Case Law Review -2020

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C.B.H. Properties, Inc. v. Rose
205 A.D. 2nd 686 (1994)

- Facts:
  - Article 78 brought to challenge a decision of the Town of Hempstead ZBA which denied a special use permit renewal for a cabaret.
  - Article 78 also challenged the denial of a renewal of an off-street parking variance.
  - Community residents claimed that the cabaret and the parking across the street was the primary source of noise, disturbance, trespassing, and littering.
  - The cabaret was becoming a nuisance and the ZBA used the opportunity for renewal of the special permit and variance as a means to shut down the cabaret.

Issues

- Can the ZBA deny a renewal of the special permit because of the “nuisance” it was creating in the neighborhood.

Holding

- The classification of a special permit is tantamount to a legislative finding that, if the special permit or exception conditions are met, the use will not adversely affect the neighborhood and the surrounding areas.
- Although there is no entitlement to a special permit, once the applicant shows that the contemplated use is in conformance with any conditions imposed, the special permit must be granted.
- It is impermissible to deny a special permit solely on the basis of generalized objections and concerns of the neighborhood, which is tantamount to “community pressure.”
- The ZBA must issue the special permit with reasonable conditions.

Nyack Hosp. v. Village of Nyack Planning Board 231 AD2d 617

- Facts:
  - Village of Nyack Planning Board gave a preliminary approval to a site plan for Nyack Hospital.
  - When the hospital applied for final approval, the Planning Board did not grant it within 62 days.
  - Hospital brought an action to declare the site plan approved by default.

Issue

- Does the default provisions in state statute apply to site plan approval?

Holding

- The State Legislature failed to include an approval-by-default provision in either the Village Law or the Town Law which govern site plan approval.
- The failure of the Legislature to include an approval-by-default is a strong indication that the exclusion was intended.
- How about subdivisions?
- What is the recourse if there is constant delay?
- Can there be a local provision for default approval?

Matter of Route 17k Reals Estate, LLC v. ZBA of the Town of Newburgh, 168 AD3d 1065 (2019)

Facts:

- Property owner wanted to build a hotel on his property.
- Code compliance office denied the application because the Code says that a hotel has to have its "principal frontage" on a state or county highway.
- Property owner applied to ZBA for an area variance from this provision.
- ZBA granted area variance.
- Neighbor sued saying it should have been a use variance.

Issue

- Town Law 267(1)(b) defines an area variance as:
  - Authorization by the ZBA for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning law.
- Does the requirement that hotel principal frontage be on a state or county road fit the definition of an area variance or use variance.

Holding

- A local zoning board has broad discretion in rendering a determination on matters within its jurisdiction.
- The requirement that a hotel be on principal frontage is a “physical requirement” not a use requirement and therefore an area variance is appropriate.
- The ZBA considered the 5 criteria and its decision to grant the variance was not irrational or without a rational basis.

Matter of Yeshiva Talmud Torah v. ZBA of Town of Wawarsing, 170 AD3d 1488 (2018)

- Facts:
  - Yeshiva was a not-for-profit incorporated for religious purposes in Brooklyn and owned a 23-acre property in Ulster County.
  - Yeshiva submitted a site plan application to Town to rehabilitate and convert the existing buildings on the property for "ongoing torah and Talmudic studies throughout the summer months."
  - Property is in a Neighborhood Settlement District which allows places of worship.
  - CEO said that while place of worship is allowed, a camp or any type of occupancy that allows overnight stays is not.
  - ZBA upheld CEO decision.

Issue

- Is the operation a place of worship or is it a camp?

Holding

- While deference is given to a Zoning Board in interpreting an ordinance that addresses an area of zoning which it is difficult or impractical for a legislative body to lay down a rule which is all encompassing, when the issue presented is pure legal interpretation, deference is not required.
- If the law at issue does not define a particular term, courts will afford its plain or ordinary meaning, and any ambiguity will be resolved in favor of the property owner.
- Courts of this state have been very flexible in their interpretation of religious uses under zoning codes.
- A synagogue and related onsite facilities like a rectory and school halls would be allowed.
- The purpose for constructing the facility is to provide religious instruction at a location with a tranquility and natural environment.

Northwood School, Inc. v. ZBA of North Elba, 171 AD3d 1292 (2019)

- Facts:
  - Private Boarding school was left a single-family house in Lake Placid.
  - It's located near the private school.
  - School wanted to use the house for students to live in with supervising faculty member.
  - CEO said the use is not allowed; its not a single-family residents.
  - Single-family residential is defined as: "(a) a detached dwelling unit designed for year-round or seasonal occupancy by one family." Family is defined as "a group of people, related or not related, living together as a common household …"

Issues

- Was the ZBA interpretation of the code a pure legal interpretation or was it a zoning interpretation?
- Is the ZBA given deference?

Holding

- The court does not defer to a ZBA's pure legal interpretation of terms in an ordinance.
- However, the ZBA is accorded reasonable discretion in interpreting an ordinance that addresses an area of zoning where it is difficult or impractical for a legislative body to lay down a rule which is both definitive and all-encompassing.
- Whether schools proposed use falls within the definition of "family" is "essentially a factual question."
- Defer to ZBA unless irrational.
- Temporary nature of students (one or two years), go home for vacations, not use property address as residence are all factors considered.
- Not a family.
- How does this compare to Yeshiva case? Deference to religious or schools uses.

People v. Ventura, 97 NYS3d 379 (2019)

- Facts:
  - Mr. Ventura was allegedly using his property illegally to process dirt, soil, gravel and rock or rock crushing.
  - Mr. Ventura claimed that quarrying was a legal nonconforming use on his land and therefore he went to trial on the five counts.
  - After non-jury trial, he was found guilty on all five counts and fined $350 for each count.
  - Mr. Ventura's witness testified that rock crushing had taken place on the property continuously since 1983, when a site plan was issued for the property.

Issue

- Does Mr. Ventura owe $1,750.00?

Holding

- The law in place in 1983 did not allow quarrying to take place on the property.
- The 1983 site plan approval was for a “contractor’s yard” on the property.
- Contractor’s yard and garages were allowed and accessory uses customary with and incidental to the aforesaid use.
- The 1983 site plan mentions a storage yard but makes not mention of processing dirt, soil, gravel or rock.
- As a nonconforming use cannot be established through a use of property that, when the use commenced, was in violation of the prior zoning ordinance, Mr. Ventura must pay.

Matter of Healy v Town of Hempstead Board of Appeals, 83 NYS 3d 836 (2018)

- Church wants to build a 26,000 sq. ft. cultural center in a residential neighborhood adjacent to the church.
- Variances and special permits were required.
- ZBA held a full day hearing and granted the permits.
- Neighbors across the street brought Article 78 on claiming SEQRA was done incorrectly.

Issue

- Was the board hearings conducted properly?
- Was there a conflict of interest because one of the ZBA members was the sister-in-law of an attorney who used to be a member of the law firm representing the Church and because the law firm's current managing partner was a campaign manager for her estranged husband?
- Was there a "hard look" at SEQRA and was there a reasoned elaboration explaining the neg dec.

Holding

- No conflict of interest.
- One paragraph declaring the center and accompanying use and area variance “will not have a significant effect on the environment.”
- No explanation. No rationale. No articulation of the basis of its determination.
- Doesn’t matter if the rational is in the record. It must be in the decision. Courts don’t search the record.
- Zoning determination cannot serve as the rationale for its SEQRA determination.
- Zoning decisions are no substitute for the separate analysis focusing on the environment.
- The zoning decisions were conditional and would not support an unconditional negative declaration.
- SEQRA fails and therefore the variances and special permits must fail.