

Matter of Esteves Holding Corp. v DeChance

2020 NY Slip Op 31867(U)

May 11, 2020

Supreme Court, Suffolk County

Docket Number: 323/2019

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

In the Matter of the Application of
ESTEVEZ HOLDING CORP.,

Petitioner,

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

-against-

PAUL M. DECHANCE, CHAIRMAN, JAMES
WISDOM, VICE-CHAIRMAN, CHARLES
LAZAROU, HOWARD BERGSON, RONALD
LINDSAY, RICK CUNHA, and WAYNE
ROGERS, constituting the ZONING BOARD
OF APPEALS OF THE TOWN OF
BROOKHAVEN, THE ZONING BOARD OF
APPEALS OF THE TOWN OF
BROOKHAVEN, and THE TOWN OF
BROOKHAVEN,

Respondents.

ORIG. RETURN DATE: FEBRUARY 25, 2019
FINAL SUBMISSION DATE: FEBRUARY 28, 2019
MTN. SEQ. #: 001
MOTION: MD

ORIG. RETURN DATE: FEBRUARY 28, 2019
FINAL SUBMISSION DATE: FEBRUARY 28, 2019
MTN. SEQ. #: 002
MOTION: MG

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Upon the following papers numbered 1 to 10 read on this motion _____
FOR A JUDGMENT PURSUANT TO CPLR ARTICLE 78 AND MOTION TO DISMISS
Notice of Motion/Order to Show Cause and supporting papers 1-3; Notice of Motion and
supporting papers 4-6; Affirmation in Opposition and supporting papers 7, 8; Reply
Affirmation and supporting papers 9, 10.

In this article 78 proceeding, the petitioner seeks to set aside the
determination of the respondent Zoning Board of Appeals of the Town of Brookhaven

("ZBA") dated December 17, 2018, to the extent that it denied the petitioner's proposal to subdivide two parcels of property into 7,000 square feet lots, which would require lot area, lot frontage, front and rear yard setbacks, and total and side yard setback variances.

The petitioner is the contract vendee to purchase two parcels of real property located on the North Side of Elmhurst Road, 200' ("Plot 1") and 270' ("Plot 2") East Hollis Drive, in Sound Beach, Town of Brookhaven, State of New York, known by Suffolk County Tax Map # 0200-031.00-06.00-035.000, 036.000 and 037.000 (hereinafter the "Real Property"). The Real Property is 14,000 square feet in total area, and is located in B-1 zoning, which requires a minimum of 20,000 square foot total area and 125 foot lot frontage.

The Petitioner brought an application before the ZBA proposing to subdivide the Real Property into two identically sized parcels which would each be 7,000 square feet in total area with 70 foot lot frontage. Both lots would require lot area, lot frontage, front and rear yard setback, and minimum and total side yard setback variances.

A public hearing was held on October 17, 2018, whereby testimony was taken, and the report of the Board's Land Planner, Christopher Wrede dated October 15, 2018 was made part of the record. Thereafter, on December 12, 2018 the ZBA denied Petitioner's application and set forth its Findings of Fact and Conclusions.

In its decision, the ZBA stated that it could not grant the application on the basis that the parcel is deficient of the B-1 lot area requirement of 20,000 square feet wherein the proposed lot was 14,000 square feet, with the further proposal of dividing it into two 7,000 square foot lots, thereby bearing little resemblance to the established pattern of the neighborhood. The ZBA further found that the application would require a total of twelve (12) variances from the Town Code, most significantly being almost 70% deficient from the Code requirements for lot frontage, rear yard, front yard, minimum side yard and total side yard deficiencies up to 44% of the Code requirement. These deficiencies having been deemed by the ZBA to be both individually and collectively substantial when compared to the Code requirements. The ZBA further found that the lots with the requested variances would bear little resemblance to the established developed neighborhood, conforming to only 39% of the developed lots in the applicable radius, that there is no precedent for the Board action in this area and that there are feasible alternatives to the relief requested. In addition, the ZBA found that permitting the division of the parcel into two lots would result in limited setbacks which in turn would result in an intense use of the parcel, and producing an adverse effect on the physical density and environmental conditions in the neighborhood.

Lastly, the ZBA found that the applicant failed to establish a hardship issue for its consideration.

Petitioner commenced this Article 78 proceeding challenging the ZBA's determination denying its application for an area variance on the basis that the determination was arbitrary and capricious, and lacked a rational basis. Specifically, Petitioner asserts that the ZBA failed to take into account that the proposed subdivision would yield lots that are similar to a significant percentage of the lots on the radius map, and that there were no lots on the radius map which actually complied with the applicable zoning, and that there was approximately 39% of the development pattern of the neighborhood was nearly identical to the proposed development. Petitioner additionally asserts that the ZBA's decision was arbitrary and capricious in that its determination that the proposed development would have a negative impact on the nature and character of the neighborhood, and that there was no evidence that the proposed development would exacerbate the physical and environmental conditions of the neighborhood. Petitioner's submissions in support of its application include a copy of the ZBA decision, a copy of the survey of the Real Property and tax map, and a copy of the hearing transcript.

Respondent moves to dismiss the application on the grounds that the matter was not properly commenced pursuant to CPLR 304 and 2102, in that Petitioner failed to timely commence the action pursuant to Town Law § 267-c (1). Respondent notes that the petition was filed on January 18, 2019, one day prior to the 30 day statute of limitations, but that the RJI was not purchased until January 28, 2019, which was outside the 30-day statute of limitations, and as such fails to comply with the commencement-by-filing requirements of CPLR 304. Notwithstanding the foregoing, the Court shall address the petition on the merits.

The Court's role in reviewing an administrative decision is not to decide whether the agency's determination was correct or to substitute its judgment for that of the agency, but to ascertain whether there was a rational basis for the determination (see *Matter of Sasso v Osgood*, 86 NY2d 374, 633 NYS2d 239 [1995]; *Matter of Chemical Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 626 NYS2d 1 [1995]; *Matter of Warder v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 440 NYS2d 875 [1981]). It is fundamental that when reviewing a determination that an administrative agency alone is authorized to make, the court must judge the propriety of such determination on the grounds invoked by the agency; if the reasons relied on by the agency do not support the determination, the administrative order must be overturned (*Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 758, 570 NYS2d 474 [1991]; see *Matter of National Fuel Gas Distrib. Corp. v Public Serv. Commn. of the State of N.Y.*, 16 NY3d 360, 922 NYS2d 224

[2011]; *Matter of Filipowski v Zoning Bd. of Appeals of Vil. of Greenwood Lake*, 77 AD3d 831, 909 NYS2d 530 [2d Dept 2010]; see *Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale*, 74 AD3d 961, 902 NYS2d 662 [2d Dept 2010]; *Matter of Stone Landing Corp. v Board of Appeals of Vil. of Amityville*, 5 AD3d 496, 773 NYS2d 103 [2d Dept 2004]).

A local zoning board has broad discretion in considering applications for area variances (see *Matter of Pecorano v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 781 NYS2d 234 [2004]; *Matter of Cowan v Kern*, 41 NY2d 591, 394 NYS2d 579 [1977]), and its interpretation of the local zoning ordinances is entitled to great deference (see *Matter of Toys "R" Us v Silva*, 89 NY2d 411, 654 NYS2d 100 [1996]; *Matter of Gjerlow v Graap*, 43 AD3d 1165, 842 NYS2d 580 [2d Dept 2007]; *Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, N.Y.*, 30 AD3d 515, 817 NYS2d 361 [2d Dept 2006]; *Matter of Ferraris v Zoning Bd. of Appeals of Vil. of Southampton*, 7 AD3d 710, 776 NYS2d 820 [2d Dept 2004]). Nevertheless, a court may set aside a zoning board's determination if the record reveals that the board acted illegally or arbitrarily, or abused its discretion, or simply succumbed to generalized community pressure (see *Matter of Pecorano v Board of Appeals of Town of Hempstead*, *supra*; *Matter of Cacsire v City of White Plains Zoning Bd. of Appeals*, 87 AD3d 1135, 930 NYS2d 54 [2d Dept], *lv denied* 18 NY3d 802, 938 NYS2d 859 [2011]). "In applying the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis . . . [a] determination will not be deemed rational if it rests entirely on subjective considerations, such as general community opposition, and lacks an objective factual basis" (*Matter of Kabro Assoc., LLC v Town of Islip Zoning Bd. of Appeals*, 95 AD3d 1118, 1119, 944 NYS2d 277 [2d Dept 2012]; see *Matter of Ifrah v Utschig*, 98 NY2d 304, 746 NYS2d 667 [2002]; *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, 68 AD3d 62, 886 NYS2d 442 [2d Dept 2009], *lv denied* 13 NY3d 716, 895 NYS2d 316 [2010]). Further, the decision of an administrative agency "which neither adheres to its own prior precedent nor indicates a reason for reaching a different result on essentially the same facts is arbitrary and capricious" (*Matter of Charles A. Field Delivery Serv. (Roberts)*, 66 NY2d 516, 517, 498 NYS2d 111 [1985]; see *Matter of Knight v Amelkin*, 68 NY2d 975, 510 NYS2d 550 [1986]; *Matter of c/o Hamptons, LLC v Zoning Bd. of Appeals of Vil. of E. Hampton*, 98 AD3d 738, 950 NYS2d 386 [2d Dept 2012]; *Matter of Lucas v Board of Appeals of Vil. of Mamaroneck*, 57 AD3d 784, 870 NYS2d 78 [2d Dept 2008]).

A zoning board also must consider whether the granting of a variance will produce an undesirable change in the character of the neighborhood or a detriment to neighboring properties; whether the benefit sought by the applicant can be achieved by some other feasible method, rather than a variance; whether the requested variance is

substantial; whether granting the variance will have an adverse impact on the physical or environmental conditions in the neighborhood; and whether the alleged difficulty is self-created (see *Matter of Blandeburgo v Zoning Bd. of Appeals of Town of Islip*, 110 AD3d 876, 972 NYS2d 693 [2d Dept 2013]; *Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale*, *supra*; see also *Matter of Schumacher v Town of E. Hampton, N.Y. Zoning Bd. of Appeals*, 46 AD3d 691, 849 NYS2d 72 [2d Dept 2007]). However, a zoning board is not required to justify its determinations with evidence as to each of the five statutory factors, as long as its determinations “balance the relevant considerations in a way that is rational” (see *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, *supra*; *Matter of Merlotto v Town of Patterson Zoning Bd. of Appeals*, 43 AD3d 926, 841 NYS2d 650 [2d Dept 2007]).

The ZBA’s determination denying the application for the requested variances is wholly supported by the record. Moreover the determination had a rational basis in concluding that a 14,000 square foot property in the B-1 district, zoned for 20,000 square feet, was already below the required size and that petitioner’s request to further reduce the size to two lots of 7,000 square feet total each, was self-imposed and did not adhere to the established development pattern of the neighborhood. As such, petitioner has failed to meet its burden in establishing that the ZBA’s decision was arbitrary and capricious.

Accordingly, the petition is **DENIED**, the motion to dismiss is **GRANTED**, and this special proceeding is hereby dismissed.

The foregoing constitutes the decision and Order of the Court.

Dated: May 11, 2020

HON. JOSEPH FARNETI
Acting Justice Supreme Court

 X FINAL DISPOSITION

_____ NON-FINAL DISPOSITION