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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 24

In the Matter of the Application of Frank Bolognino etc

Petitioner,

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

- against -

Zoning Board of Appeals of the Town of Huntington and St. Paraskevi Greek Orthodox Shrine Church,

Respondents

By: Cohalan, J.S.C.

Dated: June 08, 2011

Index No. 04078-10

Mot. Seq. # 001 - CDISPSUBJ

Return Date: March 26, 2010
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This is an Article 78 special proceeding brought by the petitioners seeking to reverse, annul and set aside a determination and decision by the respondent, Zoning Board of Appeals (hereinafter ZBA) of the Town of Huntington (hereinafter Town), which granted an application by the additional respondent, St. Paraskevi Greek Orthodox Shrine Church

(hereinafter Church) for relaxation of a side yard variance only for the purpose of erecting an addition to the Church as well as to the 2 story community center and the erecting of a new gymnasium on the property and interpreting the zoning code as to whether the new gymnasium is to be considered an additional main building or an accessory structure.

Frank Bolognino, Steven Dombrower, Jeffrey Gray, Susan Lovelett, Michael McDonald, Timothy Mee, Mark Sidoti and Paul Vitucci (hereinafter petitioners) are the owners of residential parcels of real estate on Greenbush Court adjacent to the respondent. Church which is located on a 5 acre parcel of land at 1 Shrine Place located in Greenlawn, Suffolk County on Long Island, New York. The property is presently improved with a 7,740 square feet Church with an attached 15,020 square feet community center/ministry building with a small gymnasium contained within the community center. On April 21, 2009 the Church received a denial of its application from the Town Department of Planning and Environment which referred the Church's application to the ZBA finding that

> "This office believes both the community center/ school building and the gymnasium building are not accessory to a permitted religious institution use and are two other main buildings on one lot that will not comply with Town Code §198-10G. **An interpretation determining if the existing community center / school building with its proposed addition, and the construction of a new gymnasium building are other main buildings on a lot or accessory buildings that are accessory to the religious institution (the main church building) by the Town of Huntington Zoning Board of Appeals pursuant to Town Code §198-109 might be required:**"

The Church has conducted religious services on the property prior to the development of the homes on Greenbrush Court and sought by its application to expand by seeking a side yard variance "to erect addition to school building, addition to existing Church, 2 story community center and erect a new gym building and interpretation if community center/school building and gym are additional buildings or oversized accessory buildings."

A ZBA hearing was held on October 8, 2009 and in its decision, dated January 14, 2010, the ZBA granted the Church's application finding that "the proposed additions and alterations are all consistent with and in furtherance of the religious use of the premises."The decision continued "{T]he fact that the proposed gym building is a separate , stand-alone building rather than being attached to the other building is not significant, especially in view of our prior precedents." The ZBA thereafter granted the application with certain conditions i.e. providing a 6 feet dense evergreen buffer on the westerly property line, a 12 feet dense evergreen buffer on the rear of the property where the gymnasium

building would be located, an 11:00 pm curfew on use of the gymnasium and the gymnasium building not to exceed a height of 28 feet.

The petitioners thereafter instituted the present Article 78 proceeding and appeal from the ZBA's decision as arbitrary, capricious, against the weight of the substantial evidence presented and legally without merit.

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

It is well settled "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).

As stated 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*** Court, supra, further 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. & 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']).”

Thus the ZBA determination must be upheld if it is rational, and supported by substantial evidence. 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).

Further, the ZBA's interpretation of the Town Code as to the appropriateness or factual findings of what constitutes an accessory structure also is entitled to judicial deference unless such interpretation of the provisions of the Town Code is irrational, arbitrary or capricious. See, ***Zupa v. Zoning Bd of Appeals of Town of Southold***, 56 AD3d 569, 867 NYS2d 189 (2nd Dept. 2009) citing to ***NY Botanical Garden v. Bd of Standards & Appeal of City of New York***, 91 NY2d 413, 671 NYS2d 423 (1998).

In ***NY Botanical Garden v. Bd of Standards & Appeal of City of New York***, *supra*, 420, the Court of Appeals in dealing with the very nature of accessory uses and the standard to be used as stated:

> “Whether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the overall character of the particular area in question. This analysis is, to a very great extent, fact-based... . This Court may not lightly disregard that determination.”

The ZBA involved itself in a lengthy discussion and resolution of the gymnasium issue as to whether or not it was a “main building” or should be considered an accessory structure to the Church and found the gymnasium to be an accessory structure noting that “the use of the gym building for athletic activities by congregants is consistent with similar uses of religious organizations throughout the Town.” The ZBA further stated that “there is a

longstanding history by which religious groups offer athletic activities to their congregants as part of their religious mission." There is nothing contained within the ZBA's determination to warrant further Court involvement and, in fact, this Court (even if it disagreed with ZBA finding) should not substitute its judgment for the ZBA decision merely because it disagreed with the finding. In ruling on the application, the ZBA did what it was charged by law to do in rendering an interpretation of what was an accessory structure as opposed to a main building and did so without being arbitrary, capricious or using a strained interpretation of the facts involved. "[W]hen applying its special expertise in a particular field to interpret statutory language, an agency's rational construction is entitled to great deference." See, ***Raritan Development Corp. v. Silva***, 91 NY2d 98, 667 NYS2d 327 (1997); ***Beekman Hill Association v. Chin***, 274 AD2d 161, 712 NYS2d 471 (1st Dept. 2000).

While the petitioners seek to couch the issues herein in terms of an analysis of the nature and character of the principal use of the land as a Church and that a gymnasium is not a religious enterprise so as to warrant accessory use, the Court respectively disagrees. The Court merely need look at a number of religious institutions with gymnasiums attached as accessory uses to religious services such as parochial school gymnasiums or providing religious congregants with additional facilities that not only strengthen their bonds to the religious institution on a spiritual level but also on a more physical level. In ***East Hampton Library v. Zoning Board of Appeals of East Hampton***, 31 Misc 3rd 1231(A) [WL2041148], my distinguished colleague, Mr. Justice Thomas F. Whelan, observed:

> "The respondent's position further ignores the fact that religious and educational institutions are recognized as facilitating the same objectives as zoning ordinances, namely, fostering the public health, safety, morals and general welfare of the community (*see* ***Cornell Univ. V. Bugnardi***, 68 NY2d 583, 594; ***New York Institute of Technology v. Le Boutiller***, 33 NY2d 125, 350 NYS2d 623 [1973]. Libraries [and Churches], such as the petitioner, are thus endowed with the presumptions of beneficial use and purposes that underlie the deferential standards applicable to churches and schools with respect to zoning matters that the courts of this state have long recognized, namely, that religious and educational uses are inherently beneficial to the community"

A review of the record presented establishes more than sufficient support within the record of the proceedings to substantiate the ZBA's decision to grant the Church's application for the side yard variance and the determination that the building housing the gymnasium was **not** a main building but was an accessory building to the Church and the community center. See, ***Siegert v. Luney***, 111 AD2d 854, 491 NYS2d 15 (2nd Dept. 1985)

[playground a proper accessory use of synagogue]; ***Sisters of the Order of St. Dominicv. Town of Babylon Zoning Bd. of Appeals***, 262 AD2d 492, 691 NYS2d 322 (2nd Dept. 1999) [child day care center]; ***Cornell University v. Beer***, 16 AD3d 890, 791 NYS2d 682 (3rd Dept. 2005)[parking lot]. The petitioners' claims that the ZBA failed to perform a detailed analysis of the relationship between the principal use of a Church as a place of worship and the accessory use of a gymnasium are without support in the record. The principal function of a Church is worship, yet the accessory use can and should include not only spiritual development but the physical health and welfare of the congregation as well as social services associated with the Church. See, ***Lawrence School Corp. V. Lewis***, 174 AD2d 42, 578 NYS2d 627 (2nd Dept. 1992).

A religious institution's social programs, including those programs directed at the physical health of the congregation, as in this case with the erecting of a building housing a gymnasium, are accessory uses in that they are customarily incidental to the principal use. The character of uses and structures that Courts have deemed accessory to religious uses has varied widely. See, generally, Annotation, ***What constitutes Accessory or Incidental Use of Religious or Educational Property within Zoning Ordinance*** (1982), 11 ALR 4th 1084, 1086 citing 2 Anderson, **American Law of Zoning 2d**, Section 12.26. As was noted by the Court in ***In Application of Covenant Community Church Inc.***, 111 Misc 2d 537, 444 NYS2d 415 (NY Sup Ct 1988):

> "However, the case law is clear that '[s]trictly religious uses ... are more than prayer and sacrifice .... Churches have always developed social groups for adults and youth where the fellowship of the congregation is strengthened with the result that the parent church is strengthened.... It is a religious activity for the church to provide a place for these social groups to meet, since the church by doing so is developing into a stronger and closer knit religious unit' (***Matter of Community Synagogue v. Bates***, 1 NY2d 445, 453, 154 NYS2d 15, 136 NE2d 488)."

Finally, the ZBA also took into account the precedential nature of the Church's request. The ZBA noted in its decision that "This Board has previously granted applications that permit a second building for accessory religious uses." In ***Matter of Campo Grandchildren Trust v. Colson, et. Al.***, 39 AD3d 746, 834 NYS2d 295 (2nd Dept 2007), 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).

This is a valid concern of the ZBA. This Court should not second guess or substitute its judgment for the ZBA's well reasoned analysis in this case. The Court finds that the ZBA conducted and engaged in the required balancing test in finding the Church's application for the relaxation of side yard requirements to be proper and that its interpretation of the gymnasium as an accessory use and not a main building is also proper. ***Mattiacco v. Zoning Bd. of Appealsof Village of Pleasantville***, 22 AD3d 758, 804 NYS2d 385 (2nd Dept. 2005).

Based upon the entire record before it, and balancing all the factors involved, the ZBA could and did rationally conclude and interpret that the building of a gymnasium in a building constituted an accessory structure and not a main building and thus its determination granting the requested relief was not arbitrary or capricious. ***Picarelli v. Karl***, 51 AD3d 1028, 858 NYS2d 389 (2nd Dept. 2008). Accordingly, the petition is denied and the proceeding dismissed. ***Matter of Ifrah v. Utschig***, supra.

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Settle Judgment

The foregoing constitutes the decision of this Court.

Date: June 08, 2011

J.S.C.