

**Fabrizio v Zoning Bd. of Appeals of the Vil. of W.
Hampton Dunes**

2025 NY Slip Op 35467(U)

March 3, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 619181/2024

Judge: C. Stephen Hackeling

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Short Form Order

Index No. 619181/2024

SUPREME COURT – STATE OF NEW YORK
PART 12 – SUFFOLK COUNTY**P R E S E N T:**

Mot. Seq. No. 001-MD (Case disp)

Hon. C. Stephen Hackeling

Justice Supreme Court

-----X
LAURA FABRIZIO,

Petitioner,

-against-

ZONING BOARD OF APPEALS OF THE
VILLAGE OF WEST HAMPTON DUNES,Respondent.
-----X**PETITIONER'S ATTORNEY**

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Upon petitioner's e-filed documents [NYSCEF Doc Nos. 1-10, 36-39, 41, 46] and Respondent's opposition documents [NYSCEF Doc Nos. 11-35, 42-34] and upon due deliberation, it is hereby

ORDERED and **ADJUDGED** that the above-captioned verified petition is denied and the proceeding is dismissed.

Petitioner, Laura Fabrizzio (hereafter "petitioner") commenced this CPLR Article 78 proceeding seeking an order setting aside, vacating, annulling, and reversing Respondent Zoning Board of Appeals of the Village of West Hampton Dunes' (hereafter "ZBA") June 29, 2024 decision, which denied petitioner's application for nine area variances necessary to subdivide petitioner's property into two separate buildable lots.

Undisputed Facts

Petitioner is the owner and resident of a single-family home located at 772 Dune Road, West Hampton Dunes, New York and within the R-40 residential zoning district. On October 19, 2006, petitioner previously received ZBA approval (via a 3-2 vote) for similar area variances to decrease the minimum area distances and total area square footage to allow for submission to the Village Planning Board so as to subdivide the subject property into two lots. At that time the subject lot contained approximately 52,000 square feet. Each subdivided lot was to consist of 19,732 square feet with the balance of 13,151 square feet being dedicated as an open space municipal reserve. The 2006 ZBA decision made the necessary findings of fact that:

- (A) The variances would not alter the essential character of neighborhood.
- (B) The variances were not substantial.

- (C) The variances would not have a negative impact on the community or impair the aesthetics and/or environment of the neighborhood.
- (D) The benefit of granting the variances was greater than the negative impact on the neighboring community.

Shortly after the 2006 ZBA variance approval, the Trustees and Freeholders of Southampton (hereafter the Freeholders) commenced litigation which resulted in a 2023 resolution wherein petitioner conveyed 12,000 square feet of the subject property to the Freeholders. During the period of the approximate 17-year litigation the ocean also reclaimed approximately 8,000 square feet due to shoreline erosion.

Petitioner's Hearing Before the ZBA

At a hearing held June 29, 2024, the ZBA considered and denied (via a 4-0 vote) petitioner's request for the following area variances:

Lot 1:

1. A reduction of the zoning code's 40,000 sq. ft minimum requirement to 15,100 sq. ft.
2. A reduction in the zoning code's 150 ft lot width requirement to 56 ft.
3. A reduction in the zoning code's 20 ft side-yard requirement to 1.9 ft.
4. A reduction in the zoning code's 60 ft total side yard requirement to 14 ft.

Lot 2:

1. A reduction in the 40,000 total area requirement to 17,790 sq ft.
2. A reduction in the 150 ft. lot width requirement to 70 ft.
3. A reduction in the 20 ft. street width requirement to 14 ft.
4. A reduction in the 60 ft. side-yard requirement to 28 ft.
5. A reduction of the 20 ft. minimum required side yard to 14 ft.

It is noted in the ZBA 2024 decision findings that its prior 2006 decision to approve a variance was not binding upon it as the subject property is now 25% smaller than the original lot.

Issues Presented

Petitioner alleges that the ZBA erred in not reapproving the previously granted area variance, and even if this was an original application, petitioner argues that the ZBA failed to properly balance the relevant considerations for an area variance in a rational way, and that the ZBA is estopped from changing its prior variance decision for reasons of arbitrariness.

Discussion and Applicable Law

Regarding petitioner's argument that the ZBA is bound by its prior variance approval decision, "[s]ubsequent Zoning Boards of Appeal are not bound by estoppel or other non-equitable precedent by prior boards' decisions if there is a change in circumstance. See gen. *Palm Mgt. Corp. v. Goldstein*, 29 A.D.3d 801 (2d Dept. 2006). Zoning Boards of Appeal can also change their minds in certain instances simply because they refuse to duplicate a prior boards error. *Hurley v. ZBA Amityville*, 69 A.D.3d 940 (2d Dept. 2010); See also *Cowan v. Kern*, 41 N.Y.2d 591 (1977); *Josato, Inc. v. Wright*, 35 A.D.3d 470 (2d Dept. 2006).

“A determination of an administrative agency which neither adheres to its prior precedent nor sets forth its reasons for reaching a different result on essentially the same facts is arbitrary and capricious”. See *Tall Trees Constr. Corp. v Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 93 (2001). However, in the case at bar, the evidence presented at the rehearing established that the differing circumstances of the prior area variance granted by the ZBA and the current application are distinguishable.

In addressing the merits of an Article 78 proceeding: “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”. *Ifrac v. Utschig*, 98 N.Y.2d 304, 308 (2002), citing *Fuhst v. Foley*, 45 N.Y.2d 441, 444 (1978). “The determination of a local zoning board is entitled to great deference and will be set aside only if it is illegal, arbitrary and capricious, or irrational.” *Grosso v. DeChance*, 205 A.D.3d 1026, 1027 (2d Dept. 2022), quoting *Affordable Homes of Long Is., LLC v. Monteverde*, 128 A.D.3d 1060, 1061 (2d Dept. 2015). A determination of a zoning board of appeals should be sustained on judicial review if it has a rational basis and is supported by substantial evidence. See *Pecoraro v. Board of Appeals of Town of Hempstead*, 2 N.Y.3d 608, 613 (2004), citing *Ifrac*, 98 N.Y.2d at 308 establishing that a reviewing court should refrain from substituting its own judgment for the reasoned judgment of the zoning board of appeals.

In making its determination whether to grant an area variance, a village/town ZBA 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. *Ifrac v. Utschig*, 98 N.Y.2d at 304 (2002), citing *Sasso v. Osgood*, 86 N.Y.2d 374, 382 (1999). Under this test, a ZBA is also required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance. A zoning board is “not required to justify its determination with supporting evidence with respect to each of the five factors, so long as its ultimate determination balancing the relevant considerations [is] rational.” *Cohen v. Town of Ramapo Bldg., Planning & Zoning Dept.*, 150 A.D.3d 993, 994 (2d Dept. 2017), quoting *Merlotto v. Town of Patterson Zoning Bd. of Appeals*, 43 A.D.3d 926, 929 (2d Dept. 2007).

In this case, the ZBA properly applied the required balancing test and considered the relevant factors of Village Law § 7-712-(b)3(b). The denial of petitioner’s application for more substantial area variances was supported by sufficient evidence as presented at the hearing. The evidence before the ZBA supported its findings that granting the requested variance would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the variance was substantial, that the proposed variance would adversely impact the physical or environmental conditions in the neighborhood, and that the difficulty was self-created.

Specifically, the ZBA found that the benefit to petitioner was outweighed by the detriment to the neighborhood properties, that the requested area variance was substantial as the request

represented a 67% reduction of the requirement, that the approval of the variance would change the character of the neighborhood, and that there was potential for an adverse effect on the adjacent neighbors. Petitioner's assertion that 17 of the neighborhoods 70+ lots are non-conformingly small is not determinative as it does not address the question of whether those lots were grandfathered in as preexisting the enactment of the village's zoning code and not via formal variance approval. Moreover, the ZBA's finding that the alleged difficulty was self-created had a rational basis, as petitioner knew of the one lot zoning designation at the time she acquired same. Contrary to petitioner's allegations, the ZBA made findings as to substantialness and adverse impact, which were not conclusory in nature, but detailed the grounds for its decision. See *gen. Gabrielle Realty Corp. v. Board of Zoning Appeals of Vil. of Freeport*, 24 A.D.3d 550, 550 (2d Dept. 2005), *quoting Farrell v. Board of Zoning & Appeals of Inc. Vil. of Old Westbury*, 77 A.D.2d 875, 876 (2d Dept. 1980).

Petitioner's contention that the ZBA based its decision solely on generalized community objections is also not supported by the record. "It is well settled that a zoning board of appeals may not deny an application 'based solely on generalized objections or community pressure, [but] where there are other grounds in the record to support a denial, deference must be given to the discretion and common-sense judgment of the board.'" *FCFC Realty LLC v. Weiss*, 192 A.D.3d 683, 687 (2d Dept. 2021), *quoting Dries v. Town Bd. of Town of Riverhead*, 305 A.D.2d 596, 597 (2d Dept. 2015). The ZBA's conclusion that the variance would have a detrimental impact on neighborhood's character was supported by factual evidence.

Based on the foregoing, the Court finds that the ZBA's denial of petitioner's application for variances had a rational basis, was supported by the evidence presented, and was not illegal, arbitrary and capricious, or an abuse of discretion. Accordingly, the instant petition is denied and dismissed.

The foregoing constitutes the decision and Order of the Court.

Date: March 3, 2025
Riverhead, New York



HON. C. STEPHEN HACKELING, J.S.C.

 X FINAL DISPOSITION

 NON-FINAL DISPOSITION