**Matter of 1430 Meadow Lane, LLC #1 v Village of Southampton Zoning Bd. of Appeals**

2024 NY Slip Op 34908(U)

July 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 628953/2023

Judge: Christopher Modelewski

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Index No. 628953/2023

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

***PRESENT:***

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

MOTION DATE 01/15/2024 (001)
ADJ. DATE 05/13/2024
Mot. Seq. #001-M

**ORDER AND JUDGMENT**

In the Matter of the Application of
1430 MEADOW LANE, LLC #1
and 1430 MEADOW LANE, LLC #2,

Petitioners,

- against -

VILLAGE OF SOUTHAMPTON
ZONING BOARD OF APPEALS,

Respondent.

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Upon the E-file document list numbered 1 to 117 read and considered on this CPLR Article 78 petition to reverse, annul, and set aside a determination by the Village of Southampton Zoning Board of Appeals as set forth in an undated written decision which appears to have been filed in the office of the Village Clerk on February 23, 2024; it is

***ORDERED*** that this CPLR Article 78 petition to reverse, annul, and set aside a determination by the respondent Town of Southampton Zoning Board of Appeals in an undated written decision which appears to have been filed in the office of the Village Clerk on February 23, 2024 is granted, for the reasons set forth herein; and it is further

***ORDERED*** that the respondent Village of Southampton Zoning Board of Appeals is directed to grant the petitioners, 1430 Meadow Lane, LLC #1 and 1430 Meadow Lane, LLC #2, variances for expansion of three second floor bedrooms within a single family dwelling on the subject property, located at 1430 Meadow Lane in the Village of Southampton within ten (10) days from the date of this Order and Judgment.

Before the Court is a CPLR Article 78 petition challenging the decision of respondent Village of Southampton Zoning Board of Appeals ("Board" or "ZBA") which denied the application of the petitioners for variances to expand three bedrooms in an existing single family dwelling located at 1430 Meadow Lane. As disclosed by the Zoning Denial Letter issued by the Village Building Department dated April 6, 2023, the proposed expansion included necessary relief from the strict application of the Village

Pyramid Law[1] and a height variance. The subject premises is a 108,244 square foot lot improved with a home, tennis court, pool, decking and other minor structures. The variances framed for decision before the Board included 1,155 cubic feet of Pyramid Law relief as well as a height variance of 6 feet 1 inch. The Zoning Denial Letter likewise discloses that at it's highest existing point, the home at the subject premises is nearly 6 feet higher than the proposed addition, which itself requires a height variance.

Known locally and regionally as "Billionaire Lane", Meadow Lane is an east-west improved roadway on the barrier beach which is fully developed with very spacious and very valuable waterfront homes. Advertence to the photos in the record in this matter discloses that the subject home is consistent with the prevailing pattern of development on Meadow Lane, both as it existed at the time of the application, and as depicted on the architectural drawings detailing the addition for expansion of three bedrooms, on the appeal before the Board.

Petitioners' application for relief before the Board was filed on or about March 23, 2023. The application was supplemented with additional submissions on or about June 8, 2023. The first of four public hearings was conducted on June 13, 2023. Thereafter, the Board voted to close the hearing on September 12, 2023. At that time, the Board was advised by counsel about the 62-day rule (time of decision) found at Village Law 7-712(a)(8). On October 26, 2023 a motion to deny was made and carried with the subscript "written decision to follow". The petitioners commenced this special proceeding timely on November 21, 2023. Petitioners claim a disadvantage based upon the four month delay between the Board vote and the utterance of the written decision, which followed commencement of this CPLR Article 78 Proceeding. In the matter presently before the Court, the Board explains that the delay of the written decision was occasioned by a change in both Village administration and identity of the Board's counsel. In any case, the Second Department views such delays as inconsequential. (***Matter of FCFC Realty, LLC v. Weiss*** 192 AD3d 683, 144 NYS3d 57 [2d Dept 2021]; ***Matter of Thirty W. Park Corp v. Zoning Bd. Of Appeals of City of Long Beach***, 43 AD3d 1068, 843 NYS2d [2d Dept 2007]) and the Court similarly finds the delay here to be inconsequential.

The sharpest disagreement among and between the Board and the petitioners in this matter centers on first the role of the ZBA as a board of equity with a clear legislative mandate, and second, whether or not two other similar grants of relief by the Board to nearby property owners, one in 2016 and one in 2018 and both located nearby on Meadow Lane, manifest as precedent which should constrain the Board to grant the requested relief. In the context of the matter at bar, they are interrelated.

A review of the hearing transcripts reveals a number of testy exchanges between Board Members (especially the Board Chairman) on the one hand, and petitioners' counsel on the other. By itself there is nothing remarkable about that fact; land use matters reserved for local determination are often marked by passion on the part of the applicant, neighboring property owners, counsel and Board Members. However, in this instance, the colloquy during the August 8, 2023 hearing discloses a fundamental defect, the Board's misunderstanding of its role as a board of equity which appears to the Court to have prevented any meaningful application of the legislative mandate to engage in the required balancing test. The following excerpt from the transcript is instructive:

> CHAIRMAN GREENWALD: So the fact that there are so many nonconforming residential structures in the area argues against granting another variance, because it argues in a way that undermines the affect of new legislation. You can't have effective new legislation if the Zoning Board of Appeals is going to grant variance relief each time and (sic) applicant comes in and says this was passed while I still had ownership, or this was

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[1] This is a newer dimensional requirement found in some zoning codes which in this instance establishes the legal building envelope by projecting an angular line skyward from lot lines. In the nomenclature of the Village of Southampton, this is sometimes referred to as the "sky plane requirement".

passed while I already had a pre-existing tall building. We just want to expand that nonconformity. That is our job. Our job on behalf of the Village is to maintain, in my view, the integrity of the Village zoning code.

MR. BENNETT: No, it's not. Your job - - what you just said has absolutely nothing to do with your job. Absolutely nothing. Your job is to grant relief in an appropriate case. And mere citing of prior laws has nothing to do - -

MEMBER GIUFFRA: Mr. Bennett, I think you are out of order.

MR. BENNETT: (Continuing) I'm not out of order. I'm responding.

The conclusory characterizations of the proposed addition found in the Board's written decision "stand out like a sore thumb in view of the desired community" and "prevent the erosion of an aesthetic loss of open space" are never squared with the facts in the record. First, the home is already legally non-conforming as to the height requirements and the request for height relief is to a point some six feet lower than what is existing. In addition, the 1,155 cubic feet of Pyramid Law relief is minuscule when measured in terms of the size of the existing home, (itself situated on nearly 2.5 acres) and the prevailing pattern of development on Meadow Lane. The "importance of the Village's recent Village Code amendments restricting the height of dwellings"[2] is referenced repeatedly both in the colloquy during the hearings and the written decision; revealing an abandonment of the Board's mandate to hear and decide this matter according to the statutory standards prescribed at Village Law 7-712-b(3)(b).

On the matter of precedent, the first matter granted in 2016 (1400 Meadow Lane, LLC–"1400") included a request for Pyramid Law relief of 44,360 cubic feet and a front yard variance. In that decision, the Board granted the requested relief, finding that the second technical front yard of this parcel was akin to a side yard (Road D, the second street, actually functioning as a parking area for those seeking beach access), finding neither a substantial adverse impact on neighborhood character, nor inconsistency with the objectives of the Pyramid Law by way of the variances granted. The more recent matter (Madison Avenue Partners. LLC–"Madison") was granted in 2018. There the Board granted front yard setback relief in addition to Pyramid Law Relief of 17,691 cubic feet. The fairly terse written decision of the Board in that matter found that the home to be built was congruent with the existing pattern of development, specifically, respecting the numerous homes in the area not conforming to the sky plane requirement. Ancillary environmental benefits were noted based upon relocation of the home further from wetlands. Neither case could rationally be viewed as anything but similar to the instant case, excepting that on a volumetric basis, on both 1400 and Madison, the Board granted a great deal of relief, whereas in this matter, very little relief was sought.

When arguing that precedent constrains a zoning board of appeals respecting successive determinations, it is incumbent on the applicant to show that the particular properties and approvals to which comparison is made are similar in all relevant respects. (*see* ***Latuga v. Giannadeo***, 140 AD3d 771, 31 NYS3d 206 [2d Dept 2016]). Here, the Court finds that on that point the applicant carried the day before the Board. The two matters offered as precedent are compelling for a number of reasons. First, the two prior approvals were knock-downs. Typically zoning boards of appeal look to such events as opportunities to create greater conformity in the event that the structures to be razed are characterized by legal non-conformity respecting dimensional requirements. This is the *tabula rasa* or clean slate that generally causes zoning boards to require greater adherence to area standards; the very essence of Euclidian zoning. On the blank canvas presented on both 1400 and Madison, this Board saw fit to grant pyramid relief of 44,360 cubic feet and 17,691 cubic feet, while denying a mere 1,155 cubic feet to the

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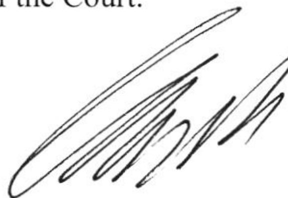
[2] See paragraph 9 of the Board's written decision.

petitioners herein. Next, this Board demonstrated in the two previous similar applications that advertence to the existing pattern of development in the area properly guided the Board in granting substantial pyramid relief. The departure from that crucial consideration in this matter on a conversely insubstantial request is not supported by the record or the written decision of the Board. Quite to the contrary, the wooden approach to "maintain(ing)... the integrity of the Village zoning code" as noted by the Chairman respecting this appeal disclosed the Board's failure to adjudge the matter on the merits and in accord with appropriate standards of review, along with its predisposition to a denial, no matter what the offers of proof disclosed. The repeated hollow statements in the Board's written decision of substantiality and negative effect do nothing to prop up this denial. Zoning law is all about what the human senses experience as a result of the development and use of land. There is nothing in this record or in this written decision to establish that anyone, other than the applicant, gaining minimally expanded bedrooms with waterfront views, would be able to recognize that area relief had been granted in this matter. That simply cannot be reconciled with the Board's repeated and unsupported assertions of detrimental effect and undesirable change.

Judicial review of a decision of a Zoning Board of Appeals is generally is confined to determining whether board action was illegal, arbitrary and capricious or an abuse of discretion. Matter of 7-Eleven v. Town of Huntington, 140 AD3d 889 (2d Dept 2016) citing, (***Matter of Witkowich v Zoning Bd. of Appeals of Town of Yorktown***, AD3d at 680; see ***Matter of Pecoraro v Board of Appeals of Town of Hempstead***, 2 NY3d 608, 613, 814 NE2d 404, 781 NYS2d 23 [2004]; ***Matter of Robert E. Havell Revocable Trust v Zoning Bd. Of Appeals Vil. of Monroe***, 127 AD3d 1095, 1097, 8 NYS3d 353 [2015]). A decision of the zoning board of appeals should be upheld if it is not illegal, if it has a rational basis and is not arbitrary or capricious (***Matter of Schweig v City of New Rochelle***, 170 AD3d at 865, 95 NYS3d 569, quoting ***Matter of Blandeburgo v Zoning Bd. Of Appeals of Town of Islip***, 110 AD3d 876, 877, 972 NYS2d 693). 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, 886 NYS2d 442 [internal quotation marks omitted]; see ***Matter of FNR Home Constr. Corp. v Downs***, *57 AD3d 540, 541-542, 868 NYS2d 310).* In addition, and of particular application hereto, the principal of precedent effect in the area of zoning has been enshrined in New York law for decades. A decision of a zoning board of appeals which neither adheres to its own prior precedent not indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious. ***Knight v. Amelkin***, 68 NY2d 975, 510 NYS2d 550 [1986]; ***Matter of Lucas v. Board of Appeals of Vil. of Mamaroneck***, 57 AD3d 784, 870 NYS2d 78 [2d Dept 2008]). The Board's decision is not at all supported by the record and was made contrary to previous similar matters that were granted. Accordingly, the Court finds the decision to have been made in derogation of law, and therefore grants the petition in its entirety.

The foregoing constitutes the Order and Judgment of the Court.



Dated: July 18, 2024

HON. CHRISTOPHER MODELEWSKI, J.S.C.

**_X_ FINAL DISPOSITION _____ NON-FINAL DISPOSITION**