

**Matter of Charles Rafimayeri LLC v Zoning Bd. of
Appeals of the City of Long Beach**

2025 NY Slip Op 35598(U)

January 21, 2025

Supreme Court, Nassau County

Docket Number: Index No. 601331/2024

Judge: Randy Sue Marber

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 2

In the Matter of the Application of
CHARLES RAFIMAYERI LLC and
CHARLES DEVELOPMENT CORP.,

Petitioners-Plaintiffs,

-against-

Index No.: 601331/24
Motion Seq...01, 02 & 03
Motion Date...9/17/24
XXX

THE ZONING BOARD OF APPEALS OF THE
CITY OF LONG BEACH, THE CITY COUNCIL
OF THE CITY OF LONG BEACH,
GARY UELLEND AHL, SHAEN BEGLEITER,
NEAL J. MONTEKO, DEBORAH R. MONTEKO,
RICHARD BOODMAN, GLORIA BERNSTEIN,
PHYLLIS GINSBERG, LESTER GINSBERG,
ROSEMARY ANTONIK, MICHAEL ANTONIK,
STEVEN M. BERNSTEIN, JESSICA RONE and
RAZVAN RONE, AS MEMBERS OF BEECH
AND LINCOLN COMMUNITY ALLIANCE,

Respondents-Defendants.

Papers Submitted:
Amended Notice of Petition (Seq. 01).....x
Notice of Motion (Seq. 02).....x
Memo of Law in Support.....x
Notice of Motion (Seq. 03).....x
Memo of Law in Support.....x
Memo of Law in Opposition.....x
Memo of Law in Opposition.....x
Amended Affirmation in Reply.....x
Reply Affirmation.....x

The amended verified petition (Mot. Seq. 01) by the Petitioners, CHARLES
RAFIMAYERI LLC and CHARLES DEVELOPMENT CORP., seeking an Order,

pursuant to CPLR Article 78, vacating and setting aside a January 2, 2024 determination of THE ZONING BOARD OF APPEALS OF THE CITY OF LONG BEACH (the “Zoning Board”), and declaring that Zoning Code 9-105.2(j) of the City of Long Beach is invalid and a nullity; the motion (Mot. Seq. 02) by the Respondents, the Zoning Board and THE CITY COUNCIL OF THE CITY OF LONG BEACH (jointly “Long Beach”), seeking an Order, pursuant to CPLR § 7804(f) and CPLR §§ 3211 (a)(1), (5), and (7), dismissing the petition; and the motion (Mot. Seq. 03) by the Respondents, GARYUELLEND AHL, SHAEN BEGLEITER, NEAL J. MONTEKO, DEBORAH R. MONTEKO, RICHARD BOODMAN, GLORIA BERNSTEIN, PHYLLIS GINSBERG, LESTER GINSBERG, ROSEMARY ANTONIK, MICHAEL ANTONIK, STEVEN M. BERNSTEIN, JESSICA RONE and RAZVAN RONE, AS MEMBERS OF BEECH AND LINCOLN COMMUNITY ALLIANCE (collectively “Beech and Lincoln”), seeking an Order, pursuant to CPLR § 7804(f) and CPLR § 3211 (a)(7), dismissing the Petition, are consolidated for disposition and decided as provided herein.

The Petitioners are the owners of the premises known as 355 East Beech Street, Long Beach, New York (the “Premises”).

On or about August 26, 2020, Petitioners submitted a permit application to the City of Long Beach Building Department for the performance of “alterations or renovations” to the two-family dwelling located upon the Premises. The application identified the scope of work as “pointing exterior brick siding” and certain interior renovations.

Approximately two days after submitting the permit application, Petitioners’

counsel advised the Building Department that Petitioners intended to subdivide the Premises into two lots for the purpose of converting the existing two-family home to a single-family home and constructing a new two-family home.

By correspondence dated September 29, 2020, Petitioners' subdivision request was denied by the Building Commissioner, stating that the requested subdivision would require the demolition of an existing detached two-car garage and thus would violate Section 9-105.2(j) of the Zoning Code. Further, the proposed off-street parking would have been located in the front yard of the Premises in violation of Section 9-113.2(g) of the Zoning Code.

Notwithstanding the denial of that aspect of the application, on or about October 8, 2020, the Building Department did issue a limited building permit for the identified pointing and interior renovations.

To the extent that its subdivision request was denied, Petitioners submitted a variance application to the Zoning Board for the stated purpose of "subdivision & expanded use".

The Petitioners were afforded a hearing before the Zoning Board on November 19, 2020, after which the requested variance to allow it to subdivide the Premises was denied by a resolution dated December 18, 2020.

Thereafter, the Building Department discovered that Petitioners, without a building permit authorizing the work, had installed an additional curb cut and two unauthorized concrete parking pads on the east and west sides of the existing two-family dwelling located on the Premises. Accordingly, on or about June 11, 2021, the Building

Department provided Petitioners with a notice of violation and an Order to immediately rectify same.

In response, Petitioners submitted a request to amend the October 8, 2020 permit to include “two curb cuts”.

On or about September 1, 2021, the Building Commissioner denied the requested amendment on the ground that the already completed construction did not conform to the Zoning Code’s off-street parking requirements.

In response to that denial, Petitioners appealed to the Zoning Board for a reversal of the Building Department’s determination or, alternatively, for an area variance that would allow them to maintain the previously completed and unauthorized construction.

A public hearing was held on that application on or about March 24, 2022, after which the requested variance was denied by resolution dated April 29, 2022.

In correspondence (not in a permit application) addressed to the Building Commissioner, dated May 26, 2022, Petitioners advised the Building Commissioner that they intended to demolish a chimney located on the east side of the existing two-family dwelling to facilitate off-street parking in the rear of the Premises. In that same correspondence, Petitioners expressed that “the reason for this proposal is to subdivide the existing 100 x 100 lot for the existing two-family home and a 40 x 100 lot” for a new single-family home.

On or about August 9, 2022, Petitioners submitted a permit application to the Building Department for “sidewalk-driveway” work. The application made no mention of

chimney demolition, nor did it request a subdivision. A permit was issued on or about September 7, 2022.

By correspondence dated May 15, 2023, Petitioners' counsel wrote to the City Assessor, arguing that the "Old-Filed Map" exception contained in Real Property Law Section 334-a entitled Petitioners to subdivide the Premises into two lots as of right. Petitioners' counsel requested that the City Assessor provide written consent to such subdivision.

When Petitioners' counsel's correspondence was received, the City Assessor forwarded it to the Building Commissioner, requesting that he review it for zoning, building, and housing code violation purposes.

On or about June 1, 2023, though the garage that caused him to deny the subdivision in 2020 still existed and the chimney had been demolished with the informally expressed (not by permit application) intent to accomplish a subdivision, the Building Commissioner advised the City Assessor that "there is nothing preventing this property from being sub-divided as requested" without explaining the reasoning for the reversal of the previous denial.

On or about June 8, 2023, the City Assessor advised the Nassau County Planning Commission that the City of Long Beach had no objection to the subdivision of the Premises.

That same day, the Nassau County Planning Commission advised Petitioners' counsel that the Premises does not fall under the jurisdiction of the Nassau County Planning Commission, and that the Premises is located entirely within the City of

Long Beach. Petitioners' counsel was advised to contact the City for its procedures, prior to filing the appropriate deed(s) in the Office of the County Clerk.

On or about June 29, 2023, without contacting the City as directed by the Nassau County Planning Commission, Petitioners caused two deeds to be filed with the Nassau County Clerk purporting to reflect a subdivision of the Premises.

On or about July 27, 2023, pursuant to City Law Section 81-a, the Respondents, Beech and Lincoln, Gary Ullendahl, and Shaen Begletter, submitted a request to the Zoning Board for a Zoning Code interpretation with respect to the June 1, 2023 determination.

The Zoning Board conducted a hearing in connection with that request on August 24, 2023. By resolution dated January 2, 2024, upon the evidence presented at the hearing and its review of the law, the Zoning Board overruled the Building Commissioner's determination that Petitioners were entitled to a subdivision as of right.

On January 24, 2024, Petitioners commenced this action seeking to vacate the January 2, 2024 resolution. The Respondents now move to dismiss.

"In a proceeding pursuant to CPLR article 78 to review a determination of a zoning board of appeals, judicial review is limited to ascertaining whether the action was illegal, arbitrary and capricious, or an abuse of discretion" (*Green Materials of Westchester v. Town of Cortlandt*, 132 A.D.3d 868 [2d Dept. 2015]). "The applicable standard of review in this proceeding is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. An action is arbitrary and capricious when it is taken without sound basis in reason or

regard to the facts” (*Scott v. Vill. of Nyack Hous. Auth.*, 147 A.D.3d 957 [2d Dept. 2017]).

Here, the Petitioners do not claim that Respondents’ actions were illegal or an abuse of discretion. In the petition and in opposition to Respondents’ motions, Petitioners argue that the Court should find Respondents’ actions were arbitrary and capricious. The Petitioners argue that Respondents’ actions were arbitrary and capricious in three ways: (i) that Beech and Lincoln’s appeal was time-barred and should not have been entertained, (ii) that Petitioners are entitled to subdivision as of right because the Premises was already legally subdivided in 1911 when the Subdivision Map was filed with the Nassau County Clerk’s Office, and (iii) that the Zoning Board improperly based its decision on generalized unsubstantiated concerns of the neighboring property owners.

In addition to arguing that the determination of the Zoning Board was arbitrary and capricious, Petitioners’ fourth cause of action seeks a declaration that Zoning Code 9-105.2(j) of the City of Long Beach is invalid and a nullity because when it was enacted by the City Council, it was not transmitted or referred to the Nassau County Planning Commission prior to its enactment. The Court notes that, not only would the granting of such relief be beyond the scope of this Article 78 proceeding, but, as noted by Long Beach, the entirety of the City’s Zoning Ordinance was referred to the Nassau County Planning Commission, in compliance with General Municipal Law 239-m, in 2001. Petitioners’ opposition does not offer any argument challenging this assertion by Long Beach. Consequently, that portion of the petition is denied.

TIME BARRED

The Petitioners argue that Beech and Lincoln’s appeal was patently untimely

pursuant to General City Law 81-a(5)(b) such that it was arbitrary and capricious for the Zoning Board to have entertained it. That provision provides:

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken. (*NY Gen. City Law 81-a[5][b]*).

As an exhibit to the motion papers, Long Beach submitted a copy of the July 27, 2023 Letter from Beech and Lincoln's Counsel to the Zoning Board (the "Appeal Letter"). The Appeal Letter requests, "a Zoning Board of Appeal's interpretation, seeking the review and reversal of a certain administrative determination made by the Building Commissioner of the City of Long Beach by letter dated June 1, 2023 approving the subdivision of the [Premises] pursuant to §9-105.20 of the Zoning Code."

This Court finds that July 27, 2023 is less than sixty days after the June 1, 2023 determination by the Building Commissioner. The Petitioners' argument that the Court should look back to previous dates or occurrences as the 'real' date from which an appeal needed to have been taken is unavailing. This Court further finds that it was not arbitrary or capricious for the Zoning Board to have engaged in the review requested by Beech and Lincoln, based on the timeliness of the Appeal Letter.

AS OF RIGHT

The Petitioners argue that the Premises was legally subdivided in 1911 when the Subdivision Map was filed with the Nassau County Clerk's Office and that no

additional approvals were required.

The Respondents assert that the ‘Old-Filed Map’ exception was repealed in 2009 by Section 1610(b)(2) of Local Law 6-2009.

Section 1610(b)(2) of Local Law 6-2009 states that, “Notwithstanding section 334-a of the New York Real Property Law, no map proposed for the subdivision of real property shall be exempt from the requirements set forth in paragraph one of this subdivision solely because a map for the subdivision of such real property had been filed prior to January twelfth, nineteen hundred forty-five.”

Section 1610(b)(1) states, in part, that, “...No map of a subdivision of land partly or wholly within the County shall be filed *until it shall have been approved* by each planning commission and/or planning authority having jurisdiction over that area and the approval thereof entered on the plat by the chairperson, director or such agent as may be authorized by the planning commission and/or planning authority thereof...” [Emphasis supplied].

This Court finds that it was not arbitrary and capricious for the Zoning Board to have disregarded the Subdivision Map from 1911 since Section 1610(b) of Local Law 6-2009 required any map proposed for subdivision to be approved prior to filing regardless of whether such map had already been filed. In turn, the Petitioners fail to show that any such approval was given prior to the filing of the 1911 Subdivision Map.

The Court finds Petitioners’ reliance on a Supreme Court case which in turn relied upon *Pro Home Builders, Inc. v. Greenfield*, 67 A.D.3d 803 [2d Dept. 2009] regarding approval requirements in light of New York Property Law 334-a misplaced, as

that line of cases makes no mention of Local Law 6-2009, which very clearly states it is to be read “Notwithstanding section 334-a...”.

UNSUBSTANTIATED PUBLIC CONCERN

The Court does not agree with Petitioners’ conclusory statement that it is obvious that the Zoning Board completely altered its position after the August 24, 2023 hearing solely in response to generalized community opinion. Additionally, as Beech and Lincoln asserts, the existence of community opposition does not render a determination arbitrary and capricious. “Where substantial evidence 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” (*Retail Prop. Tr. v. Bd. of Zoning Appeals of Town of Hempstead*, 98 N.Y.2d 190, 774 N.E.2d 727 [2002]). It is clear to this Court that there was substantial evidence in this matter, only some of which is discussed above. The Petitioners fail to show that the Zoning Board’s determination was based solely on generalized community opinion.

The Court has considered the Petitioners’ remaining arguments and finds them to be unavailing.

Accordingly, it is hereby

ORDERED, that that the motion (Seq. 02) to dismiss by the Respondents, THE ZONING BOARD OF APPEALS OF THE CITY OF LONG BEACH and THE CITY COUNCIL OF THE CITY OF LONG BEACH, is **GRANTED**; and it is further

ORDERED, that the motion (Seq. 03) to dismiss by the Respondents, GARY UELLEND AHL, SHAEN BEGLEITER, NEAL J. MONTEKO, DEBORAH R. MONTEKO, RICHARD BOODMAN, GLORIA BERNSTEIN, PHYLLIS GINSBERG,

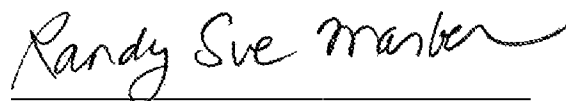
LESTER GINSBERG, ROSEMARY ANTONIK, MICHAEL ANTONIK, STEVEN M. BERNSTEIN, JESSICA RONE and RAZVAN RONE, AS MEMBERS OF BEECH AND LINCOLN COMMUNITY ALLIANCE, is **GRANTED**; and it is further

ORDERED and ADJUDGED, that that the Amended Verified Petition (Seq. 01), is hereby **DENIED** and the proceeding is **DISMISSED**.

All matters not specifically addressed herein are **DENIED**.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
January 21, 2025



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE