

<b>Mutual Benevolence Socy. of Working Men v City of Saratoga Springs Zoning Bd. of Appeals</b>
2014 NY Slip Op 33850(U)
March 25, 2014
Supreme Court, Saratoga County
Docket Number: 20134045
Judge: Stephen A. Ferradino
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SUPREME COURT  
STATE OF NEW YORK

COUNTY OF SARATOGA

THE MUTUAL BENEVOLENCE SOCIETY OF  
WORKING MEN, PRINCIPESSA ELENA;  
MOTO HOLDINGS, INC.,

Petitioners,

- against -

CITY OF SARATOGA SPRINGS ZONING BOARD  
OF APPEALS; WILLIAM MOORE; JOAN SALMON  
and CHRISTOPHER CUCCIO,

Respondents.

**AMENDED  
DECISION and JUDGMENT**  
RJI # 45-1-2013-1960  
Index # 20134045

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FILED

**APPEARANCES:**

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STEPHEN A. FERRADINO, J

The petitioners commenced this proceeding, pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), seeking a judgment of this court annulling the decision of the City of Saratoga Springs Zoning Board of Appeals (ZBA) and declaring that the decision was arbitrary, capricious, contrary to law and against the weight of the evidence.

Respondents, ZBA, William Moore (Moore) and Joan Salmon (Salmon) have opposed the petition.

Respondents Moore and Salmon agreed to purchase certain property, known as 75 South Franklin Street, Saratoga Springs, New York (the subject property), from respondent, Christopher Cuccio. The subject property is located in the Urban Residential-3 (UR-3) zoning district for the City of Saratoga Springs. Respondents Moore and Salmon sought to construct a single family residence, with a detached garage, on the subject property.

On November 8, 2013, the Zoning and Building Inspector denied the application. The denial notice provided that respondents Moore and Salmon would have to obtain an area variance to permit the proposed residence to be constructed with eight feet of total side yard, instead of the minimum of twelve feet required by the zoning ordinance. In addition, the notice specified that an area variance would be required to allow for the garage to exceed the maximum accessory building coverage of 10%, by an additional 2%, for a total of 12%. Finally, the denial notice indicated that an area variance would be required to permit habitable space above the garage.

Respondents Moore and Salmon appealed to the ZBA and requested the area variances, as set forth in the denial notice issued by the Zoning and Building Inspector. On November 18, 2013, the ZBA met and a public hearing was held. Respondent Moore was the chairman of the ZBA. At the hearing, respondent Moore excused himself as a member of the ZBA, and addressed the ZBA in support of the application. Members of the public, including the petitioners herein, spoke in opposition to, and in support of, the application.

The application was again considered by the ZBA on November 25, 2013. The ZBA heard the petitioners in opposition to the application. The ZBA voted and the application

was approved, unanimously. The ZBA issued its written decision on November 27, 2013.

The ZBA's written decision specifically provided that the ZBA considered the balance between the benefit to the applicant and the detriment to the health, safety and welfare of the community. The decision recited the reasons for the ZBA's approval of the requested variances. Among other things, the ZBA noted that the applicant demonstrated that the benefit could not be achieved by other feasible means and that the granting of the variance would not create an undesirable change in the neighborhood character or act as a detriment to nearby properties. The ZBA specifically noted that the construction of a single family residence in this neighborhood would not create a detriment, but rather, would advance the intent of the UR-3 district which is, "[t]o conserve, maintain and encourage single family and multi-family residential uses."

With regard to the requested area variance to permit habitable space above the garage, the ZBA noted that the granting of such a variance was subject to the condition that, "[n]o kitchen or bath facilities, or any overnight stays will be permitted in the finished space in the accessory structure."

The ZBA's decision recited that the total side yard setback and habitable space variances were substantial. The ZBA noted that this was due to the fact that the preexisting, nonconforming lot was undersized. The ZBA found that the setback variances were needed due to the narrow space in which the house would be located. In addition, the ZBA determined that the small size of the proposed main living space, resulted in the applicant having to seek finished space in the proposed accessory structure.

The ZBA determined that the accessory building coverage variance was not substantial. The ZBA further determined that the variances would not have a significant

adverse physical or environmental effect on the neighborhood or the district. The ZBA also determined that the alleged difficulty was self-created, but that this fact was not necessarily fatal to the application.

The petitioners have requested a judgment and order annulling the decision of the ZBA as arbitrary, capricious, contrary to law and against the weight of the evidence. The petitioners argue that: 1) the ZBA failed to make a determination as to the legality of the nonconforming lot; 2) the ZBA's decision violated the limitations of the zoning ordinance; 3) the ZBA's grant of approval of habitable space in the accessory structure was illegal; 4) the ZBA failed to address the issue of the potential for environmental contaminants at the subject property; and 5) the ZBA acted arbitrarily and capriciously in simply accepting the rationales of the applicants in support of the requested variances without giving consideration to the arguments raised with regard to the detrimental effects of the planned construction.

It is well settled that “[a] decision of a zoning board of appeals may be disturbed only if it is arbitrary and capricious, irrational or wholly unsupported by the record. *Matter of Heitzman v Town of Lake George Zoning Bd. of Appeals*, 309 AD2d 1126, 1127 [3d Dept 2003], quoting *Matter of Citizens Against Illegal Zoning v Zoning Bd. of Appeals of Town of Rochester*, 276 AD2d 897, 898 [3d Dept 2000]. Judicial review of a zoning board determination is limited to an examination of whether it has a rational basis and is supported by substantial evidence. *Matter of Sullivan v City of Albany Bd. of Zoning Appeals*, 20 AD3d 665, 666 [3d Dept 2005]; *Matter of Ifrah v Utschig*, 98 NY2d 304, 308 [2002]; *Matter of SoHo Alliance v New York City Bd. of Stds. & Appeals*, 95 NY2d 437, 440 [2000]. A determination is rational if it has some objective factual basis, as opposed

to resting entirely on subjective considerations. *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, 68 AD3d 62, 67 [2d Dept 2009].

General City Law (GCL) §81-b(4)(b) provides that in making its determination with regard to whether or not to grant an area variance, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. GCL §81-b(4)(b) further provides that, in making such determination, the board shall also consider: 1) whether an 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; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The arguments made by the petitioners in support of their request for a judgment annulling the decision of the ZBA are unpersuasive. Upon reviewing the record, it is evident that the ZBA properly applied the balancing test and considered and addressed each of the factors set forth in GCL §81-b(4)(b). See, *Matter of Heitzman v Town of Lake George Zoning Bd. of Appeals*, 309 AD2d at 1128. The court notes that where the zoning board's determination is supported by substantial evidence, a reviewing court "may not substitute its own judgment for that of the board, even if such a contrary determination is itself

supported by the record.” *Matter of Feinberg v Board of Appeals of Town of Sanford*, 306 AD2d 593, 594, quoting *Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead*, 98 NY2d 190, 196 [2002]. The court will not weigh the evidence or reject the choice made by the board where the evidence is conflicting and room for choice exists. *Matter of Sullivan v City of Albany Bd. of Zoning Appeals*, 20 AD3d at 666; *Matter of Toys “R” Us v Silva*, 89 NY2d 411, 424 [1996]; *Matter of Stork Rest. v Boland*, 282 NY 256, 267 [1940].

Based on the record before it, the court cannot conclude that the ZBA overlooked any of the relevant factors or that the ZBA’s determination lacked a rational basis and evidentiary support in the record. Therefore, the petition is dismissed.

Any relief not specifically granted herein is denied. No costs are awarded to any party. This decision shall constitute the judgment of the Court. The original decision and judgment shall be forwarded to the attorney for the respondent, the City of Saratoga Springs Zoning Board of Appeals, for filing and entry. The underlying papers will be filed by the court.

Dated: March 25, 2014  
Malta, New York

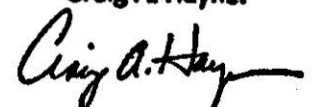
  
STEPHEN A. FERRADINO, J.S.C.

Papers Received and Considered:

- Notice of Petition for Judgment Under Article 78 of CPLR, dated December 26, 2013
- Petition, dated December 26, 2013, with Attached Exhibits 1-5
- Return, dated January 27, 2014, with Attached Exhibit 1

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Craig A. Hayner  
  
Saratoga County Clerk

Answer, by Anthony J. Izzo, Esq., on behalf of the City of Saratoga Springs Zoning Board of Appeals, dated January 27, 2014

Verified Answer, by James S. Cox, Esq., on behalf of William Moore and Joan Salmon, dated January 29, 2014

Affidavit in Opposition to the Petition, of William Moore, sworn to January 29, 2014

Respondent William Moore and Joan Salmons' Memorandum of Law in Opposition to Petition, dated January 29, 2014

Petitioners' Memorandum of Law, dated February 10, 2014, with Attached Exhibit A