Case Law Review

March 13, 2024

Presented By:

Joe Frateschi and Amelia McLean-Robertson
Harris Beach PLLC

HARRIS BEACH PLLC
ATTORNEYS AT LAW
Discover True Engagement®

Disclaimer

This training is not meant to serve as legal advice and does not create an attorney-client relationship. For further information or questions, the advice of legal counsel should be sought.

Matter of Friedman v. Town of Dunkirk, 221 A.D.3d 1581 (4th Dep't 2023)

- Facts:
- Under the Town of Dunkirk Code:

  In the Residential Zoning District, a "single family dwelling unit" is allowed

  "Family" is defined under the Code as:

  Up to three (3) people occupying a dwelling unit; OR

  If four (4) people . . .

  They are a family IF . . .

  They are related by blood, marriage or legal adoption OR

  They are the "functional equivalent" of a family
- Town Code Enforcement Officer renders an interpretation that an AirBnB in the residential zoning district is not allowed in the Residential Zoning District because the use does not constitute a "single family dwelling unit"
- Town ZBA upholds the decision of the Town Code Enforcement Officer
- Issue: Whether the ZBA's determination in finding that an AirBnB was not allowed in the Residential Zoning District was arbitrary and capricious?

Holding

- Under the Code, so long as a “family” is using the property as a dwelling unit, the use is allowed;
- There is nothing in the Code that states that a transient use by a family is prohibited;
- As such, the decision of the ZBA was arbitrary and capricious

Upper Delaware Hospitality Corp. v. Town of Tusten, 223 A.D.3d 1040 (3d. Dep't 2024)

Facts:

- August 2020: Town of Tusten Planning Board approved Petitioner's special use permit application to convert part of a property into a restaurant.
- October 2021: Town issued a Certificate of Occupancy.
- January 2022: Lessees of property across the street appealed to the Town ZBA to challenge the issuance of the Certificate of Occupancy.
- February 2022: ZBA voted 4 to 1 to dismiss the appeal as untimely… but later in the meeting ZBA voted 4 to 1 to abandon its earlier decision to dismiss the appeal and scheduled a hearing for March 2022.
- Prior to March hearing, Petitioner filed an Article 78 seeking to annul ZBA's decision to rehear the appeal and to declare the Certificate of Occupancy to be in full force and effect.

Issue and Holding

Was the ZBA's resolution to abandon its decision to dismiss the appeal proper?

- The Town Code (consistent with Town Law 267-a) requires that for a rehearing to occur, the motion must be "adopted by unanimous vote of the members present, but not less than a majority of all members."
- At the meeting, after dismissing the appeal, one of the ZBA members moved to abandon that decision and "rehear" the initial resolution. Because the vote was not unanimous, the resolution was annulled by the court.

Matter of Gutman v. Covert Town Board, 222 A.D.3d 1357 (4th Dep't 2023)

- Property owner proposes to add a second story deck directly above the porch of the main cottage

Under the Covert Town Code:

- All buildings shall be set back a minimum of 20 feet from each side and rear lot line
- The second story deck would be within 20' of the lot line
- Town Code Enforcement Officer and ZBA issued a determination that a variance was not needed because the porch coincided with the footprint of the existing porch
- Adjoining property owner challenges the determination

Issue: Whether the ZBA's determination that a variance was not needed as arbitrary and capricious?

Holding

- Because the ZBA is the expert agency in interpreting its Code, the Court will give deference to their determination.
- Based upon the expertise of the ZBA, it was rational for them to determine that the covered porch did not expand the existing footprint of the structure, and, therefore, did not require an area variance

Matter of Gutman v. Covert Town Board, 222 A.D.3d 1357 (4th Dep't 2023) (Cont'd)

- Property owner proposes to add a bunkhouse to the property (in addition to the existing cottage)

Under the Covert Town Code:

- Only one dwelling structure is allowed per parcel
  - "Dwelling" is defined as a "building, or part thereof, used as a living quarters for one family"
  - "Family" is defined as "one . . . or more persons living, sleeping, cooking or eating on the same premises as a single housekeeping unit"
  - The Code states that a "dwelling" DOES NOT include "a motel, hotel, boarding house, tourist home, single-wide mobile home, or other similar structure" BUT DOES INCLUDE "a seasonal dwelling"
- The proposed bunkhouse lacked kitchen facilities, and, was intended to support overflow sleeping accommodations for guests of the cottage
- Town Code Enforcement Officer and ZBA issued a determination that the proposed bunkhouse was not a "dwelling", and, therefore was allowed
- Adjoining property owner challenges the determination

Issue: Whether the ZBA's determination that the structure was not a dwelling was arbitrary and capricious?

Holding

- The ZBA had a rational basis in determining that the bunkhouse did not constitute a dwelling
- The bunkhouse could not be used as a living quarters:
  - It lacked basic kitchen facilities, and, therefore, could not support a family living there independently from the main cottage
  - The examples of structures that did not constitute dwellings under the Code (i.e., a motel, hotel, boarding house, tourist home, etc.) were transitory in nature, and, the proposed use of the bunkhouse was also transitory in nature.
  - Because the proposed use of the bunkhouse was more similar to transitory uses than more permanent uses (i.e., a seasonal residence), the ZBA had a rational basis to conclude that the structure was not a dwelling

Town of Beekman v. Town Board of Town of Union Vale, 219 A.D.3d 1430 (2d Dep't 2023)

- Town of Union Vale owned property in Town of Beekman.
- Town Board of Union Vale adopted resolutions approving an option and ground lease agreement for construction of a telecommunications tower and related equipment and issued a Negative Declaration pursuant to SEQRA.
- Town Board of Union Vale also resolved that the project was not subject to Beekman's zoning laws.
- Town of Beekman sought to annul the resolutions and alleged that the project would be subject to the local zoning laws. Also alleged that the Town Board failed to comply with SEQRA.

Issue: Was project exempt from local zoning?

The court applied a “balancing of public interests test” to determine if the project should be granted immunity from the local zoning requirements.

Factors for the balancing test:

- The nature and scope of the instrumentality seeking immunity.
- The kind of function or land use involved.
- The extent of the public interest to be served thereby.
- The effect local land use regulation would have upon the enterprise concerned.
- The impact upon legitimate local interests.

Holding

- The court found that the application of the balancing of public interests test supported the Board's finding that the project at issue is immune from the Petitioner's local zoning.
- The installation of the tower would serve the public interest by remedying a gap in cellular coverage and aiding emergency services. The fact that the tower would benefit the private interests of the developer did not undermine the public purposes served by the tower.
- The court also found the Town Board satisfied SEQRA requirements.

Town of Orangetown v. Armoni Inn & Suites (Rockland County Supreme Court)

Facts:

- Hotel owner in the Town of Orangetown (Rockland County) signs a contract with a contractor on behalf of New York City to house migrants for four (4) months;
- The Hotel is located in the Community Shopping District, which allows for the use of “hotels and motels”
- Under the Town of Orangetown Code:
  - A “hotel” is defined as “a multiple dwelling used for the purpose of furnishing, lodging, with or without meals, for more than 15 transient guests, for compensation”
  - “Transient” is defined as “occupancy of a dwelling unit or sleeping unit for not more than 30 days”
  - No change shall be made in the use or type of occupancy of an existing building unless a Certificate of Occupancy authorizing such change shall have been issued by the Code Enforcement Officer
- The Hotel Owner begins modifying the hotel by converting hotel conference rooms into office space and storage space for personal protective equipment and modifying room layouts by replacing queen-sized mattresses with twin-sized mattresses
- Hotel owner does not seek any approvals
- Town Code Enforcement Officer issues a notice of violation to the Hotel Owner for changing the use of the site without obtaining any approvals
- Hotel owner argues that the Code Enforcement Officer’s interpretation within the notice of violation was arbitrary and capricious

Issue: Whether the notice of violation was supported by a rational basis?

Holding

Yes

- A four (4) month contract to house individuals converted the use from a hotel to something more than transient in nature (i.e., a shelter)
- The conversion of the space within the Hotel to office space, storage space and the adding of more beds further supported the code enforcement officer's basis for determining that the hotel was being converted into a shelter

Hotel Owner Counter-Argument

New York State, by virtue of an Executive Order, provided the following:

- "Sections 768 and 711 of the Real Property and Proceedings Law . . . to the extent necessary to prevent the creation of a landlord tenant relationship between any individual assisting with the response to the state of emergency or any individual in need of shelter or housing because of the circumstances that led to the state of emergency, and any individual or entity, including but not limited to any hotel owner . . . who provides housing for a period of thirty days or more solely for purposes of assisting in the response to the state of emergency"
- Hotel Owner's Argument: By virtue of the above executive order, only New York State has the ability to regulate hotels housing migrants and Towns are "pre-empted" from doing so.

Court's Response

- Court's Response:
- The Executive Order does not explicitly state that it is in any way attempting to override the Town's police powers (under New York Municipal Home Rule Law) or its zoning code
- The Executive Order only states that it is modifying the landlord-tenant law to redefine what constitutes a landlord-tenant relationship
- Therefore, the Town's zoning code is in no way "pre-empted" by the Executive Order

Hotel Owner Counter-Argument

- There is a New York State Office of Temporary Disability directive that allows for New York City to place migrants in hotels around New York State
- Hotel Owner's Argument: The directive issued by the state agency overrides the Town's zoning code

Court's Response

- A "directive" is not a state law or state regulation – it is merely administrative guidance that may or may not be followed
- Therefore, the directive does not override the Town's zoning code (which actually is an enforceable law)

Hotel Owner Counter-Argument

The application of the Town's zoning code violates the U.S. Constitution because the Code is being selectively enforced against migrants (on the basis of national origin and race)

Court's Response

- The Hotel Owners are attempting to bring claims of racial discrimination on behalf of the migrants
- The only parties that properly have standing to bring claims are the migrants themselves

Southern Realty and Development, LLC v. Town of Hurley, 218 A.D.3d 900 (3d Dep't 2023)

- Petitioner applied for site plan approval for a drive-thru Dunkin franchise.
- After a series of public hearings and a nonpublic meeting the Town Planning Board voted to reject the application citing to the purported negative impact the project would have on traffic in the intersection.
- Petitioner sought to annul the denial as arbitrary and capricious and contended that the Planning Board violated Open Meetings Law by improperly conducting meetings outside of the public view.

Issue and Holding

Did the Planning Board violate Open Meetings Law?

- "The purpose of the Open Meetings Law is to prevent municipal governments from debating and deciding in private what the are required to debate and decide in public."
- A violation of Open Meetings Law "renders an ensuing determination "not void" but, rather, voidable upon good cause shown."
- Petitioner did not articulate in its argument the manner in which the substance of the discussions of the nonpublic meeting were an attempt to avoid public scrutiny of the project.
- Petitioner failed to demonstrate good cause requiring nullification as they also referred to the nonpublic meeting in support of its contention that the Planning Board's decision was arbitrary and capricious.

Matter of Posillico v. Southold Town Zoning Board of Appeals, 219 A.D.3d 885 (2d Dep't 2023)

Town of Southold Code provides:

- Lots become merged for zoning purposes once they are owned by common parties.
- In other words, once adjacent lots are owned by one owner, the owner loses the existing rights associated with separate lots.

Wife and husband own a lot with a house.

Husband also owns an adjacent vacant lot.

Prior to 2007, Wife's husband passes away, and, by virtue of his passing, both parcels become owned solely by the wife.

In 2007, the Town passes a local law that states:

- Adjacent lots will not merge if the common ownership is the result of the death of a spouse
- The legislative purpose of the local law (as stated in the local law) was to correct the fact that the existing merger law unfairly punishes spouses who have lost a loved one

In 2017, wife attempts to pull a building permit to build a house on the vacant lot.

Code Enforcement Officer refuses to issue a Building permit claiming that the exception did not apply retroactively (i.e., to lots that came under common ownership prior to 2007) and because the lots were "merged" for zoning purposes she was only allowed one residence on the lots

The ZBA upheld the Code Enforcement Officer's interpretation

Issue: Whether the decision to deny the building permit was arbitrary and capricious?

Holding

Yes

- Generally, laws do not apply retroactively (i.e., to prior circumstances) UNLESS they are “remedial” (i.e., corrective) in nature.
- The 2007 law was clearly intended to be “remedial” in nature.
- It was clear from the legislative intent that the 2007 was intended to prevent exactly the situation here – unfairness to a widowed spouse.
- Because the law was “remedial” in nature, it should have been applied retroactively to the wife’s properties.
- As such, the building permit should be issued

Save Monroe Ave., Inc. v. Town of Brighton, 217 A.D.3d 1389 (4th Dep't 2023)

Petitioners sought to annul the Town's determination to issue a building permit and to deny Petitioner's appeal of that determination.

Petitioner asserted three causes of action alleging violations of the Town Code:

(1) That a building permit was issued for a building larger than the one approved in the site plan

(2) The building permit was issued without sufficient cross-access easements because the provided easements were defective due to the possibility of third-party challenges; and

(3) That the permit allowed phased construction lasting more than eighteen (18) months which was not allowed under the code.

Issue and Holding

- Was the ZBA's interpretation of the zoning ordinance irrational, unreasonable, or inconsistent with the governing code?
- No
- The Court held that a zoning board's interpretation of its governing code is generally entitled to deference.
- The ZBA determined that the building permits was "in conformity" with the site plan approval, explaining that the Town Code permits minor deviations from an approve site plan where the size of the project as a whole does not exceed the approved site plan and meets all the setback and other requirements.
- The easements provided were acceptable because the town was only required to determine the building permit complied with the municipality's standards and conditions in the zoning ordinance. And, the Town was not required to determine whether any third-partys might assert conflicting rights in the future.
- The time-frame for construction outlined in the permit had a rational basis and was supported by substantial evidence.

Sticks and Stones Holdings, LLC v. Zoning Board of Appeals of the Town of Milton, 207 A.D.3d 855 (3d Dep't 2022)

- Plaintiff sought an area variance from the 5-acre minimum lot requirement to allow it to knock down a dilapidated home and construct a new 2,500 square foot single family home.
- The site contained multiple burial grounds
- Town ZBA requested that Plaintiff provide an inventory of the burial sites, allow the Town historian to take photographs and take other measures to protect the burial sites.
- Plaintiff denied Town access to the site and did not provide an inventory as requested.
- Town ZBA denied variance request.

Issue: Whether the ZBA's decision to deny the area variance was arbitrary and capricious?

Holding

No because the Plaintiff's withholding of information/denial to allow Town to access to the property established the following pursuant to the factors:

- Possible undesirable change in the character of the community – this land was used as a burial ground previously and now residential uses could supplant that use.
- Possible adverse physical and environmental conditions – it was possible that the installation of a septic system on the property would have adverse impacts on the burial ground.
- Feasible alternative available to Plaintiff – Plaintiff could have renovated/rebuilt the dilapidated structure already existing on the property
- Variance was self-created – Plaintiff knew or should have known when it purchased the property that an area variance would be required and that burial sites were present.

Lemmon v. Town of Scipio, 216 A.D.3d 1462 (4th Dept. 2023)

Petitioner challenged a decision by Town ZBA denying his appeal from an order to remedy a zoning violation which he received after parking his camper trailer within 250 feet of his property lines.

The Town code limits "[t]he number of tents, trailers, houseboats, recreational vehicles, or other portable shelters *in a camp*" [emphasis added]

The Town code defines "camp" as "any temporary or portable shelter, such as a tent, recreational vehicle, or trailer"

Issue and Holding

Was the Town's interpretation of the zoning code irrational and unreasonable?

- The Town Code provides that "camp structures" must be set back at least 250 feet from the property lines of a "camp" and defines a "structure" as "materials assembled, constructed, or erected at a fixed location including a building, the use of which required location on the ground or attachment to something having location on the ground."
- The Petitioner's trailer does not qualify as a structure, and for the trailer to be located too close to the property line of a camp, the property must be understood as a "camp." However "camp" is defined elsewhere in the code.
- Under Town's interpretation of the zoning code, petitioner committed a violation by putting a "temporary or portable shelter, such as a tent, recreational vehicle, or trailer" (i.e. a "camp") inside another "temporary or portable shelter, such as a tent, recreational vehicle or trailer" which is irrational and unreasonable.

Therefore, the Court found the Town's zoning determination to be irrational and unreasonable.