Case Law Review -2023

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Matter of Yeshiva Talmud Torah Ohr Moshe v. ZBA of the Town of Wawarsing, 170 A.D.3d 1488 (2019)

- Facts:
  - Article 78 brought to annul ZBA's interpretation
  - Town Code: NS District allows "Place of Worship" defined as "the use of land, buildings, and structures for religious observance, including a church, synagogue, or temple and related on-site facilities such as monasteries, convents, rectories, retreat houses, and fellowship or school halls"
  - Proposed Project: Renovation of existing buildings to include synagogues, classrooms, a residence for the supervising rabbi, dormitory and dining hall for students that would be used seasonally.
  - ZBA interpreted the term "Place of Worship" and determined that the Project did not fall within that definition
  - Issue: Whether the ZBA's determination that the Project was not a "Place of Worship" was arbitrary and capricious?

Holding

- The definition of “Place of Worship” as set forth in the Code unambiguously includes not only traditional religious uses (i.e., a temple) but also “related on-site facilities” that include dormitories and dining halls that fully encompass the Project
- Even if the definition was ambiguous, because this is a religious use being proposed, any ambiguity would need to be construed in favor of the applicant

ZBA Interpretation Reversed (Remanded for Site Plan Review)

Bickerton v. Town of Preble, 72 Misc.3d 573 (Sup. Ct. Cortland County 2021)

- Facts:
  - Article 78 brought to compel the Town to issue a building permit
  - Proposed Project: A 20X24 (480 sq. ft.) green house type structure to enclose an inground pool
  - Relevant law: New York Education Law Articles 145 and 147 require stamped drawings for structures from engineers or architects, UNLESS the structure is a "residence building of gross floor area of 1500 sq. ft. or less, not including garages, carports, porches, cellars, or uninhabitable basements or attics"
  - Plaintiff's argument: The accessory residential structure (i.e., the greenhouse) is a "residence building" of 1500 square feet or less.
  - Code Enforcement Officer: The greenhouse is not a "residence building" because no one can live there, therefore, the plans submitted must be stamped by an engineer or architect.
  - Plaintiff appealed Code Enforcement Officer's interpretation to the ZBA but the ZBA declined to hear the case.

Issue

Whether the Town properly interpreted the term “residence building” as used under New York State Education Law?

Holding

- While the Town can certainly interpret its code, it is not for the Town to interpret State Law – that is the job of the courts.
- The Court found that the greenhouse structure was a "residence building having less than 1,500 square feet" for the following reasons:
  - The plain language of the statute does not require stamped drawings for residence buildings under 1,500 square feet EXCLUDING FROM THAT CALCULATION residential accessory structures (i.e., carports, garages, etc.) – clearly, the legislature was not concerned about having stamped plans for residential accessory structures; and
  - The Code Enforcement Officer's interpretation would lead to absurd results: A 12X12 shed attached to a home would not require stamped drawings but a 12X12 standalone shed would

Building Permit Issuance Compelled By Court

In the Matter of HV Donuts, LLC v. Town of LaGrange ZBA, 169 AD3d 678 (2019)

- Facts:
  - Gasoline service station and convenience store operated on a parcel of land that was not properly zoned for such use.
  - Pre-existing non-conforming use status was recognized by the Town.
  - A fuel delivery truck hit a light pole and spilled approximately 3,000 gallons of gasoline on the property.
  - Operations had to cease as remediation measures began.
  - Restoration took over 1 year to complete.
  - Code Enforcement Officer said the non-conforming use could be re-established pursuant to the Code and granted a one-year extension to re-establish the non-conforming use.
  - Dunkin Donuts across the street brought action to ZBA asking that it overturn CEO interpretation of the Code.
  - ZBA confirmed CEO's interpretation – Dunkin Donuts brought an Article 78 challenging ZBA's interpretation

Issues

- Did the gas station lose its non-conforming use status by not operating for more than 1 year – Town Code says if the use is abandoned for more than 1 year the non-conformity is lost.

Holding

- A court must set aside the determination of a ZBA “only where the record reveals illegality, arbitrariness, or abuse of discretion.”
- Where a ZBA has a rational basis in the record, a court may not substitute its own judgment, even where the evidence may support a different conclusion.
- The ZBA determined that there was “more to maintaining a gasoline filing station than pumping gas.”
- The ZBA rationally concluded that remediation of the petroleum spill amounted to a continuation of the nonconforming use and that the provisions of the Code regarding discontinuance of use were rationally applied.
- “Because the ZBA’s determinations involved interpretation of its own zoning ordinance and because its conclusions were supported by the record presented to it, we defer to its conclusions.”

ZBA affirmed

Gershow Recycling v. Town of Riverhead, 193 A.D.3d 731 (2d Dep't)

Facts:

- Plaintiff submits a site plan to Town for site plan approval to "re-grade, install site drainage, a retaining wall, concrete paving and landscaping"
- Town Code Enforcement Officer commences an action against the Plaintiff for a judgment declaring that the site's current use as a recycling center was an illegal expansion of a pre-existing non-conforming use as an auto salvage yard.
- The Town Code Enforcement Officer denies the site plan.
- Plaintiff brings an Article 78 to annul the decision of the Code Enforcement Officer

Issue

- Whether the Code Enforcement Officer properly denied the Site Plan?

Holding

- While the Code Enforcement Officer has the power to make recommendations regarding site plan, pursuant to New York Town Law Section 274-a, a Planning Board is vested with the ability to review and approve, approve with modifications or disapprove site plans. In other words, the Code Enforcement Officer usurped the power of the Planning Board

Code Enforcement Officer's Decision Annulled (Remanded to Planning Board for site plan review)

Arthur M. Cady v. Town of Germantown Planning Board, 184 A.D.3d 983 (3d Dep't 2020)

- Facts:
  - Property owner applies to the Town for subdivision approval – 1.4 acres to be conveyed and developed into a Dollar General
  - Property in overlay district with the following restriction: "The length of any façade should generally not exceed 50 feet maximum (horizontal direction)"
  - Property owner submits site plan that contains a 74 foot façade (horizontal direction)
  - Planning Board approves site plan as is.

Issue

- Whether the Planning Board properly granted site plan approval?

Holding

- The restriction “The length of any façade should generally not exceed 50 feet maximum (horizontal direction)” is merely a guideline, and, is not a restriction.
- The use of “should generally not” is different than the use of “shall not”
- This matter did not have to go to the ZBA for an area variance.

Planning Board Approval Upheld

Barnes Road Area Neighborhood Association v. Planning Board of the Town of Sand Lake, 206 A.D.3d 1507 (3d Dep't 2022)

- Property owner wants to build indoor/outdoor wedding venue.
- Town Code requires special permit for same.
- Neighboring residents complain at public meetings re: possibility of noise and traffic
- Planning Board issues special permit on the following bases:
  - All sound would be enclosed within a barn at the premises; and
  - Traffic study showed that road could handle additional 70 cars on Saturdays or Sundays

Issue

- Whether the Planning Board had a rational basis for issuing the special permit?

Holding

- Public opposition is not enough to deny a special use permit.
- Where a use is in harmony with the general zoning plan and will not adversely affect the neighborhood, the special use permit should be granted. The record showed that in this case.

Issuance of Special Permit Upheld

Affiliated Brookhaven Civic Organization, Inc. v. Planning Board of the Town of Brookhaven, 2nd Dept. 209 A.D. 3d 854, 2022

- Fact:
  - Applicant owned 100 acres located in the Town of Brookhaven.
  - In 2013 he applied under the Code then in effect for site plan and special permit approval for a solar farm.
  - In 2016, the Code Enforcement Officer deemed the application complete.
  - Afterward, and while the application was still pending, the Town Board changed the Code to say that solar farms can be built "only those lands previously cleared and/or disturbed on or before January 1, 2016.
  - The local law that amended the code also had an "exemption" section which provides that "land use applications that have been deemed complete … shall be exempt from the provisions" of the new local law.
  - In 2017, the Planning Board approved the site plan and special use permit and stated that the application was considered under "the code in place before November 7, 2016."
  - Petitioner brought an Article 78 saying the site plan and special permit should have been considered under the new law.

ISSUE

- Should the site plan and the special use permit for the solar farm be considered under the old law or the new law?

Holding

- “It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature.”
- The clearest indicator of legislative intent is the statutory text.
- The plain meaning of the language of a statute must be interpreted in light of conditions existing at the time of its passage and construed as the courts would have construed it soon after passage.
- Where the language is ambiguous, we may examine the statutes legislative history.
- Courts defer to the construction of statutes given them by the authority responsible for their administration,
- Where the question is one of “pure stator reading and analysis, dependent only on accurate apprehension of legislative intent” a court is free to ascertain the proper interpretation from the statutory language and legislative intent.
- The Planning Board’s interpretation of local zoning ordinances is entitled to deference unless arbitrary, unreasonable, irrational or made in bad faith.
- DECISION: Old Law.

Matter of 5055 Northern Boulevard, LLC v. Village of Brookville, 201 A.D.3d 932 (3d Dep't 2022)

- Facts:
  - Article 78 to review determination of Code Enforcement Officer.
  - Plaintiff operated a gas station which was a prior non-conforming use.
  - Plaintiff applies for building permit but building permit is denied.
  - Per the Code Enforcement Officer, the prior non-conforming use had been abandoned.
  - Plaintiff brings Article 78

Issue

- Could the Court annul the determination of the Code Enforcement Officer?

Holding

- TOO EARLY FOR AN ARTICLE 78
- Plaintiff must first exhaust his administrative remedies before bringing the Article 78
- In other words, the Plaintiff should have first appealed the Code Enforcement Officer's determination to the ZBA for an interpretation as to the abandonment of the non-conforming use before bringing the Article 78

Matter remanded to Village for ZBA interpretation proceedings.

Empire Import-Export of USA, Inc. v. Town of East Hampton Planning Board, 2nd Dept. 186 A.D.3d 1364, 2020

- Fact:
  - Applicant wants to construct a canopy on its gas station.
  - Town denies site plan approval because the canopy does not fit within the "use" of surrounding properties and would bring about a "noticeable change in the visual character of the area."
  - Applicant brought an Article 78 and claimed the denial was not supported by "substantial evidence."

ISSUE

- Does the Planning Board have based its denial on “substantial evidence”?

Holding

- The substantial evidence test applies only to a “quasi-judicial evidentiary hearing”
- A local planning board has broad discretion in deciding applications for site plan approval under Town Law 274-a.
- Judicial review is limited to determining whether the board’s action was illegal, arbitrary and capricious, or an abuse of discretion.
- The Planning Board held several informational public hearings.
- Based on those public hearings, it properly considered whether the proposed project was consistent with the use surrounding the properties, and whether it would bring about a noticeable change in the visual character of the area.
- Given the size and scale of the particular canopy, the Court could not say the Planning Board did not have a rational basis.

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

- Facts:
  - 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.

Titan Concrete, Inc. v. Town of Kent, 2nd Dept. 202 A.D. 3d 972, 2021

- Fact:
  - Petitioner owns commercial property on which a concrete batch plant operated since at least 1949.
  - Petitioners purchased in 2016 and leased it to Titan Concrete to refurbish and operate concrete plant.
  - Town ZBA concluded that Petitioners holds a use variance to operate a concrete plant that runs with the land.
  - Town Board passes a local law that prohibits the operation of concrete plants in all zoning districts except for the Industrial District.
  - The Property was not in an Industrial District.
  - The local law said that if a company was operating a concrete plant in another zoning district, it would become a non-conforming use and such use will terminate in 2 years unless extended by the ZBA for a finite period of time upon showing of good cause.
  - Petitioner brings Article 78 and declaratory judgement action to nullify the local law
  - One of the basis for the Article 78 was that town supervisor had a conflict and didn't recuse herself.
  - The supervisor is a member of the Hill & Dale Property Owners, Inc., which is a petitioner/plaintiff in a related proceeding and action seeking the annul the ZBA's determination regarding the variance.
  - The Supreme Court nullified the local law because of the conflict.

ISSUE

- Did the Supreme Court properly nullify the local law?

Holding

- Resolution of a conflict of interest requires a case-by-case examination of the relevant facts and circumstances.
- It is critical that the public be assured that their officials are free to exercise their best judgment without any hint of self-interest or partiality, especially if a matter under consideration is particularly controversial.
- In this case, the supervisor conceded that being a member of the Hill & Dale Property Owners, Inc. raised a conflict of interest for her, and recused herself from voting on the local law.
- However, she continued to preside over the public hearings, engaged in discussions with a representative of Titan and the public on the matter, joined her colleagues in executive session, and voted on certain motions related to the local law.
- A violation of General Municipal Law is not necessary in order for there to be an improper conflict of interest.
- The relevant question is whether an official had "any direct interest, pecuniary or otherwise" in a project "such that their vote could reasonably be interpreted as potentially benefitting themselves."
- The test to be applied is not whether there is a conflict, but whether there might be. (*Matter of Tuxedo Cons. & Taxpayers Assoc. v. Town Bd. Of Tuxedo*, 69 A.D.3d 320)
- The supervisor had an interest in the local law which went beyond mere expressions of personal opinion, or an interest shared by a majority of property owners in the town.
- Also didn't get advisory opinion of town ethics committee.

Manocherian v. Zoning Board of Appeals of the Town of New Castle, 201 A.D.3d 804 (2d Dep't 2022)

- Facts:
  - Facility began operating in 1964 under a special permit as a sanitarium for children with chronic asthma
  - Over time the facility began to also house children with other disabilities.
  - The Town changes its Code to state that all nursing facilities must operate with a special permit, and, as a condition to granting the special permit, the nursing facility must front on a state or county road.
  - The facility did not front on a state or county road.
  - Facility wanted to expand and applied to the Town for an amended special permit
  - Town Code Enforcement Officer sends the matter to the ZBA for an area variance as to the County/State road frontage requirement.
  - ZBA grants area variance

Issue

- Whether the Town ZBA can grant an area variance as to a condition for special permit approval?

Holding

- It may not have even been necessary to obtain an area variance as the use was a pre-existing non-conforming use.
- Nonetheless, the Town ZBA has the power to grant an area variance as to a condition for special permit approval.