

Matter of Coyle v Petrone
2012 NY Slip Op 32926(U)
December 3, 2012
Sup Ct, Suffolk County
Docket Number: 05386/2012
Judge: Ralph T. Gazzillo
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SHORT FORM ORDER

Supreme Court - State of New York
IAS PART 6 - SUFFOLK COUNTY

MOT. SEQ: 001 MG

PRESENT:

Hon. RALPH T. GAZZILLO
A.J.S.C.

-----X		
In the Matter of Seamus Coyle,	:	Herbert L. Haas
	:	Attorney for Plaintiff
Plaintiff(s),	:	34 Dewey Street
- against -	:	P.O. Box 1850
	:	Huntington, N.Y. 11743
Frank P. Petrone, Susan A. Berland, Eugene Cook,	:	
Mark A. Cuthbertson, and Mark Mayoka,	:	John J. Leo
constituting the Town Board of the Town of	:	Town Attorney, Town of Huntington
Huntington, Suffolk County, New York,	:	By: Deidre M. Butterfield
	:	Town Hall
Defendant(s).	:	100 Main Street
-----X		
	:	Huntington, N.Y. 11743

Upon the following papers numbered 1 to 68 read on this proceeding brought pursuant to CPLR Article 78; Notice of Petition and supporting papers numbered 1-24; Answering affidavits and supporting papers numbered 25-33; Memorandum of Law in Support of the Petitioner with exhibits numbered 34-51; Return of Record numbered 52-68; it is,

ORDERED that after hearing counsel for the parties and after consideration of the papers filed in support and in opposition thereto, this application (seq 001) by the petitioner, pursuant to Article 78, annulling the decision of the Town Board of the Town of Huntington (hereafter Board), dated February 6, 2012, is granted, and it is further

ORDERED that the application is remitted to the Huntington Town Board for reconsideration consistent with the provisions of the entirety of applicable provisions of §198 of the Town Code of the Town of Huntington, the prior approvals of all other Town agencies or boards and the recommendation of the Town's Historic Preservation Committee within 45 days of the date that this Short Form Order is served with Notice of Entry, and it is further

ORDERED that counsel for petitioner shall serve a copy of this Order with Notice of Entry upon counsel for all other parties, pursuant to CPLR §§2103(b)(1), (2) or (3), within thirty (30) days of the date the order is entered and thereafter file the affidavit(s) of service with the Clerk of the Court.

The instant proceeding seeks relief pursuant to CPLR Article 78 annulling the determination

of the Huntington Town Board which denied petitioner's application for a Certificate of Approval for the construction of a 3 bay automobile service shop in a Historic District pursuant to §198, Article VI of the zoning code of the Town of Huntington. The denial of this approval precluded the petitioner from constructing the proposed project even though the application had been under review for a period of approximately six years and had received a special permit from the Huntington Town Zoning Board of Appeals (hereinafter ZBA), site plan approval Huntington Town Planning Board (hereinafter Planning Board) and a recommendation for approval from the Huntington Town Historic Preservation Committee.

The detailed history of the application is as follows: Petitioner first made application to construct a "three bay" automobile repair shop on its property located on 114 Prime Avenue (SCTM #0400-071-11-2.00-083.000) on an 8600 square foot portion of the premises on or about June of 2004. The property is "split zoned" and is comprised of a total of approximately 13,900 square feet which is primarily zoned I-4 (Light Industry Zone). A small portion of the premises is located in the R-5 (Residential Zone). The applicable zoning has been in place on the premises since 1951. The property is improved with a single family residence with an attached rear deck and detached two-car garage. The house and garage structures presently existing on the premises are covered by a letter of pre-existing use dated July 20, 1983. The attached rear deck is covered by a Certificate of Occupancy dated August 17, 2000.

On or about June of 2004, petitioner applied to the Town's division of Building and Housing (hereinafter Building Department) for a permit to maintain the existing single family dwelling and accessory structures on a 5300 square foot portion of the premises (which includes the residentially zoned land) and to construct an automobile repair shop on an 8600 square foot portion of the premises which is zoned I-4. Because the I-4 district only allows automobile service shops pursuant to a Special Use Permit (Huntington Town Code §198-68(A)(20), the Building Department denied the application. Thereafter (since it is necessary to obtain a denial from the Building Department prior to seeking relief from the ZBA in the form of a special use permit), petitioner made application to the Town of Huntington ZBA for a determination as follows: 1) for a special use permit pursuant to Huntington Town Code §198-68(A)(20) to allow the construction of an automobile repair shop, 2) a special use permit pursuant to Huntington Town Code §198-170(B) for overnight storage of vehicles, 3) variances to sections 198-10(G) and 198-170(B) of the Huntington Town Code to legalize the existing structures on the parcel and 4) an area variance from the requirements of Huntington Town Code §198-37(F) for lot area, lot width and lot frontage.

Following receipt of petitioner's complete application, the ZBA held a public hearing at which petitioner submitted evidence and testimony on behalf of the application and at which public commentary was received. Specifically, petitioner testified that the hours of operation of the automobile repair shop would be from 8:00 am through 6:00 pm Monday through Friday and from

8:00 am through 3 pm on Saturdays. Further, petitioner testified that all work would be performed inside the building, work would be performed by petitioner and two additional employees, that no more than five vehicles would be stored outside overnight, no collision or body work would be performed on the site and that waste oil would be disposed of pursuant to applicable laws and regulations. Petitioner also provided an expert witness, i.e. Wayne A. Muller, P.E., who was recognized by the ZBA as a traffic expert and who testified that the traffic expected would not produce undue adverse traffic impacts and that there was adequate parking planned for the site. Alternatively, Mr. Muller testified that based upon the existing zoning, the existing residence on the site could be demolished and a 3,400 square foot medical or similar office could be constructed on the site as an “as of right” permitted use. However, Mr. Muller testified that such a use would generate greater traffic impacts than the use proposed by petitioner. In addition, in support of his application, petitioner introduced John J. Breslin, Jr., a real estate appraiser who was also recognized by the ZBA as an expert witness with regard to real estate and real estate valuation. Mr. Breslin testified that the parcel is contiguous to other parcels zoned I-4 and in close proximity to parcels zoned C-6, General Business. Mr. Breslin further testified that the proposed use would not adversely affect the value of the neighboring properties, the character or pattern of development within the neighborhood and that relief sought by petitioner in the form of area variances requested could not be achieved by any other means.

Following the hearing and upon due consideration of the petitioner’s application, the ZBA granted the petitioner’s application with conditions. Specifically, the ZBA, outlining its deliberation and reasoning in a 5 page determination, granted petitioner a special permit determining that the applicant “satisfied the special permit criteria as well as the variance standards”. The ZBA further determined that “[t]he Board is of the opinion that with adherence to the conditions imposed herein no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created.” Further, the ZBA found that because the applicant sought to maintain the residential structure, that the overall commercial development would be less than that could be anticipated if the applicant demolished the home and developed the property in accordance with the applicable zoning. Significantly, the ZBA determined that the development on the “subject property will be properly located in regard to transportation, water supply, waste disposal, fire protection and other facilities; that the proposed use will not create undue traffic congestion or traffic hazard nor will it adversely affect the value of property, character of neighborhood or pattern of development; that the grant of the requested special use permits will encourage an appropriate use of the land consistent with the needs of the town; and that the proposed use will not impair public health or safety and will be reasonably necessary for the public health or general welfare and interest.”

Thereafter, at the petitioner’s request, and after a second public hearing on the application, on

June 2, 2005, the ZBA modified the conditions to the special permit issues on February 3, 2005¹.

Coincidentally, just five days following the ZBA's second grant, the Huntington Town Board designated the petitioner's premises, along with several others, as part of the Mill Lane Historic District pursuant to Huntington Town Code §198-42A(12).

In early May 2006, petitioner made application to the Department of Planning and Development for Site Plan approval. Nearly four years later, the Department of Planning and Environment notified the petitioner that although the site designs had been approved, formal Site Plan approval could not be granted until the petitioner filed the Declaration of Covenants and Restrictions required as a condition of the ZBA's grant of petitioner's application for special permits. Accordingly, the Declaration of Covenants and Restrictions was filed on October 21, 2011. On November 7, 2011, the Department of Planning and Environment stamped petitioner's plans with approval and issued a letter to the petitioner stating that he was authorized to proceed to file for building permits subject to the posting of a bond as was also required as a condition of the ZBA approval. On June 2, 2010, the Huntington Town Planning Board granted the petitioner site plan approval for the project.

Thereafter, the petitioner made application to the Building Department for its permits. The Building Department forwarded the application and plans to the Town of Huntington Historic Preservation Committee (hereinafter "the Committee"), an advisory committee, for review and approval pursuant to §198-41C of the Huntington Town Code. On November 28, 2011, the Committee held a meeting to consider the application for a Certificate of Approval at which petitioner and his counsel were in attendance. Following the meeting, on November 30, 2011, the Commission sent a memorandum to the respondent Town Board recommending that the Town Board issue the petitioner a Certificate of Approval for the construction of a three bay automobile repair shop in accordance with petitioner's plans dated November 10, 2010 and stamped the petitioner's plans with the Commission's stamp indicating approval.

On February 6, 2012, the respondent Town Board held a public hearing regarding the petitioner's application to consider approval of its November 15, 2010 plans pursuant to Town's Historic District regulations. At the hearing, petitioner's counsel made a presentation outlining the history of the prior approvals granted to the petitioner for the proposed project. The public was also permitted to comment on the application. Although there were many comments public, those comments consisted exclusively of generalized objections as to perceived (but unsubstantiated)

¹Petitioner did commence an Article 78 proceeding to challenge the conditions placed upon the ZBA's February 2, 2005 determination granting the petition, but later withdrew the petition when the ZBA adopted the modifications to those conditions.

negative environmental impacts of the proposed use on noise, flooding, potential reduction in property value, emissions, fumes, traffic, parking, chemicals and pollution. In addition, members of the public discussed other properties owned by the applicant and Newsday reports regarding the applicant's alleged arrest record. No expert witnesses testified in opposition to the application². The public hearing was closed on January 10, 2012. On February 6, 2012, the Town Board unanimously adopted a resolution denying the petitioner's application for a Certificate of Approval in a Historic District stating only as follows:

"HAVING DETERMINED that the proposed building would have an adverse impact on the historic character of the Mill Lane Historic District because the proposed use of the building is not compatible with the historic residential character of the district.

HEREBY DENIES the aforesaid application of Seamus Coyle for a Certificate of Approval."

No factual recitations or findings of fact were set forth in the resolution and no analysis was provided in the resolution outlining the deliberations of the Town Board in reaching its determination.

Clearly, based upon the record before this Court, which includes prior determinations of the ZBA and the Planning Board and the Historic Preservation Committee, the determination of the Town Board in denying the petitioner's application for a Certificate of Approval in a Historic District, which is in complete contravention with the prior detailed findings and determinations of the ZBA and the Planning Board and recommendations of the Historic Preservation Committee, was arbitrary, capricious and an abuse of discretion. There is not a scintilla of evidence in the record to support the denial of the application based upon its failure to comply with the requirements of the Town's Historic District. The Town Board failed to make findings of fact or to in any other way support their determination to deny the application. Moreover, the Town Board failed to distinguish

² Counsel for the Town included copies of numerous photographs which include nearby properties as well as Heckscher Park, which is nearby the subject property as well as copies of petitions in opposition to the project apparently submitted to the Town Board outside of the public hearing. Counsel acknowledges that these photographs and petitions are not properly part of the official record on the application. Accordingly, the Court cannot consider them. "An Article 78 proceeding is limited to consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and "[t]he function of the court ... is to determine ... whether the determination had a rational basis in the record or was arbitrary and capricious" (see, *HLV Associates v. Aponte*, 223 A.D.2d 362 at 363 citing *Matter of Fanelli v. New York City Conciliation & Appeals Bd.*, 90 A.D.2d 756, 757, 455 N.Y.S.2d 814, affd 58 N.Y.2d 952, 460 N.Y.S.2d 534, 447 N.E.2d 82).

its determination from the strong precedent created by the ZBA, Planning Board and Historic Preservation Committee with respect to the application.

Specifically, in granting the petitioner's special permit, the ZBA made findings of fact regarding the compatibility of the proposed use with the requirements of the Town Code. Specifically, in rendering its determination, the ZBA articulated its findings as follows:

"[t]he Board is of the opinion that with adherence to the conditions imposed herein no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created."

Further, the ZBA determined that:

" the subject property will be properly located in regard to transportation, water supply, waste disposal, fire protection and other facilities; that the proposed use will not create undue traffic congestion or traffic hazard nor will it adversely affect the value of property, character of neighborhood or pattern of development; that the grant of the requested special use permits will encourage an appropriate use of the land consistent with the needs of the town; and that the proposed use will not impair public health or safety and will be reasonably necessary for the public health or general welfare and interest." Furthermore, the Planning Board approved the petitioner's site plan, and perhaps more importantly, the Town's own Historic Preservation Commission, recommended that the application be approved.

No where in the Town Board's determination is the six year history of the application mentioned, no where is the Town Board's determination explained or supported by evidence contained in the record and no where is its determination in any way distinguished from the ZBA determination which granted the application and made specific findings as to why the subject application conformed to the requirements of the Town Code regarding the requirements for special permits. No where in the Town Board's decision is the Planning Board site plan approval for the project considered or even mentioned. Finally, no where in the resolution does the Town Board explain or provide any reasoning for its determination to ignore the Historic District Preservation Committee's recommendation that the petitioner's application be approved. Accordingly, the Town Board's determination must be annulled (see, *Matter of Lafayette Storage & Moving Corp.* 77 N.Y.2d 823, see also, *Matter of Charles A. Field Delivery Service, Inc.* 66 N.Y.2d 516).

Although it is clear from the record that there was substantial community opposition to the project, such opposition without supporting evidence and in the form of generalized, unsubstantiated objections, is insufficient to support the denial of the application (see, *Matter of Robert Lee Realty Co. v. Village of Spring Val.*, 61 N.Y.2d 892).

Given the fact that there is no reasoning whatsoever included in the Town Board's denial

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of the petitioner’s application for Historic District approval, the determination is arbitrary and therefore, must be annulled. Accordingly, the matter is remitted to the Town Board for reconsideration of the application in accordance with the applicable provisions of the Town Code as set forth herein.

Dated: 12/3/12
RIVERHEAD, NY

[Signature]
Ralph T. Gazzillo
A.J.S.C.

NON-FINAL DISPOSITION