

**Matter of Board of Mgrs. of Gramercy Condominium
v New York City Dept. of Transp.**

2015 NY Slip Op 32034(U)

January 29, 2015

Supreme Court, New York County

Docket Number: 100292/2014

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. MARGARET A. CHAN

PART 52

EA
2/2/15
FE

Index Number : 100292/2014

BD. MGRS. GRAMERCY CONDOMINIUM

vs
NYC DEPT. OF TRANSPORTATION

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-2

3-4

5-6

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION DETERMINED PURSUANT TO ANNEXED DECISION AND ORDER

FILED

FEB 02 2015

NEW YORK COUNTY CLERK'S OFFICE

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NYS SUPREME COURT - CIVIL

Dated: 1/29/15

HON. MARGARET A. CHAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

**PRESENT: Hon. Margaret A. Chan
*Justice***

**PART 52
INDEX 100292/14**

**IN THE MATTER OF THE APPLICATION OF
BOARD OF MANAGERS OF THE GRAMERCY
CONDOMINIUM,**

Petitioner,

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

- against -

**NEW YORK CITY DEPARTMENT OF
TRANSPORTATION and POLLY TROTTEBERG,
Commissioner of the New York City Department
of Transportation, in her official capacity,**

Respondents.

FILED

FEB 02 2015

**NEW YORK
COUNTY CLERKS OFFICE**

In this Article 78 proceeding, petitioner sought to reverse respondents' determination which it claims is arbitrary and capricious. In November 2013, respondents had decided to extend the bus stop in front of petitioner's building on 340 East 23rd Street, in the County, City and State of New York. Petitioner claims this deprived its residents of four parking spaces and a loading zone. Respondents filed an answer and opposed the petition arguing that petitioner does not have standing, and that respondents' decision was rational and reasonable. Petitioner submitted a reply.

Petitioner is the Board of Managers of Gramercy Condominium located on 340 East 23rd Street near 1st Avenue in Manhattan. It is a residential building with 207 apartments. Back in 2010, due to changes in the bus routes in that area, plus the addition of a dedicated bike lane, left turns onto 1st Avenue from East 23rd Street were eliminated. Drivers had to go around Asser Levy Place to get on to 1st Avenue. In November 2013, at the behest of Community Board Six (CB6) and the Metropolitan Transportation Authority (MTA), the Department of Transportation (DOT) conducted a study of the area. CB6 wanted to allow left turns onto 1st Avenue from East 23rd Street so that first responders can travel northbound to the hospitals on 1st Avenue (Answer, Exh.1), and because Asser Levy Place was to be converted into a park and can no longer serve as

a detour (Answer, Forgione Aff., ¶ 9). MTA wanted the left-turning lane restored as it would reduce travel time for the M-9 buses by 20-30 minutes (*id.*, Exh 2) and recommended to extend the 85-foot long bus stop at East 23rd Street and 1st Avenue by 20 feet. Instead of a 20-foot extension, DOT extended it by an additional 100 feet. DOT claims that the further extension was necessary to accommodate a left-turning bay, and because the M23 and M9 buses were unable to fully pull into the stop, which resulted in part of the bus protruding into the adjacent through traffic lane. Petitioner claims that by doing so, DOT acted arbitrarily, capriciously, and contrary to law. Also, by doing so, petitioner claims that Gramercy Condominium residents (Condo residents) lost use of the space for parking of four cars in front of the building and a loading zone.

Petitioner's challenge here is directed at a governmental action, which is DOT's determination to extend the bus stop at East 23rd Street and 1st Avenue. Thus, to have standing to bring this challenge, petitioner must show "injury in fact" - that it will be directly harmed by this governmental action - and that its injury is distinct and unique from that suffered by the public at large (*see Urban Justice Center v Silver*, 66 AD3d 567, 568 [2009]; *McAllan v New York State Dept. of Health*, 60 AD3d 464 [1st Dept 2009]). Petitioner complains about the elimination of four parking spaces in front of its building. Petitioner likens its situation to that of the petitioner in *Cambridge Owners Corp. v NYC Dep't of Transportation*, 2013 WL 5890616 [NYS Sup Ct, NY Cty, Oct. 28, 2013], *aff'd* 118 AD3d 646 [1st Dept 2014]). In *Cambridge Owners Corp.*, the residents of the apartment building challenged DOT's decision to install a bike share station of 39 bike docks in front of the building. The trial court found that *Cambridge Owners Corp.* had standing as it had sufficiently alleged it suffered a unique and distinct harm in way of "quality of life and aesthetic type of injuries" - garbage accumulation and increased traffic in front of the building, and access problems by emergency responders to the building - which was not suffered by the general public at large if the bike share station was installed in front of its building (*id.*).

Here, the alleged harms of lengthening the bus stop in front of petitioner's building is the elimination of four parking spaces in front of the building. Whereas the *Cambridge Owners Corp.* residents were confronted with injuries that affected their quality of life or sense of aesthetics, there were no such allegations by petitioner here regarding the loss of four parking spaces. Notably, the four parking spaces were not reserved for the exclusive use by the Condo residents nor were there allegations that an area in the roadway fronting the building entrance was a dedicated loading zone for the building, or even dedicated as such during certain times of the day. The harm to the Condo residents is that four more residents will have to join the rest of its neighbors in finding a parking spot on the streets of Manhattan, and have the inconvenience of parking away from the front of the building. As to the deprivation of a loading zone, it is non-existent unless there is available parking space fronting the building entrance. Petitioner will have the inconvenience experienced by its neighbors immediately adjacent to its front entrance, CVS Pharmacy and McDonald's, when they get deliveries as there are no parking spots in front of their stores. Thus, petitioner is not alone in this predicament.

Street parking in Manhattan is rarely easy for anyone, not just petitioner. It cannot be said that petitioner's neighboring apartment buildings do not likewise lose an advantage of having four more parking spaces near them, or across the street from them. It also cannot be said that non-neighborhood drivers who visit the various hospitals on East 23rd Street and 1st Avenue, such as the Veterans Affairs Hospital and Beth Israel OB-GYN Medical Center, also can do with four more parking spots. Unlike the petitioner in *Cambridge Owners' Corp.* where the harms caused by the bike share station affects only the building residents, the inconvenience here is shared by drivers whether or not they live in Gramercy Condo. Thus, petitioner did not sufficiently allege it experienced harm that was unique and distinct from that of the public at large. Accordingly, petitioner does not have standing to challenge DOT's decision to extend the bus stop on East 23rd Street.

In any event, even if assuming petitioner has standing, its challenge to DOT's decision loses ground. In a proceeding pursuant to CPLR Article 78, the scope of judicial review is limited to the issue of whether the administrative action is arbitrary and capricious or has a rational basis for its determination (*see Matter of Pell v Board of Educ.*, 34 NY2d 222, 230-231 [1974]). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." (*id.* at 231). Deference is given to the agency in interpreting the regulations it administers because of its expertise in those matters, and its determination must be upheld as long as it is reasonable (*see Chin v New York City Bd. of Standards and Appeals*, 97 AD3d 485, 487 [1st Dept 2012]).

A review of DOT Commissioner Margaret Forgiione's affidavit and supporting exhibits, shows that DOT's decision to extend the bus stop was clearly in response to CB6 and MTA's requests to reinstall a left-turning lane from East 23rd Street on to 1st Avenue. DOT conducted traffic pattern studies before deciding that there was a need for a left-turn bay (Answer, Forgiione Aff., ¶ 11). Significant to petitioner's claim, when DOT observed that the M23 and M9 buses could not fully pull into the bus stop, it considered moving the M23 bus stop to the far side of 1st Avenue and requested MTA to look into the relocation. It was only after MTA's negative response on moving the M23 bus stop, because the street was too short across 1st Avenue and multiple express buses stop there, DOT determined an extension of the existing bus stop as its only alternative.

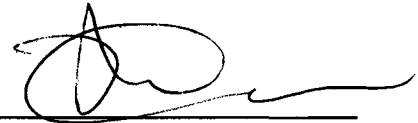
Petitioner sees DOT's supporting documents as ambiguous as there can be different interpretations. It takes issue with the word "markings" that appeared in DOT's e-mails regarding the extension of the bus stop -- "The nearside stop was lengthened by 90' with *the markings* that were installed a few weeks ago. . ." [emphasis in Pet's Reply] -- and contrasts "lengthened by 'markings'" with its own preferred phrase - "the bus stop was lengthened by 90 feet or that the parking spaces were also removed by then" (Pet's Reply Memo of Law, p.11). Another word petitioner proffers as ambiguous is "channelization", but it is unclear as to why petitioner finds this term unclear. Petitioner's issues with specific words used in traffic jargon in DOT's e-mails are not critical when transportation employees are clear with their own words of the trade.

Semantics aside, petitioner does not point to any ambiguity that would spell out as arbitrary or capricious in DOT's decision-making process. Indeed, DOT's decision was not only well-studied and well-considered, and therefore not arbitrary or capricious, but rational and reasonable.

Accordingly, the petition is dismissed. The clerk of court is directed to enter judgment dismissing the petition.

This constitutes the decision and order of the court.

Dated: January 29, 2015



MARGARET A. CHAN
J.S.C.

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