

**Matter of Hawley St. Members LLC v Zoning Bd. of Appeals of the City of Binghamton**

2014 NY Slip Op 34020(U)

July 28, 2014

Supreme Court, Cortland County

Docket Number: 14-196

Judge: Phillip R. Rumsey

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This opinion is uncorrected and not selected for official publication.

At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District at the Cortland County Courthouse, in the City of Cortland, New York on the 6<sup>th</sup> day of June, 2014.

PRESENT: HON. PHILLIP R. RUMSEY  
JUSTICE PRESIDING.

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF CORTLAND

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In the Matter of the Petition of  
**HAWLEY STREET MEMBERS LLC,**

Petitioner,

vs.

**THE ZONING BOARD OF APPEALS OF THE CITY OF BINGHAMTON, WASHINGTON DEVELOPMENT ASSOCIATES, LLC, and NEWMAN DEVELOPMENT GROUP, LLC,**

Respondents.

**DECISION, ORDER  
AND JUDGMENT**

Index No. 14-196

RJI No. 2014-0111-M

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APPEARANCES:

SCOTT F. CHATFIELD, ESQ.  
Attorney for Petitioner  
3100 Brewer Road  
P.O. Box 13110  
Marietta, New York 13110

KENNETH J. FRANK, ESQ.  
CORPORATION COUNSEL  
CITY OF BINGHAMTON  
Attorneys for Respondents *City of Binghamton*  
City Hall  
38 Hawley Street  
Binghamton, New York 13901

COUGHLIN & GERHART, LLP  
By: Cheryl I. Sacco, Esq.  
Attorneys for Respondents  
*Washington Development Associates, LLC and  
Newman Development Group, LLC*  
99 Corporate Drive  
P.O. Box 2039  
Binghamton, New York 13902-2039



**PHILLIP R. RUMSEY, J. S. C.**

Petitioner owns 20 Hawley Street in the City of Binghamton, which is a mixed-use property containing commercial space and 91 residential units having a total of 292 bedrooms that is located in a commercial zoning district (the property). Petitioner proposes to construct two five-story additions on the current building to add 40 residential units containing 180 bedrooms. The Zoning Ordinance requires that 93 additional off-street parking spaces be provided for the proposed addition, and provides that a public parking facility located within 800 feet of the property may be used to satisfy the off-street parking requirement. The property is located 139 feet from the Collier Street parking ramp owned by the City. Petitioner requested that the City's Superintendent of Building Construction, Thomas Costello, confirm that the off-street parking requirements of the proposed project could be satisfied without the need for an area variance. On October 28, 2013, Costello issued a written determination that the off-street parking requirements for the new project could be satisfied entirely by the proximity of the property to the Collier Street ramp. Respondent Newman Development Group, LLC (NDG) filed a notice of appeal from Costello's decision with the Zoning Board of Appeals (ZBA) (see Record, Exhibit C). After conducting a public hearing, the ZBA issued a written decision annulling Costello's decision that was filed in the City Clerk's Office on March 11, 2014 (see Record, Exhibit O). Petitioner timely commenced this CPLR article 78 proceeding seeking judgment (1) determining that the ZBA lacked jurisdiction to determine the appeal on the basis that NDG and respondent Washington Development Associates, LLC (WDA) lacked standing; (2) annulling the ZBA's determination; and (3) confirming the interpretation of the Zoning Ordinance made by Costello.

Petitioner contends that the ZBA lacked jurisdiction to hear the appeal because respondents lacked standing to challenge Costello's interpretation of the Zoning Ordinance, and represents that it raised the standing issue before the ZBA. The notice of appeal was filed by NDG (see Record, Exhibit C; see also Record, Exhibit O [ZBA decision identifying the appellant as "Newman Development Group"]); however, additional submissions were contemporaneously made on behalf of both NDG and WDA (see Record, Exhibits C-1, C-2), which represents that it owns Twin River Commons, a residential facility located on Washington Street approximately 483 feet from petitioner's property and 992 feet from the Collier Street ramp. To meet the demand for parking from residents at Twin River Commons, WDA rents from the City, on a month-to-month basis, 50 parking spaces in the Collier Street ramp.

Availability and use of the parking spaces rented by WDA may be adversely affected by Costello's determination that the Collier Street ramp may be used by petitioner to satisfy the requirement to provide 93 additional parking spaces, especially in light of the relative proximity of Twin River Commons to petitioner's property and the scope of petitioner's proposed project adding 180 bedrooms. Such factors show that residents of Twin River Commons and petitioner's proposed project would likely compete for limited parking (see e.g. Matter of Center Sq. Assn., Inc. v City of Albany Bd. of Zoning Appeals, 9 AD3d 651, 653 [2004]) and, therefore, are minimally sufficient to confer standing on WDA to appeal Costello's interpretation to the ZBA by showing that it sustained actual injury within the zone of interests sought to be protected different from that suffered by the public at large (id.; see also Matter of RSM W. Lake Rd. LLC v Town of Canandaigua Zoning Bd. of Appeals, 55 AD3d 1222, 1225 [2008], affd 12 NY3d 843 [2009]; Matter of Tuxedo Conservation & Taxpayers Assn. v Town Bd. of Town of Tuxedo, 69

AD2d 320, 324 [1979]).<sup>1</sup>

Turning to the merits, the dispute centers on Costello's interpretation of the following provision of the Zoning Ordinance:

“To determine the total number of off-street parking spaces available in a public parking area or structure, the number of physical spaces actually existing shall be multiplied by a factor of five to account for daily vehicle turnover unless the Planning Department has determined that the capacity of said public parking facility, including the turnover factor, has already been reached. Thus, a public facility containing 100 actual spaces would have 500 off-site spaces which could be assigned to meet the off-street parking requirements of Schedule III (§ 410-53). The Planning Commission may establish a turnover factor for private off-street parking facilities if conditions warrant.”

Binghamton City Code § 410-51(H). Briefly, Costello relied on a memorandum from the City Planning Department stating that the Collier Street facility contains 538 parking spaces. He reduced that number by spaces by 115 – representing 92 spaces permanently reserved under an easement agreement between the City and the Grand Royale Hotel, 12 dedicated to City vehicles, and 11 allocated for vehicles of the parking authority which operates the facility – to determine the net number of spaces to which the turnover factor of five was to be applied. He then applied the turnover factor and determined that 2,330 spaces were available toward satisfaction of the requirement that petitioner provide 93 new parking spaces for the proposed project.<sup>2</sup>

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<sup>1</sup> Although it appears that NDG and WDA are related entities, the relationship between them is not explained in the record. A factual basis sufficient to confer standing upon NDG is not apparent in the record; however, the determination that WDA had standing is sufficient to confer jurisdiction upon the ZBA to determine the appeal of Costello's determination, and any argument that WDA did not appeal Costello's decision has been waived. In light of the determination that WDA demonstrated sufficient injury to confer standing, the court has not considered respondents' argument that the City Code provides a “relaxed standing” standard for purposes of challenging interpretations of the Zoning Ordinance.

<sup>2</sup> Costello made computational errors not relevant to his analysis or conclusion. Using the numbers on which he relied, the number of available spaces is 2,115 ( $[538 - 92 - 12 - 11] \times 5$ ), which still far exceeds the 93 required to be provided by petitioner.

The ZBA did not specify its rationale for annulling Costello's determination. However, its minutes reflect that the ZBA concluded that Costello failed to consider three additional City Code sections relating to the actual availability of parking spaces at the Collier Street ramp (see Affidavit of Kenneth J. Frank, sworn to May 22, 2014, ¶¶ 14 – 22). In that regard, it is alleged that the ZBA determined that Costello's interpretation failed to consider that "[n]o parking spaces or portion thereof shall serve as required spaces for more than one use" (City Code § 410-51[D][2]). Thus, it appears that the ZBA concluded that Costello's interpretation overstated the number of spaces actually available to be dedicated to petitioner's use.<sup>3</sup> It is further alleged that the ZBA concluded that Costello failed to consider a residential parking permit program specifically established for the Collier Street ramp which, in part, provides that parking for such purposes is not available from 9:00 a.m. through 3:00 p.m. on weekdays and is not guaranteed when the ramp is being used for event parking (see City Code § 400-104[F], [I]).

Resolution of the merits turns on the standard of review to be applied. "A fact-based interpretation of a zoning ordinance that determines its application to a particular use or property is entitled to great deference. However, deference is not required when reviewing a pure legal interpretation of terms in an ordinance" (Matter of Erin Estates, Inc. v McCracken, 84 AD3d 1487, 1489 [2011] [quotations and citations omitted]; accord Matter of Albany Basketball & Sports Corp. v City of Albany, 116 AD3d 1135 [2014], lv denied 2014 NY Slip Op 76667;

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<sup>3</sup> The record also contains a considerable number of comments that were submitted expressing concern that there is already a shortage of parking in downtown Binghamton, and a statement from the operator of the Collier Street ramp that no additional monthly permits were then available. The ZBA does not rely on these factors to defend its decision in this proceeding; however, it bears noting that such concerns of a factual nature may not, in any event, be properly considered in construing the plain meaning of an ordinance.

Matter of Shannon v Village of Rouses Point Zoning Bd. of Appeals, 72 AD3d 1175 [2010]; Matter of Mack v Board of Appeals, Town of Homer, 25 AD3d 977 [2006]; Matter of Blalock v Olney, 17 AD3d 842 [2009]). In such cases, a zoning ordinance must be read as a whole, with unambiguous language construed to give effect to its plain meaning (see Matter of Erin Estates at 1489). In addition, zoning ordinances must be construed against the municipality (see Matter of Albany Basketball at 1137).

Costello's interpretation is based on the unambiguous language of the ordinance, which provides that "the number of **physical** spaces **actually** existing shall be multiplied by a factor of five to account for daily vehicle turnover **unless** the Planning Department has determined that the capacity of said public parking facility, including the turnover factor, has already been reached" (City Code § 410-51[H] [emphasis supplied]). The Planning Department had not made any determination regarding the capacity of the Collier Street ramp or its turnover factor (see email from Senior Planner Leigh A. McCullen dated September 18, 2013, attached as Exhibit 3 to Exhibit A to the Record). In fact, a memorandum from the Planning Department staff dated July 25, 2013 states that "substantial available off-street parking spaces exist within the City's public parking garages, in an amount well above the code requirement for the new units [sic] 93 spaces" (Record, Exhibit D to Exhibit C-2; see also a memorandum from Planning Staff dated July 23, 2013, attached as Exhibit 2 to Exhibit A to the Record [showing 538 spaces and 257 monthly parking passes at the Collier Street ramp]).

Inasmuch as the Planning Department has not made any determination limiting the capacity or turnover factor of the Collier Street ramp, the plain language of the ordinance requires that spaces available for petitioner's proposed project be calculated by multiplying the

total number of physical spaces available (538) by the turnover factor (5), which results in 2,690 off-street parking spaces available for petitioner's proposed project. This conclusion is consistent with the following example set forth in the ordinance to illustrate its proper application: "Thus, a public facility containing 100 actual spaces would have 500 off-site spaces which could be assigned to meet the off-street parking requirements of Schedule III (§ 410-53)" (City Code § 410-51[H] [emphasis supplied]).<sup>4</sup>

The ZBA's reliance on additional provisions of the City Code to annul Costello's literal interpretation of Section 410-51(H) is misplaced. Section 410-51(D)(2) provides that a parking space may be used to satisfy only a single use; however, it must be read in a manner that gives meaning to Section 410-51(H), which more specifically addresses use of public parking spaces to meet off-street parking requirements by providing that their availability is to be determined by application of a formula. Thus, to the extent that Section 410-51(D)(2) applies to parking spaces located in public facilities, the determination of whether a space has been allocated to a specific use is delegated to the Planning Department by Section 410-51(H), which it authorizes to determine when the capacity of any public parking facility, including the turnover factor, has been reached.<sup>5</sup> In other words, the ordinance contains a mechanism for determining whether a public parking space has been dedicated or reserved to specific use, or whether it remains

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<sup>4</sup> The example's use of the term "actual spaces" logically means "physical spaces actually existing," except as modified by a Planning Department determination that certain of the physical spaces do not exist for the intended purpose.

<sup>5</sup> It bears noting that the Zoning Ordinance authorizes the Planning Department to vary the literal application of Section 410-51(D)(2) to private property, by allowing it to "establish a turnover factor for private off-street parking facilities if conditions warrant" (City Code, § 410[H]). Although not decided herein, subsection (D) is logically applicable, by its own terms, only to private parking facilities. For example, it encourages private property owners to provide cross-access and allows combined facilities for uses which "may or may not be on the same lot."

available to satisfy the off-street parking requirement for a new project. That mechanism requires that a determination be made by the Planning Department – not by the Superintendent of Building Construction or the ZBA. Thus, any concern regarding the number of spaces actually available in the Collier Street ramp to be dedicated to petitioner’s proposed use has been delegated to the Planning Department – not the ZBA.

Nor is the residential parking program established for the Collier Street ramp inconsistent with Costello’s interpretation. Although it establishes a parking program for residents which limits access during the weekday hours of 9:00 a.m. through 3:00 p.m., it does not preclude a resident from purchasing any other type of permit that may be available allowing for use during those hours. Indeed, WDA notes that it purchased monthly permits for residents of Twin River Commons for the very purpose of obtaining residential off-street parking.

Based on the foregoing, the plain language of the ordinance does not support the ZBA’s interpretation. Accordingly, the petition is granted to the extent of annulling the ZBA’s decision dated March 11, 2011, which overturned the Costello’s determination dated October 28, 2013, and is otherwise dismissed.

This decision constitutes the order and judgment of the court. The transmittal of copies of this decision, order and judgment by the court shall not constitute notice of entry.

Dated: July 28, 2014  
Cortland, New York

Phillip R.  
Rumsey

Digitally signed by Phillip R. Rumsey  
DN: cn=Phillip R. Rumsey, o=ou,  
email=PRumsey@NYCourts.gov, c=US  
Date: 2014.07.28 11:10:07  
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HON. PHILLIP R. RUMSEY  
Supreme Court Justice

ENTER

The following documents were filed with the Clerk of the County of Cortland:

- Notice of petition dated April 7, 2014.
- Verified petition dated April 7, 2014 and verified April 9, 2014, with Exhibits 1 – 2.
- Affirmation of Scott F. Chatfield dated April 7, 2014.
- Verified answer of the Zoning Board of Appeals of the City of Binghamton dated May 22, 2014.
- Affidavit of Kenneth J. Frank, sworn to May 22, 2014.
- Certified Record dated May 22, 2014, with Table of Contents and Exhibits A – C, C1, C2, D – O.
- Verified answer of Washington Development Associates, LLC and Newman Development Group, LLC, dated and verified May 21, 2014.
- Affidavit of Marc Newman, sworn to May 21, 2014.
- Affidavit of Cheryl I. Sacco, Esq., sworn to May 27, 2014.
- Original Decision, Order and Judgment dated July 28, 2014.