District so relief from the respondents Board of Trustees was required.

Petitioner Rallye Motors applied to respondents Board of Trustees for site plan approval pursuant to Article VII of the Roslyn Village Code. A meeting was held on August 18, 2009,

and petitioner Rallye Motors withdrew its application to construct a parking garage. Its outstanding application was limited to site plan approval for the replacement of the canopy, the construction of a two-story addition to its showroom and the construction of new facades on both the service department and showroom buildings.

Petitioner Rallye Motors maintained that the proposed canopy and addition were needed to improve convenience, service and efficiency and that the proposed facade changes were necessary to comply with Mercedes Benz's worldwide "Autohaus Program" campaign which employed a specific palette of colors as well as a distinctive architectural style and design elements to make their premises readily identifiable as Mercedes Benz dealers. The proposed colors utilized were blue, silver and white and the architectural style was sleek and modern with discreet signage. Petitioner Rallye Motors' architect explained that the buildings were not required to be identical and were permitted to be distinct individual buildings which would nevertheless be readily identified as Mercedes Benz dealerships. The architect further explained that petitioner Rallye Motors' two buildings were inconsistent with both Mercedes Benz's Autohaus Program, as well as each other. He further explained that to achieve the goals of the Mercedes Benz Autohaus program, the existing granite on the showroom building would be removed and silver and white alucobond metal panels with minor design blue features would be attached to the building, along with window panels across the facade to allow customers to see the vehicles from outside the building. He explained that similar materials would be used on the service buildings thereby unifying the two buildings.

Concern and opposition was expressed by Village of Roslyn residents as well as respondents Board of Trustees members because the showroom building had been built by a

prominent architect, Ulrich Franzen and was emblematic of the Village of Roslyn's emphasis on good architectural design. It was noted that the two buildings need not coordinate as they were of different architectural styles and had distinct functions.

At the close of the hearing, the matter was referred to the Village Planning Board pursuant to Roslyn Village Code §§ 15.701, 15.706.

Planning Board meetings at which similar presentations were made by petitioner Rallye Motors' representatives were held in October, November and December. At the conclusion of the December meeting, the Planning Board recommended to respondents Board of Trustees that it approve the two-story addition, the replacement canopy and the new facade for the service department, but that it deny the proposed facade change to the showroom.

A public hearing was held in December 2009, at which petitioner Rallye Motors temporarily tabled its request to change the showroom's facade pending further investigation in conjunction with Mercedes Benz. Only the canopy replacement, two-story addition and service department building facade alteration were considered. Site plan approval was granted for the canopy replacement, the two-story addition and the facade change of the service department building.

In 2010, petitioner Rallye Motors again sought approval of its proposed facade change to the showroom building which was again referred to the Village Planning Board. Petitioner Rallye Motors' architect explained that Mercedes Benz Autohaus designs simply could not be incorporated on the building's pink granite facade because the effect would be an unacceptably poor design. Mercedes Benz representatives urged the importance of its Autohaus Program to its international image, as well as the applicant petitioner Rallye Motors. The Planning Board voted two to one to approve petitioner Rallye Motors' application.

Another public hearing was held on June 15, 2010. The presentation by petitioner Rallye Motors and Mercedes Benz was cumulatively repetitive of their several prior presentations.

Once again, respondents Board of Trustees members noted the architect of the buildings, the building's "iconic" status in the community and that it had been recognized as "architecturally significant" in the AIA Guide to Nassau and Suffolk Counties. It was also noted that its pink facade aided to buffer the Commercial Division from the adjacent Residential Division of the Village of Roslyn. Respondents Board of Trustees voted four to zero to deny petitioner Rallye Motors' application. A written decision was rendered on August 17, 2010. In its Decision, respondents Board of Trustees noted the Village of Roslyn's commitment to preserving not only traditionally historic properties, but architectural resources as well. Respondents Board of Trustees also noted that the building is "an iconic structure on Long Island designed by a world renowned architect" as well as the building's entry in the AIA Architectural Guide to Nassau and Suffolk Counties which states:

Rallye Motors, the impressive and dramatic building of Rallye Motors, evocative of Art Moderne buildings of the 1930s, is the successful and well-planned design of Ulrich Franzen and Associates. Smooth, unadorned wall surfaces of granite-clad, precast concrete and glazed masonry, a low flat roof and curved glass window walls provide a horizontal and streamlined facade, hallmarks of the Art Moderne style. Superbly sited and graded on a six-acre landscaped site, the two-story structure, built in 1998, comprises showroom and customer-service center

connected by a bridge at the second floor level. The building's architect, Ulrich Franzen, winner of numerous awards including the Gold Medal of the New York Chapter of the AIA, has been engaged in a variety of projects across the country

Respondents Board of Trustees further noted that it was not controverted that the proposed changes to the building's facade would destroy the building's architectural character and for that reason alone, must be denied pursuant to Village Code §§ 15.705(E) and (J). The Zoning Board additionally noted that the building was specifically designed to provide a buffer between the Village of Roslyn's Commercial and Residential Districts, which was a concern when the building was built and would be lost if the facade were changed. They concluded that the building was built by a world renowned architect to provide a buffer between the Commercial and Residential Districts, the importance of which could not be overstated. In addition, respondents Board of Trustees noted that as is, the building is compatible with the hillside and nearby historic residences which compatibility would be lost if the facade was changed which could result in a decline in property values. Weighing the "architectural screening," the "compatibility of design considerations" and the impact of the proposed changes (Village Code §§ 15.707, 15.705[E][J] and 15.705[N]), respondents Board of Trustees denied the application.

In this proceeding, petitioner Rallye Motors maintains that the architect's identity, as well as his accolades, was an arbitrary and capricious basis to deny its application, as was the showroom building's inclusion in the AIA Guide to Nassau and Suffolk Counties because that recognition did not render the site "a recognized architecturally significant structure" that can

never be changed. It further maintains that the pink granite was not conceived as a buffer, nor does it actually serve as one, nor was there any evidence that the proposed alteration to the building's facade would adversely affect property values or the surrounding community. Finally, it maintains that the proposed alteration did not violate any of the site plan approval standards set forth at Section 15.705 of the Village Code.

The arbitrary and capricious standard applies here. *See Home Depot, U.S.A. v. Town Bd. of Town of Hempstead*, 63 A.D.3d 938, 881 N.Y.S.2d 160 (2d Dept. 2009), *citing Halperin v. City of New Rochelle*, 24 A.D.3d 768, 809 N.Y.S.2d 98 (2d Dept. 2005); *Sasso v. Osgood*, 86 N.Y.2d 374, 633 N.Y.S.2d 259 (1995).

“[J]udicial review of the issue before this court is limited to whether the (Village) Board's (of Trustees) determination was illegal, arbitrary and capricious, or an abuse of discretion.” *See Yilmaz v. Foley*, 63 A.D.3d 955, 881 N.Y.S.2d 154 (2d Dept. 2009) *citing* CPLR § 7803(3); *Zupa v. Board of Trustees of Town of Southold*, 54 A.D.3d 957, 864 N.Y.S.2d 142 (2d Dept. 2008); *Mastroianni v. Strada*, 173 A.D.2d 827, 571 N.Y.S.2d 55 (2d Dept. 1991).

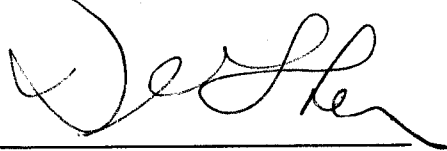
The denial of a site plan application on aesthetic/architectural grounds has been upheld by the Court of Appeals. *See Matter of Ifrah v. Utschig*, 98 N.Y.2d 304, 746 N.Y.S.2d 667 (2002). Here, evidence of the negative aesthetic impact should the proposed changes to the facade are found in the record. *See Rosewood Home Builders, Inc. v. Zoning Bd. of Appeals of Town of Waterfront*, 17 A.D.3d 962, 794 N.Y.S.2d 152 (3d Dept. 2005). *See also Isle Harbor Homeowners v. Town of Bolton Zoning Bd. of Appeals*, 16 A.D.3d 830, 790 N.Y.S.2d 585 (3d Dept. 2005). Similarly, the consideration of the historic architectural character of the building was properly considered and supported by the record. Indeed, General Municipality Law Art.

5-K § 119-a grants the authority to localities to “manage the historical and cultural properties under their jurisdiction in a spirit of stewardship and trusteeship for future generations.” Furthermore, as a matter of public policy, “the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state [which] should be preserved.” Section § 14.01 of the Parks, Recreation and Historic Preservation Law.

Respondents Board of Trustees’ determination is not illegal, arbitrary and capricious, nor an abuse of discretion. The Petition is denied and this proceeding is dismissed.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

XXX

ENTERED
JAN 28 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: Mineola, New York
 January 25, 2011