93 Water Mill Town Rd., LLC v Phillips
2014 NY Slip Op 32525(U)
September 18, 2014
Supreme Court, Suffolk County
Docket Number: 2071-13
Judge: Denise F. Molia

COPY

Index No.: 2071-13

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA,**
Justice

93 WATER MILL TOWD ROAD, LLC,

Petitioner,

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

- against -

HERBERT PHILLIPS Chairman, ADAM GROSSMAN, ANN NOWACK, KEITH TUTHILL, DENISE O'BRIEN, DAVID REILLY and BRIAN DESESA, Constituting the Members of the Southampton Town Zoning Board of Appeals, JOHN LEONARD, MARY SLATTERY and GILBERT S. FOSTER and DORIS C. FOSTER,

Respondents.

CASE DISPOSED: YES
MOTION R/D: 2/25/14
SUBMISSION DATE: 6/6/14
MOTION SEQUENCE NO.: 002 MD

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Upon the following papers filed and considered relative to this matter:

Notice of Petition and Verified Petition dated January 14, 2014; Exhibits A and B annexed thereto; Amended Verified Petition dated May 7, 2014; Exhibits A through L annexed thereto; Verified Answer dated April 10, 2014; Amended Verified Answer dated May 28, 2014; Petitioner's Memorandum of Law; Respondents' Memorandum of Law; Petitioner's Reply Memorandum of Law; Respondents' Reply Memorandum of Law; and upon due deliberation; it is

ORDERED, that the petition of 93 Water Mill Towd Road, LLC, pursuant to CPLR Article 78, for a judgment reversing, annulling, and setting aside so much of the December 20,

RST

2012 determination of the Southampton Town Zoning Board of Appeals In the Matter of the Application of John Leonard and Mary Slattery as approved variances and/or granting such other and further relief as to this Court may seem just and proper, is denied.

The petitioner is a limited liability company and owner of certain property located at 93 Water Mill Towd Road, Water Mill, New York, which abuts and lies immediately to the west of No# Water Mill Towd Road, Suffolk County Tax Map number 900-100-3-3.7 ("premises"). In this proceeding, the petitioner seeks to annul the December 20, 2012 decision of the Southampton Town Zoning Board of Appeals ("ZBA"), which granted relief to respondents John Leonard and Mary Slattery, as contract-vendees, and respondents Gilbert S. Foster and Doris C. Foster, as contract-vendees (collectively referred to as "respondents").

The subject vacant, non-conforming, irregularly shaped parcel is approximately 31,193 square feet and located in the CR-80 Zoning District. Said lot was created when the Town of Southampton relocated Water Mill Towd Road from behind the premises to its current location. It appears that the premises has been held in single and separate ownership since its creation.

On or about June 21, 2012, respondents filed an application with the ZBA seeking the following variances:

1. A variance from Town Code §330-11 seeking to allow the front yard setback for the proposed single family residence to be 43.1 feet where 80 feet is required;

2. A variance from Town Code §330-11D(2) seeking to allow the setback for the proposed single family residence to be 15 feet from the rear yard where 25.5 feet is required;

3. A variance from Town Code §330-84D seeking relief for an encroachment in the amount of 3,613 cubic feet; and

4. A variance from Town Code §330-11 seeking to allow an accessory structure to be setback from the street 41.5 feet where 90 feet is required.

A public hearing on the application was conducted by the ZBA on October 18, 2012. Testimony in support of the application was accepted from the respondents and their attorney. Written submissions in opposition to the application from neighbors objecting to the scope of the application were received and considered by the ZBA. The opponent's contended that alternatives existed to the respondents' proposal, any hardship was self-created, the proposed garage and swimming pool should not be permitted, and screening should be required to provide a buffer from Water Mill Towd Road.

By decision dated December 20, 2012, the ZBA approved the following variances:

1. A variance from Town Code §330-11 to allow the front yard setback for the

proposed single-family residence to be 42.6 feet where 80 feet is required;

2. A variance from Town Code §330-11D(2) to allow the setback for the proposed single-family residence to be 15 feet from the rear yard where 25.5 feet is required;

3. A variance from Town Code §330-84D for a pyramid encroachment of 3,613 feet;

4. A variance from Town Code §330-11 to allow an accessory structure to be setback from the street 41.5 feet where 90 feet is required; and

5. A variance from Town Code §330-76D and §330-83C for the proposed swimming pool to be located within the required front yard of a non-conforming lot.

In making determinations on area variance applications, Town Law §267-b(3)(B) requires a Zoning Board of Appeals to consider whether:

1. an undesirable change will be produced in 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, feasible method;

3. whether the requested area variance is substantial;

4. the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and

5. the alleged difficulty was self created, which consideration shall be relevant to the decision of the Zoning Board, but shall not necessarily preclude the granting of the area variance.

In its decision dated December 20, 2012, the ZBA stated the facts as set forth in the application and presented at the hearing by the applicant. It was noted that there was no written or verbal testimony presented in opposition to the application. However, the ZBA also noted that it was aware of concerns expressed by adjacent property owners, including the petitioner, and addressed these concerns in the body of the decision. The ZBA then made the following findings:

1. That no 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, since the proposed residence and pool is far enough from the adjacent parcels that, with the extensive screening that is being conditioned in the decision herein, the impact on the adjacent property owners is minimal;

2. That the benefit sought by the applicants cannot be achieved by some method, feasible for the applicants to pursue, other than an area variance, since the location of the unusual size and shape of the subject property limits the available location to place the proposed residence and pool, and under this set of facts and circumstances, the requested setback and pyramid relief for the proposed residence and pool will be mitigated by the screening conditioned in this decision;

3. While the requested area variance would be substantial if it were closer to the adjacent parcels, or without substantial screening, this Board finds that under this set of facts and circumstances the relief requested herein is not substantial;

4. The proposed variance, based on the facts and circumstances surrounding this particular application, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district since, with the screening conditioned herein, there is sufficient space between the location of the proposed residence and pool and adjacent residences; and

5. The alleged difficulty was not self created.

The instant proceeding was subsequently commenced by the petitioners, alleging that the aforesaid decision of the respondent Board was irrational, arbitrary and capricious, and not supported by the evidence submitted and the record before it.

The Court of Appeals has reaffirmed the limited role of the courts in the review of decisions issued by local land use boards as follows:

> "As with board determinations on variances, a reviewing court is bound to examine only whether substantial evidence supports the determination of the board. Where substantial evidence exists, a court may not substitute its own judgment for that of the board, even if such a contrary determination is itself supported by the record."

Retail Property Trust v. Bd. of Zoning Appeals of Town of Hempstead, 98 N.Y.2d 190, 196. (See also, Matter of P.M.S. Ltd. v. Zoning Board, 98 N.Y.2d 683; Matter of Ifrah v. Utschig, 98 N.Y.2d 304)

The reason for the limited scope of judicial review was set forth by the Court of Appeals in Cowan v. Kern, 41 N.Y. 2d 591 at 599, as follows:

> "The crux of the matter is that the responsibility for making zoning decisions has been committed primarily to quasi-legislative, quasi-administrative boards composed of representatives from the local community. Local

> officials generally possess the familiarity with local conditions necessary to make the often sensitive planning decisions which affect the development of their community. Absent arbitrariness, it is for the locally selected and locally responsible officials to determine where the public interest in zoning lies. (McGowan v. Cohalan, 41 N.Y.2d 434, 438, supra.) Judicial review of local zoning decision is limited; not only in our court but in all courts. Where there is a rational basis for the local decision, that decision should be sustained."

Under the circumstances presented, the Court finds that the findings of the respondent Board are rational and supported by the substantial evidence on the record, and are not found to be arbitrary, capricious, or erroneous as a matter of law, or an abuse of discretion. Accordingly, the petition is dismissed.

The foregoing constitutes the Order of this Court.

Dated: September 18, 2014

Hon. Denise F. Molia

HON. DENISE F. MOLIA A.J.S.C.