Matter of Baychester Retail III LLC v City of New York
2025 NY Slip Op 34980(U)
December 22, 2025
Supreme Court, New York County
Docket Number: Index No. 152151/2025
Judge: Mary V. Rosado
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. MARY V. ROSADO** **PART** **33M**

Justice

----------X

INDEX NO. 152151/2025

In the Matter of the Application of
BAYCHESTER RETAIL III LLC,

MOTION DATE 02/14/2025

MOTION SEQ. NO. 001

Petitioner,

For a Declaratory Judgment and a Judgment Under Article 78 of the Civil Practice Law and Rules,

- v -

THE CITY OF NEW YORK, DEPARTMENT OF BUILDINGS OF THE CITY OF NEW YORK, JAMES S ODDO, SHAMPA CHANDA, SALVATORE SCIBETTA, DARA OTTLEY-BROWN, NASR SHETA, CHRIS YOON, THE BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW YORK

DECISION + ORDER ON MOTION

Respondents.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 71 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Appearances:
Petitioner: Cyrulnik Fattaruso LLP (Jason Cyrulnik, Esq.)
Respondents: The New York City Law Department (Jessica Katzen, Esq.)

Upon the foregoing documents, and after oral argument, which took place on October 28, 2025, Baychester Retail III LLC's ("Petitioner") Petition for a declaration and judgment vacating and annulling Respondents' revocation of certain permits issued to Petitioner with respect to a sign overlooking an arterial highway is denied and the Petition is dismissed.

I. Background

This Petition is the latest chapter in a drawn-out saga which has taken place for over a decade. The subject of the saga: an advertising sign.

Petitioner owns the property located at 2001 Bartow Avenue, Bronx, New York (the "Property"). The property is in a C7 zoning district, which is a rare zoning designation that exempts size, height, and illumination restrictions applicable in other zoning districts. However, the Property is close to the New England Thruway, a heavily trafficked arterial highway. Signage in proximity to arterial highways is subject to various regulations, including 1 Rules of the City of New York § 49-15 and Zoning Resolution § 32-662.[1] The purpose of these regulations is to ensure drivers are not distracted by signage, and to ensure signage does not pose a safety hazard to drivers in the event the signage breaks and falls. The Property is also near Co-op City, whose residents and elected officials have opposed the proposed development of maintenance and advertising signs at the Property on the basis they would cause light pollution and sleep disruption.

The parties' first round of litigation commenced in 2013 and concerned Petitioner's request to install a single monopole structure to which 54 separate advertising signs would be attached. At that time, Respondent Department of Buildings of the City of New York (the "DOB") rejected Petitioner's request to install 54 separate advertising signs on the basis that Petitioner was really requesting to install one large sign that violated the maximum surface area restrictions. Petitioner commenced an Article 78 proceeding, which Justice Carol R. Edmead dismissed. The First Department affirmed Justice Edmead's decision (*see Matter of Baychester Retail III LLC v Perlmutter*, 161 AD3d 678 [1st Dept 2018]).

The parties then commenced their second round of litigation in July of 2016, with Petitioner submitting a revised proposal. Petitioner proposed that instead of having two large signs divided into 54 small advertisement signs supported by a monopole, it would erect 54 signs each supported by its own individual armature, but each of those armatures would still be supported by a

[1] Zoning Resolution § 32-662 prohibits advertising signs from being located within 200 feet of an arterial highway.

monopole. This request was denied because the 54 signs still stemmed from one monopole and thus Respondents considered it as one sign that violated restrictions on the allowable surface area of certain advertising signs. In 2018, Petitioner commenced another Article 78 proceeding challenging this determination, which Hon. Arthur F. Engoron dismissed. Petitioner appealed, and the First Department affirmed Justice Engoron's decision (*see In re Baychester Retail III LLC v Perlmutter*, 181 AD3d 512 [1st Dept 2020]).

Meanwhile, in June 2018, via a notice of intent to revoke permits, Respondents claimed its prior demarcation of the boundaries of the New England Thruway was erroneous, and the highway boundary was actually closer to the Property than previously assessed. Respondents engaged in an audit process regarding permits issued to Petitioner and the location of the boundary. When the audit was completed in August 2019, DOB found that the boundary of the New England Thruway was actually far enough to allow Petitioner to construct advertising signs at its Property. But in January of 2020, the Department of City Planning informed the DOB that based on its review of the applicable maps, the boundary of the New England Thruway was mere feet away from Petitioner's Property, making the grant of the original permits improper. That's when the third round of litigation commenced.

On February 11, 2020, a third round of litigation was commenced. Petitioner filed a hybrid Article 78 and declaratory judgment action and obtained a temporary restraining order prohibiting DOB from revoking Petitioner's permits and making any determination as to the viability of the permits. Ultimately, on September 15, 2020, Hon. Eileen A. Rakower (Ret.) granted Petitioner's application and found Respondents were estopped from revoking Petitioner's permits based on a new interpretation of the New England Thruway's boundary. The First Department reversed and found the action was barred by the doctrine of ripeness because there was not yet a final and

binding agency determination (*see Matter of Baychester Retail III, LLC, v City of New York*, 201 AD3d 512 [1st Dept 2022]).

The latest chapter in this saga started on August 12, 2022, when the DOB issued a letter to Petitioner revoking its permits based on the determination that the signs are located within 200 feet of an arterial highway. The issue was appealed to Respondent Board of Standards and Appeals of New York City (the "BSA") and on January 15, 2025, the BSA found the DOB's revocation was rationally based on the Department of City Planning's clarification of the boundary of the New England Thruway.

On February 14, 2025, Petitioner filed this action seeking, amongst other things, an annulment of the DOB's revocation of Petitioner's permits, an annulment of the BSA's denial of Petitioner's appeal, and that the determination that the boundary of the New England Thruway is less than 200 feet from the Property is arbitrary and capricious. Respondents oppose and request dismissal. Respondents argue the BSA and DOB properly relied on the Department of City Planning, which pursuant to the New York City Charter is the custodian of the city map, in determining the location of the New England Thruway's boundaries. Respondents further argue they cannot be estopped from revoking the permits as there has been no judicial determination as to where the boundary of the New England Thruway is, and government agencies cannot be estopped from enforcing zoning laws and correcting the erroneous issuances of permits.

II. Discussion

The Petition is denied, and this proceeding is dismissed. In an Article 78 proceeding, judicial review is limited to determine whether an administrative decision is arbitrary and capricious, premised on an error of law, a violation of lawful procedure, or an abuse of discretion, (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d

246 [1st Dept 2007]). The "review of administrative determinations is confined to the facts and record adduced before the agency" (*Slesinger, supra* quoting *Matter of Yarbough v Franco*, 95 NY2d 342 [2000]). The Court "may not weigh the evidence, choose between conflicting proof, or substitute its assessment of the evidence or witness credibility for that of the administrative factfinder" (*In re Harvey v New York City Department of Buildings*, 180 AD3d 434, 435 [1st Dept 2020] quoting *Matter of Porter v New York City Hous. Auth.*, 42 AD3d 314, 314 [1st Dept 2007]).

As a preliminary matter, Petitioner's reliance on Justice Rakower's decision in a prior action is unavailing, as that decision was reversed by the First Department and therefore does not have any binding or preclusive effect (*see Matter of Baychester Retail III, LLC v City of New York*, 201 AD3d 512, 513 [1st Dept 2022]). Nor is there any res judicata effect regarding the location of the boundary line from the prior actions, because the location of the New England Thruway's boundary was never contested or litigated in those actions, and those actions preceded the Department of City Planning's determination as to the location of the New England Thruway's boundary. What was litigated in the prior actions was whether Petitioner's proposed signs violated certain regulations and whether the surface area should be calculated based on individual signs or collectively as a whole.

Moreover, res judicata is not applicable *per se* to administrative decisions where applying res judicata would be inconsistent with the function of the administrative agency involved (*see Josey v Goord*, 9 NY3d 386, 389 [2007]; *Karakash v Del Valle*, 194 AD3d 54, 63 [1st Dept 2021]). Applying res judicata here would be inconsistent with the function of the various named Respondents, whose job is to enforce applicable zoning laws and regulations, with determinations that have the possibility of changing depending on facts and circumstances of a given case.

Further, it is well established that estoppel may not preclude a municipality from correcting an administrative error, including the revocation of permits in contravention of zoning laws and regulations (*see Parkview Associates v City of New York*, 71 NY2d 274, 282 [1988], *cert . denied* 488 US 801 [1988]; *see also Take Two Outdoor Media LLC v Board of Standards and Appeals of City of New York*, 146 AD3d 715, 715 [1st Dept 2017]). The Department of City Planning explained in great detail as to how it came to its conclusion that the boundary of the New England Thruway runs along Baychester Avenue, and the BSA explained in its resolution why the Department of City Planning's findings were proper, which provides a reasonable basis for the departure from prior measurements as well as a rational basis for the decision to uphold DOB's revocation of Petitioner's permits (*see Baychester Retail III LLC v Perlmutter*, 161 AD3d 678, 679 [1st Dept 2018]). Petitioner's reliance on the vested rights doctrine is unavailing in two respects. First, it was not fully litigated or raised before the BSA. Second, assuming it was properly litigated, that doctrine requires a party to make substantial improvements to property based on a validly issued permit, but here, no substantial improvement to the property was ever made because Petitioner's proposed improvements were repeatedly rejected by the relevant municipal agencies and this Court (*see also Perlbinder Holdings, LLC v Srinivasan*, 27 NY3d 1, 8 [2016]).

Simply put, there is a rational basis for BSA's resolution affirming DOB's revocation of Petitioner's permits. BSA relied on the Department of City Planning's analysis of the relevant and applicable maps to ascertain the boundary line of the New England Thruway, which was less than 200 feet from Petitioner's Property, making the erection of any signs impermissible. BSA's reliance on Department of City Planning's assessment was rational as the Department of City Planning's is specifically designated by New York City Charter § 198 as "the custodian of the city map" whose duty is to "complete and maintain the same and to register thereon all changes

resulting from action authorized by law." Thus, BSA's reliance on the Department of City Planning expertise and knowledge of assessing and comprehending the official New York City Map was proper, and it was not arbitrary or capricious for BSA to rely on the Department of City Planning's assessment over Petitioner's own self-serving assessment.

Petitioner's argument that Respondents acted in excess of their jurisdiction is without merit. New York City Administrative Code § 28-105.10.1 provides the DOB with the authority to revoke a permit where the permit was issued in error and the conditions establish the permit should not have been issued. Nor has Petitioner established its right to a writ of prohibition against Respondents, or attorney's fees. Moreover, because the Court finds there was a rational basis for Respondents' determinations, Petitioner is not entitled to the declaratory relief sought. The Court has considered the parties remaining contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED and ADJUDGED that the Petition is denied, and this matter is dismissed; and it is further

ORDERED that within ten days of entry, counsel for Respondents shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

12/22/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	[x]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[x] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE