

Riley v New York City Bd. of Stds. & Appeals

2025 NY Slip Op 32834(U)

July 18, 2025

Supreme Court, New York County

Docket Number: Index No. 160793/2023

Judge: Judy H. Kim

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

JOSEPH L RILEY, CONCETTA MUSSOLINO, IRENE DOBRONSKI, JOANNA JOSEPH, ANDREW JOSEPH, ELISA CASSIDY, CHRISTIAN CASSIDY, JOAN BOMENGO, KAYANE HINDY, PIERRE HINDY, CONGRESSWOMEN NICOLE MALLIOTAKIS, ASSEMBLYMAN MICHAEL TANNOUSIS, COUNCILMAN JUSTIN BRANNAN,

Petitioners,

- v -

THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS, SHORE HILL HOUSING COMPANY INC., RAHF IV SHORE HILL LLC,

Respondents.

-----X

INDEX NO. 160793/2023
MOTION DATE 11/02/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43

were read on this motion for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the petition is denied and this special proceeding is dismissed.

In this Article 78 proceeding, petitioners seek an order: (1) nullifying the August 7, 2023 resolution of respondent the New York City Board of Standards and Appeals (the “BSA”) which granted respondents RAHF IV Shore Hill, LLC and Shore Hill Housing Company Inc.’s application for a special permit reducing the required on-site parking at 9000 Shore Road, Bay Ridge, Brooklyn (the “Premises”); (2) preliminarily enjoining RAHF IV Shore Hill, LLC and Shore Hill Housing Company Inc. (collectively, “Shore Hill”), from proceeding with the construction of a new Affordable Independent Residence for Seniors (“AIRS”) at that location

during the pendency of this special proceeding; and (3) “removing all further proceedings, hearings and applications by respondent for a special permit pursuant to ZR §73-434 from the NYC Board of Standards and Appeals to this honorable court” (NYSCEF Doc No. 1, petition).

FACTUAL BACKGROUND

The New York City Board of Standards and Appeals (the “BSA”) is an independent, five-member body consisting of experts in building construction, land use and planning (New York City Charter §659[a], [b]). The BSA’s jurisdiction includes, as pertinent here, the issuance of certain special permits authorized by New York City Zoning Resolutions (“Z.R.”) (*see* New York City Charter §666[10]). Pursuant to ZR §73-434 (now ZR §73-433) the BSA may grant a special permit reducing the number of off-street parking spaces required for AIRS developments constructed prior to March 22, 2016, if it finds that: the reduction will facilitate an improved site plan; any new dwelling units on the site will be income-restricted; the reduction will not cause traffic congestion; and the reduction will not have undue adverse effects on the surrounding community.

Shore Hill sought such a special permit in connection with its effort to construct a third AIRS building on the Premises. Petitioners opposed this application. The BSA ultimately granted the permit on August 7, 2023, which the petitioners now seek to nullify through this special proceeding, on the grounds that the BSA “openly expressed bias against the petitioners” during the hearing process.

In support of this claim, petitioners point to statements by BSA Chair Shampa Chanda at the May 23, 2023 public hearing on Shore Hill’s application. After petitioner Joanna Joseph requested an adjournment to submit a “peer review” traffic study that would, purportedly, rebut the traffic study already submitted by Shore Hill, the following colloquy ensued:

CHAIR CHANDA: I just want to say that the applicant is the team of the Shore housing, and it is their responsibility to conduct the study, it is their responsibility to provide the analysis for our consideration. And, based on what they have submitted, the board here -- I think I speak for the board -- has met the findings. And you're welcome to do the study, but it's -- it is not part of our review and part of our findings; the finding is for the applicant to prove and provide, and which --

JOANNA JOSEPH: So the residents does [sic] not get a say in this even though we live here?

...

CHAIR CHANDA: And I'd like to make it clear for everyone listening, the board is not requesting and the board is--has not, and is not, requesting that any member of the public engage in a traffic study or parking demand study or spend any money putting forth that; only members of the applicant team are tasked with meeting their burden to make that finding. We have evidence in the record to that effect. It is the board's review of the applicant's submission to find whether the applicant has met its burden. It is not the public's burden to negate the applicant's burden essentially. But the applicant's burden to make their record. So I just want to make it clear, the board is not asking, directing or welcoming any members of the public to spend money to do something that is not their burden. That being said, anything that is submitted for the board to review will be reviewed by the board, but we are not asking members of the public to engage in a parking study demand.

...

CHAIR CHANDA: With regards to the statement that I had state--and I want to clarify it for the record--is we are not asking the public to do any further study. Should you do it, and should you submit the proposal, we will review it, but we are not asking the community to do that because we believe the applicant has met the findings that this particular section of the zoning resolution requires.

(NYSCEF Doc No. 6, BSA Hearing tr at pp 27-29, 33) [emphasis added].

BSA interposed an Answer, as did Shore Hill. Respondents argue, in sum and substance, that BSA's approval of the special permit was proper, as it followed "two public hearings, a careful review by the Board of the thousands of pages of documentation and evidence submitted by the Applicant (which included detailed revised site plans, responding to concerns raised by the BSA as well as the public), as well [as] testimony submitted by the public, and a site and neighborhood inspection by two of the Commissioners" (NYSCEF Doc No. 17, BSA answer at ¶83).

Respondents also note that petitioners were, ultimately, able to submit their traffic study to the BSA and that Shore Hill, at BSA's direction, addressed this traffic study's recommendations prior to the approval of the permit application.

DISCUSSION

In an Article 78 proceeding, the standard for judicial review of an administrative determination is, generally, limited to whether the agency acted arbitrarily or capriciously, i.e., without any sound basis in reason or regard to the facts (*see Matter of Pell v Board of Educ.*, 34 NY2d 222, 231-232 [1974]). Accordingly, "decisions of the BSA are entitled to deference and a court may not substitute its own judgement for the reasoned determination of the board ... [a]s long as the BSA's determination is not arbitrary and capricious" (*Barry's Bootcamp NYC LLC v Bd. of Standards and Appeals of City of New York*, 195 AD3d 501, 502 [1st Dept 2021] [internal citations omitted]).

In this special proceeding, however, petitioners do not address whether there was a rational basis in the record for the BSA's decision but instead assert that the BSA was biased such that its determination must be nullified. "Many concepts are embraced under the heading of bias, including advance knowledge of facts, personal interest, animosity, favoritism and prejudgment" (*Matter of 1616 Second Ave. Rest., Inc. v New York State Liq. Auth.*, 75 NY2d 158, 161 [1990]). Petitioners argue that Commissioner Chanda's statement at the May 23, 2023 hearing indicates that the BSA prejudged Shore Hill's application.

The BSA, like all administrative agencies, is entitled "the presumption that its official acts are lawful and are honestly motivated" (*Council of Supervisory Associations of Pub. Schools of New York City v Bd. of Ed. of City of New York*, 23 NY2d 458, 467 [1969]). Accordingly, to set aside an agency determination on the grounds that it was not based "on a dispassionate review of

facts but on a [administrative agency’s] prejudgment or biased evaluation,” a “mere allegation of bias will not suffice” (*Warder v Bd. of Regents of Univ. of State of N. Y.*, 53 NY2d 186, 197 [1981] citing *Matter of Rotwein [Goodman]*, 291 NY 116, 123 [1943]). Rather, “[t]here must be a factual demonstration to support the allegation of bias and proof that the outcome flowed from it” (*id.*).

Neither requirement has been established here. Commissioner Chanda’s expression of the BSA’s assessment that Shore Hill had met its burden to establish that the requirements of ZR §73-434 were satisfied cannot reasonably be considered a “prejudgment.” This statement was made after Shore Hill’s application had been ongoing for eight months and included, by that point, its initial application, a Community Board presentation, Shore Hill’s response to Notice of Comments, and a public hearing, after which Shore Hill provided written responses to the BSA commissioners’ questions, and therefore does not indicate that Commissioner Chanda or the BSA “adjudged the facts as well as the law of a particular case in advance of hearing it” (*Matter of 1616 Second Ave. Rest., Inc. v New York State Liq. Auth.*, 75 NY2d 158, 162 [1990] [internal citations omitted]) but that the BSA was “appropriately familiar with the subjects of their regulation” (*Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 112 [1st Dept 2018]).

Even setting this aside, the Court notes that Commissioner Chanda also indicated at that hearing that the BSA’s assessment was not final, insofar as it would consider additional submissions from petitioners before making a final determination. As it is undisputed that petitioners’ subsequent submission of their own traffic study—and Shore Hills’ response to same—were reviewed by the BSA before its final determination, “[t]he record indicates that the [BSA’s] determination flowed from the evidence presented at the public hearing rather than any alleged bias” (*see 989 Hempstead Turnpike, LLC v Town Bd. of Town of Hempstead*, 215 AD3d 668, 670-71 [2d Dept 2023] *lv to appeal denied*, 40 NY3d 903 [2023]).

Accordingly, it is

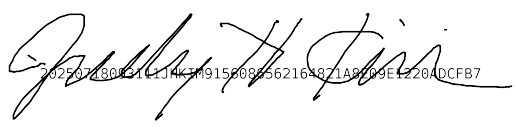
ORDERED and **ADJUDGED** that the petition is denied, and this special proceeding is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that respondents RAHF IV Shore Hill, LLC and Shore Hill Housing Company Inc. shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry upon petitioners as well as the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E filing” page on this court’s website).

This constitutes the decision, order, and judgment of the Court.



00259726000141146319150085562164871A909E12204DCFB7

7/18/2025
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE