25 Cross Hwy. LLC v Zoning Bd. of Appeals of the Vil. of E. Hampton

2025 NY Slip Op 35359(U)

January 14, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 613574/2024

Judge: Paul M. Hensley

SUPREME COURT- STATE OF NEW YORK
PART 70, SUFFOLK COUNTY

PRESENT:
HON. PAUL M. HENSLEY, JSC

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25 CROSS HIGHWAY LLC,

Plaintiff,

-against-

ZONING BOARD OF APPEALS OF THE VILLAGE OF EAST HAMPTON,

Defendant.

Index No. 613574/2024
Motion Date: 8/2/2024
Submit Date: 1/14/2025

Motion Seq.: 001-MD; CASEDISP

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Upon the following papers read on petitioner's application pursuant to Article 78 to overturn a denial of an area variance issued by the Zoning Board of Appeals of the Village of East Hampton: NYSCEF documents 1 thru 10; it is hereby

ORDERED petitioner's application is denied.

ln 2019, the petitioner purchased real property located in the Village of East Hampton which is improved with a single-family residence, swimming pool and pool house. The property is a legally nonconforming lot with a triangular shape and two front yards. In 2004, a prior owner obtained a variance permitting a two-story addition with porches to the north side of the residence, but no construction had been undertaken. The petitioner subsequently applied for an area variance to permit the construction of a patio on the south side of the residence and the continued maintenance of a shed. The patio was to be constructed 18 feet and 12 feet from the two front yard lot lines where 35 feet is required by the village code. Following public hearings, the respondent Zoning Board of Appeals of the Village of East Hampton (hereinafter "the Board") granted the application as to the shed but denied the application with respect to the patio. The petitioner then commenced a proceeding, pursuant to CPLR Article 78, seeking to

annul the Board's determination. Local zoning boards have broad discretion in considering applications for variances, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion (*see* ***Matter of Ifrah v Ultschig***, 98 NY2d 304, 746 NYS2d 667 [2005]; ***Matter of Fuhst v Foley***, 45 NY2d 441, 410 NYS2d 56 [1978]; ***Matter of Miller v Town of Brookhaven Zoning Board of Appeals***, 74 AD3d 1343, 904 NYS2d 199 [2d Dept 2010]). Thus, the determination of a zoning board will be upheld if it is rational and not arbitrary and capricious (*see* ***Matter of Sasso v Osgood***, 86 NY2d 374, 633 NYS2d 259 [1995]; ***Matter of JSB Enterprises v Wright***, 8l AD3d 955, 917 NYS2d 302 [2d Dept]; ***Matter of Caspian v Zoning Board of Appeals***, 68 AD3d 62, 67, 886 N YS2d 442 [2d Dept 2009]). A determination is rational "if it has some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition" (***Matter of Caspian v Zoning Board of Appeals***, *supra* quoting ***Matter of Halperin v City of New Rochelle***, 24 AD3d768, 772, 809 NYS2d 98 [2d Dept 2005]; *see* ***Matter of JSB Enterprises v Wright***, *supra*). Where a rational basis for the determination exists, "a court may not substitute its own judgment for that of the board, even if such a contrary determination is itself supported by the record" (***Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead***, 98 NY2d 190, 196, 746 NYS2d 662 [2002]; *see* ***Matter of Gebbie v Mammina***, 13 NY3d 728, 885 NYS2d 450 [2009]; ***Matter of Roberts v Wright***, 70 AD3d 1041, 896 NYS2d 124 [2010]). In making its determination whether to grant an area variance, a zoning board of appeals is required to engage in a balancing test, weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted (*see* ***Matter of Pecoraro v Board of Appeals***, 2 NY3d 608, 781 NYS2d 234 [2004]; ***Matter of Ifrah v Utschig***, *supra*; ***Matter of Sasso v Osgood***, *supra*). The board must consider whether (l) an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance; (2) the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance; (3) the requested variance is substantial; (4) the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and (5) the alleged difficulty was self-created (*see* ***Matter of Pecoraro v Board of Appeals***, *supra*al6l3; ***Matter of Ifrah v Utschig***, *supra* at 307 -308). A zoning board is not required to justify its determination with supporting evidence with respect to each of the five factors as long as its ultimate determination balancing the relevant considerations is rational (*see* ***Matter of Jacoby Real Prop. LLC v Malcarne***, 96 AD3d 747, 946 NYS2d 190 [2d Dept 2012]; ***Matter of Merlotto v Town of Patterson Zoning Board of Appeals***, 43 AD3d 926, 841 NYS2d 650 [2d Dept 2007]). The previous record demonstrates that the Board considered the statutory factors and engaged in the required balancing test in rendering its determination. The Board's conclusion that the variances were substantial is supported by the record. The petitioner was seeking 65.7% relief from one lot line and 48.57% relief from the other lot line as it was looking to place the patio at the front of the property facing the intersection of multiple streets. Previously, at least two nearby property owners objected to the patio asserting that the location in the front yard would cause noise and be disruptive to the neighborhood. Thus, the Board's conclusion that the variance would be detrimental to nearby properties was found to be supported by the record. The Board's finding that the hardship was self-created was also supported by the record as the

petitioner purchased the property in 2019 and is presumed to have known about the applicable zoning restrictions (*see* ***Matter of Kaye v Zoning Board of Appeals of the Village of North Haven***, 185 AD3d 820, 128 NYS2d 820 [2d Dept 2020]; ***Matter of Matejko v Board of Zoning Appeals of Town of Brookhaven***, 77 AD3d 949, 910 NYS2d 123 [2d Dept 2010]; ***Matter of Monroe Beach Inc v Zoning Bd of Appeals of City of Long Beach***, 71 AD3d 1150, 898 NYS2d 194 [2d Dept 2010]). The Board concluded that the benefit sought by the petitioner could be achieved by some method, feasible to pursue, other than the requested variances by locating the patio in the rear or southern side of the house without the need for a variance. The petitioner contended that the location of the patio in the rear was not suitable based on the design of the house and location of the kitchen. The fact that the petitioner preferred the location in the front did not mean that the alternate location was not feasible. The petitioner also claims that a variance would still be required to place the patio in the back of the house. While the record is unclear as to whether such a variance would be necessary, placing the patio in the rear of the house would minimize any impacts to nearby properties and would presumably require a less substantial variance, if needed. The petitioner also contended that locating the patio in the rear would have required forfeiting the right to build the addition granted in the 2004 variance. However, the Board made no finding that the petitioner would lose its rights under the 2004 variance by placing the patio in the rear of the house. The petitioner then testified at the hearing that it did not intend to construct the addition. If the petitioner changed its mind regarding the addition, there is nothing in the record that would preclude construction at a later time. Under these circumstances, the Board's determination had a rational basis and was not arbitrary and capricious (*see* ***Matter of Gerbino v Whelan***, 186 AD3d 70, 127 NYS 298 [2d Dept 2020]; ***Matter of Schwartz v LaRocia***,167 AD3d 906, 90 NYS3d 246 [2d Dept 2018]; ***Matter of Sacher v Village of Old Brookville***, 124 AD3d 902, 3 NYS3d 69 [2d Dept 2015]; ***Matter of Chynn v DeChance***, 110 AD3d 993, 973 NYS2d 328 [2d Dept 2013]). The petitioner also contended that the Board's determination was contrary to other variances that had previously been granted. However, the petitioner failed to establish that the other determinations bore sufficient factual similarity to the subject application so as to require an explanation from the Board (*see* ***Matter of Kramer v Zoning Board of Appeals of Town of Southampton***, 131 AD3d 1170, 16 NYS3d 832 [2d Dept 2015]; ***Matter of Traendly v Zoning Board of Appeals of Town of Southold***, 127 AD3d 1218, 7 NYS3d 544 [2d Dept 2015]).

Despite the denial by the Board in 2021, and a judicial determination in 2022 that that decision was not arbitrary and capricious as discussed above, petitioners built a patio without a permit.

Petitioner's current application seeks a 22.3 foot area variance for a patio 12.7 feet from the front-yard property line where 35 feet are required; and a 13.6 foot variance for a patio 21.4 feet from the front-yard property line where 35 feet are required. The application is nearly identical to the 2021 application, except petitioner now offers to round the corners of the patio. The patio, now built, without permits, is a self-created hardship. On May 10, 2024, the Board issued a well-reasoned determination addressing the statutory mandates of New York State VillageLaw and the Village Code of the Villages of East Hampton. That decision properly considered and weighed the requisite factors for granting an area variance and its conclusions are supported by

the record. The determination of the Board was not arbitrary and capricious; accordingly, the petition herein is dismissed.

ENTER:

Hon. Paul M. Hensley
Justice of the Supreme Court

Date: Januarry 14, 2025
Riverhead, New York