

Matter of Hamptons, LLC v Zoning Bd. of Appeals of the Inc. Vil. of E. Hampton
2011 NY Slip Op 32714(U)
October 5, 2011
Supreme Court, Suffolk County
Docket Number: 12952-2011
Judge: Melvyn Tanenbaum
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SHORT FORM ORDER- JUDGMENT

INDEX NO. 12952-2011

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XIII SUFFOLK COUNTY

Decision date 10-05-11

PRESENT:
HON. MELVYN TANENBAUM
Justice

MOTION # 001, # 002 Case Disp
R/D: 06-07-2011
S/D: 07-15-2011

In the Matter of
c/o THE HAMPTONS, LLC, d/b/a c/o THE MAIDSTONE
and LEXINGTON LOUNGE, LLC,

PLTF'S/PET'S ATTY:
CAHN & CAHN, LLP
22 High Street, Suite 3
Huntington, NY 11743

Petitioners,

for an Order Pursuant to Article 78 of the Civil Practice
Law and Rules in the Nature of *mandamus* and *certiorari*

-against-

THE ZONING BOARD OF APPEALS OF THE
INCORPORATED VILLAGE OF EAST HAMPTON
and the DESIGN REVIEW BOARD OF THE VILLAGE
OF EAST HAMPTON,

DEFT'S/RESP'S ATTY:
LAMB & BARNOSKY, LLP
534 Broadhollow Road, P.O.Box 9034
Melville, NY 11747

Respondents..

Upon the following papers numbered 1 to 32 read on this motion for an order pursuant to CPLR Sec
6301 & 6302, 7803 Notice of Motion/Order to Show Cause and supporting papers 1-4; Notice
of Cross Motion and supporting papers 5-16 Answering Affidavits and supporting papers 17-18, 19-24, 25-26
Replying Affidavits and supporting papers 27-32 Other _____; (and after hearing counsel in support and opposed
to the motion) it is,

ORDERED that this motion by petitioners THE HAMPTONS, LLC d/b/a c/o THE MAIDSTONE and LEXINGTON LOUNGE, LLC ("MAIDSTONE") brought on by Order to Show Cause seeking an order pursuant to CPLR Section 6301 & 6312 enjoining respondents ZONING BOARD OF APPEALS OF THE INCORPORATED VILLAGE OF EAST HAMPTON ("ZONING BOARD") and the DESIGN REVIEW BOARD OF THE VILLAGE OF EAST HAMPTON ("DESIGN REVIEW BOARD") from enforcing the conditions set forth in respondents resolutions dated April 8, 2011 and April 20, 2011 respectively pending determination of petitioners CPLR Article 78 petition and this petition by petitioners "MAIDSTONE" seeking a judgment pursuant to CPLR Section 7803 in the nature of mandamus to review and annul the determinations of: 1) respondent "ZONING BOARD" dated April 8, 2011 declaring null and void conditions # 2 and #3; and 2) respondent "DESIGN REVIEW BOARD" dated April 20, 2011 declaring null and void conditions #1,#2 and #3 are determined as follows:

Petitioner "MAIDSTONE" operates an historic inn and restaurant as a nonconforming use in residential zoning district. On August 3, 2009 petitioner filed special permit and site plan applications with respondents "ZONING BOARD" and "DESIGN REVIEW BOARD" seeking permission to extend the nonconforming use to include outdoor dining. On August 19, 2009

Hamptons v. Inc. Vlg. E. Hampton
Index # 12952-2011
Page 2

respondent "DESIGN REVIEW BOARD" conducted a preliminary hearing which was adjourned until September 16, 2009 for submission of seating plans and additional materials by petitioners. Respondent "ZONING BOARD's" original September 11, 2009 public hearing date was adjourned twice from September 25, 2009 and then until October 9, 2009.

On October 1, 2009 respondent BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF EAST HAMPTON ("BOARD OF TRUSTEES") conducted a public hearing to consider enacting a local law which would prohibit outdoor dining as an accessory use in any commercial establishment located in a residential district. Following the hearing the "BOARD OF TRUSTEES" enacted Local Law No. 10 of 2009 amending the Village Zoning Code to limit the authority of the "ZONING BOARD" and "DESIGN REVIEW BOARD" to approve outdoor dining in all residential districts on lots used for a pre-existing nonconforming or special permit use. On October 16, 2009 the "BOARD OF TRUSTEES" adopted a resolution ratifying and re-enacting the local law. As a result respondents discontinued petitioners special permit and site plan applications.

Petitioners commenced a CPLR Article 78 proceeding to compel the respondents to schedule hearings and grant "MAIDSTONE's" special permit application to permit outdoor dining at the restaurant. By Judgment dated December 9, 2010 the petition was granted and respondents were directed to issue the special permit subject to reasonable conditions consistent with respondents June, 2008 special permit grant to another historic inn on the same street and in the same residential zoning district.

By resolution dated April 8, 2011 respondent "ZONING BOARD" granted petitioner "MAIDSTONE's" special permit application subject to compliance with nine conditions. By resolution dated April 20, 2011 respondent "DESIGN REVIEW BOARD" granted petitioner "MAIDSTONE" permission to provide outdoor dining subject to compliance with three conditions. Petitioners claim that respondent "ZONING BOARD's" resolution conditions # 2 and # 3 and respondent "DESIGN REVIEW BOARD's" resolution conditions # 1, #2 and #3 must be declared null and void.

Respondent "ZONING BOARD's" resolution conditions #2 and #3 provide:

2. The area in which the tables and chairs may be located shall include but be limited to the entire area between the outside edges of the two curved walls immediately behind the awning at the back of the main portion of the principal building (much but not all of which is already paved as a slate patio), as depicted on the survey prepared by George Walbridge Surveyors, P.C., most recently revised July 14, 2009

Hamptons v. Inc. Vlg. E. Hampton

(hereafter referred to as the "survey"), as indicated by the hatchmarks on the attached portion of the survey. To the extent some of the permissible outdoor dining area is not paved, but contains shrubbery, the shrubbery may be substituted with lawn, subject to the approval of the Design Review Board.

3. The premises shall be landscaped so that vegetative screening at least five feet in height shall be maintained around the perimeter of the outdoor dining area, along the outside of the curved walls and the back of the slate patio where the outdoor dining is permitted. Further, a double six-foot-high fence with sound baffling material sandwiched between the two fences shall be installed and maintained along the portions of the L-shaped northeast boundary line that stretch between the two one-story cottages. The foregoing shall be subject to Design Review Board approval.

Respondent "DESIGN REVIEW BOARD's" resolution conditions #1, #2 and #3 provide:

1. The vegetative screening required pursuant to Condition #3 in the determination by the Zoning Board of Appeals around the perimeter of the outdoor dining area, along the outside of the curved walls and the back of the slate patio where the outdoor dining is permitted, shall be ilex inkberry, planted 18 inches on center and 5 feet high as planted. However, there shall be an opening 6 feet wide in the center of the back of the slate patio (west side) and an opening 4 feet wide on the north side of the northerly curved wall where the existing slate connects to the circular wall.

2. There shall be no additions or changes in outdoor lighting or in illuminating the outdoor dining area, with the sole exception of three pathway fixtures, two to be installed on either side of the 6-foot-wide opening in the ilex required by the foregoing paragraph (at the center of the slate patio on the west side) and one at the 4-foot-wide opening in the ilex on the north side of the northerly curved wall. These pathway fixtures are to be Hadco Pathlyte (R3), with a maximum wattage A19 or florescent equivalent, to be on a stem of 18 inches above finished grade.

3. The sides of the sound-attenuating fence required pursuant to Condition #3 in the determination by the Zoning Board of Appeals shall be of clear western red cedar 5/4" x 10" tongue and groove boards with a cap of the same material.

Hamptons v. Inc. Vlg. E. Hampton
Index # 12952-2011
Page 4

“MAIDSTONE’s” petition seeks a judgment declaring the conditions set forth above null and void claiming that they violate the Court’s prior Judgment which required reasonable conditions consistent with the respondents 2008 special permit granted to the neighboring historic inn known as “1776”. Petitioners seek a preliminary injunction enjoining enforcement of the conditions pending a determination of the underlying petition. Petitioners claim that the “ZONING BOARD’s” condition # 2 requiring chairs and tables be clustered in a confined space causes an unreasonably hazardous conditions for patrons and staff. Petitioners claim that the “ZONING BOARD’s” condition #3 mandating construction of double 6-foot high fencing with sound baffling materials and additional five foot vegetative screening is unnecessary and damaging to the premises. It is petitioners position that neither of these conditions were imposed by respondent when issuing the special permit to “1776” and therefore such conditions violate this Court’s prior Judgment. Petitioners also claim that the “DESIGN REVIEW BOARD’s” conditions are not consistent with the “ZONING BOARD’s” conditions and must therefore also be declared null and void. Petitioners contend that an injunction is necessary to enjoin respondents from enforcing the arbitrary conditions contained in respondents resolutions and that the CPLR Article 78 petition must be granted based upon respondents abuse of discretion and failure to abide by the prior Judgment.

In opposition respondents submit a verified answer and two attorney affirmations and claim that no basis exists to grant injunctive relief since the conditions imposed by respondents are rationally based and designed to mitigate impacts on the residential community that adjoins it. Respondents claim that the requirements of fencing, shrubbery and additional lighting seek to protect neighboring property owners from the adverse effects resulting from the proposed outdoor dining. Respondents claim that petitioner’s patio location places the dining area eight feet beyond the transitional yard of the adjacent residences. Respondents also claim that the petition was improperly served and jurisdictionally defective since the notice of petition failed to provide a return date in compliance with CPLR Section 403(a).

There is no issue but that jurisdiction has been acquired over the respondents based upon petitioner’s service of the petition and motion brought on by Order to Show Cause upon the respondents which established the Court’s return date for submission of papers.

A preliminary injunction may be granted upon a clear showing of three things; 1) the likelihood of ultimate success on the merits, 2) irreparable injury to movant absent the granting of the preliminary injunction and 3) balancing of the equities in his favor (ALBINI v. SOLORK ASSOCIATES, 37 AD 2d 835, 325, NYS 2d 150 (2nd Dept., 1971); HUDSON VALLEY TREE, INC. v. BARCANA, INC., 114 AD 2d 400, 494 NYS 2d 124 (2nd Dept., 1985)).

The December 9, 2010 Judgment required that respondents grant petitioners a special permit to provide outdoor dining subject to reasonable conditions consistent with a prior substantially identical application awarded to another historic facility in June, 2008. Based upon a review of the

Hamptons v. Inc. Vlg. E. Hampton
Index # 12952-2011
Page 5

evidence submitted by the parties, petitioners have made the required clear showing of a likelihood of success on the merits, irreparable injury and a balancing of the equities in "MAIDSTONE's" favor since the conditions imposed by respondents appear inconsistent with the prior 2008 special permit granted the neighboring historic inn. Under such circumstances petitioners are entitled to a preliminary injunction preventing enforcement of the conditions.

CPLR Section 7803(3) provides:

The only questions that may be raised in a proceeding under this article are:

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed...

In a proceeding in the nature of mandamus to review a court examines an administrative action involving the exercise of discretion. Mandamus to review resembles certiorari except that in a certiorari proceeding a quasi-judicial hearing is required and the reviewing appellate court has the benefit of a full record. The standard of review in such a proceeding is "substantial evidence" (CPLR Section 7803(4). "In a mandamus to review proceeding no hearing is required; the petitioner need only be given an opportunity to be heard and to submit whatever evidence he or she chooses and the agency may consider whatever evidence is at hand, whether obtained through a hearing or otherwise. The standard of review in such a proceeding is whether the agency determination was arbitrary and capricious or affected by an error of law." (CPLR Section 7803(3); SCHERBYN v. WAYNE-FINGER LAKES BD. OF CO-OP., 77 NY2d 753, 757-758, 570 NYS 2d 474 (1991)).

Based upon a review of the evidence submitted, respondents resolution conditions requiring: 1) clustering of tables and chairs in a confined space ; 2) construction of double 6-foot fencing with sound baffling materials; 3) vegetative screening ; and 4) prohibition of outdoor lighting was arbitrary and capricious and clearly not consistent with respondents June, 2008 special permit award to "1776". The prior Judgment required imposition of reasonable conditions measured against the prior award. The conditions imposed by respondents are unreasonable and an abuse of the "ZONING BOARD" and "DESIGN REVIEW BOARD's" discretion particularly where precedent was previously established. This petition seeking a judgment setting aside the conditions set forth in respondents resolution must therefore be granted. Accordingly it is

ORDERED that petitioners motion for an order pursuant to CPLR Section 6301 & 6312 is granted, and it is further

ORDERED, ADJUDGED AND DECREED that petitioners CPLR Article 78 petition is granted. The conditions denominated as # 2 and #3 set forth in respondent "ZONING BOARD's" resolution dated April 8, 2011 and the conditions denominated as # 1, #2 and #3 in respondent

Hamptons v. Inc. Vlg. E. Hampton
Index # 12952-2011
Page 6

“DESIGN REVIEW BOARD’s” resolution dated April 20, 2011 are hereby declared null and void. Respondents are directed to issue the special permit subject to the remaining conditions set forth in respondents resolutions within 20 days of the date of service of a copy of this Judgment with notice of entry.

Dated: October 5, 2011

Hon. Melvyn Tanenbaum

J.S.C.