Case Law Review

Onondaga County Planning Symposium

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Cappiello v. City of Glen Cove, 232 A.D.3d 844 (2nd Dep't 2024)

Facts:

- Developer sought a building permit for the construction of a single-family dwelling on a vacant lot located in the City of Glen Cove;
- The Neighbors in this case own homes on lots on either side of the vacant lot;
- All three lots slope downwards to a waterway, and, the soils on the lots make portions of all three lots unstable for building;
- Based upon representations made by the Developer's Engineer related to the soils, the City of Glen Cove Code Enforcement Officer issued a building permit to the Developer for the vacant lot;
- During the construction process, soils shifted and the neighbors' homes were damaged
- Neighbors sue the City of Glen Cove for negligently issuing the building permit

Issue: Whether the City is liable for negligence in issuing the building permit?

Holding

- A municipality and its officers have available the “governmental function immunity defense” in negligence actions
- Rule: If a municipal officer is engaged in a “discretionary determination”, and, the determination involves reasonable judgment, liability for negligence will not attach
- In this case . . .
  - The Code Enforcement Officer’s issuance of the building permit was discretionary; AND
  - Involved reasonable judgment as he relied upon the representations of the Developer’s Engineer.

Hoefler v. Town of Pompey Planning Board, Index No. 010619/2023 (Onondaga Cty., Sup. Ct., March 22, 2024)

Facts:

- Developer proposes a site plan for a meat processing facility on a property in the Town's "Farm District"
- Under the Town Code, "Farms" are allowed in a "Farm District" as of right
- The Town Code defines "Farms" as "the use of land for agricultural purposes, including the production of field crops, fruits, vegetables, ornamental plants, livestock products and/or woodland products"
- Industrial uses are not allowed in the Farm District. "Industrial" is defined under the Town Code as "any use of the property in the production of articles from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand, labor or machine."
- The Code Enforcement Officer renders an interpretation that the facility fits under the definition of "Farm" and did not fit within the definition of "Industrial"
- The Planning Board considers and grants the site plan for the project
- Neighboring property owners bring an Article 78 challenging the Planning Board's site plan approval on the ground (amongst others) that the Planning Board allowed an improper use within the Farm District
- Issue: Whether the Planning Board's approval should be approved in an Article 78 proceeding?

Holding

- The Code Enforcement Officer rendered an interpretation that the meat processing facility was an allowed use.
- The Neighboring property owners could have appealed that interpretation to the ZBA, however, they did not
- Because neighboring property owners did not exhaust their administrative remedies by challenging the Code Enforcement Officer's interpretation, an Article 78 against the Planning Board was improper

Freepoint Solar LLC. v Town of Athens, 234 A.D.3d 127 (3d Dep't 2024)

Facts:

- Developer sought use variance for a solar farm.
- Town ZBA denied the use variance. They applied the use variance standard under Town Law 267-b.
- "No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created."
- Developer brought Article 78 proceeding against town zoning board of appeals for denying the variance.

Holding

The Court determined that Town Law 267b was the incorrect analysis for a use variance for a solar farm and that the "public necessity" use variance test applies.

The "public necessity" use variance test:

(1) Applicant must show that [siting a new facility or] modification [of an existing facility] is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible to [grant a use variance] than to use alternative sources of power [...]; and

(2) "where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced".

Bali Two, LLC v. Town of Brookhaven Planning Board, 225 A.D.3d 691 (2d Dep't 2024)

Facts:

- Developer proposes a two-lot subdivision to the Town of Brookhaven Planning Board.
- Developer presents on the subdivision at the public hearing and states that there will be no adverse public effects resulting from the subdivision.
- No opposition is presented at the public hearing.
- Following the public hearing, a neighboring property owner (who is an engineer) submits a letter providing an opinion that the subdivision will cause adverse public effects as a result of the subdivision
- The Planning Board, relying on the letter of the neighbor, denies the subdivision application
- Developer brings an Article 78 challenging the determination of the Town Planning Board
- Issue: What relief, if any, is the developer entitled to?

Holding

Because the developer was not able to rebut the neighbor's letter at the public hearing, and, because the letter was relied upon by the Town Planning Board, the developer was entitled to a new public hearing (was denied a due process right)

Case was remanded to the Town Planning Board for another public hearing.

Gross v. Zoning Board of Appeals of the Village of Warwick, 233 A.D.3d 942 (2d Dep't 2024)

Facts:

- Developer issued a building permit by the Code Enforcement Officer for a single-family home.
- Neighboring property owner appeals the determination to the ZBA.
- The ZBA upholds the determination of the Code Enforcement Officer.
- The neighboring property owner brings an Article 78 proceeding challenging the determination of the Village ZBA but the lawsuit fails to name the Developer as a party to the lawsuit
- Issue: Can the Article 78 proceed against the municipality alone?

Holding

- The Developer is a necessary party to the action
- As the owner of the property that was the subject of the building permit challenged by the neighboring property owners, the developer needs to be afforded an opportunity to be heard in the Article 78 proceeding.
- Therefore, the case cannot proceed without the Developer as a named party to the lawsuit.

16 Main Street Property, LLC v. Village of Geneseo, 225 A.D.3d 1204 (4th Dep't 2024)

Facts:

- Village CEO issued a notice of violation for having an excess number of occupants at a property which had previously been used as a bed-and-breakfast prior to 2011.
- After 2011 the Village amended the zoning code and bed-and-breakfasts were no longer an allowed use.
- Property owner appealed CEO's determination with Village ZBA, and sought permission to use the property as a two-family dwelling with 4 tenants per unit; or a single-family dwelling with 8 sorority members; or a bed-and-breakfast with property manager living on site.
- ZBA denied property owner's applications.
- Property owner filed an Article 78 action based on theories of regulatory taking claimed that portions of the new zoning law were unconstitutional and that the property should be "grandfathered in" because it was previously a bed-and-breakfast.
- Property owner said portions of the Village's rental housing law were illegal.

Holding

The court determined that the ZBA's denial was not arbitrary and capricious and that an eight person occupancy load is not arbitrary and capricious.

The court found that a housing law containing a rebuttable presumption that a group of more than four persons living in a dwelling unit "who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family" was acceptable and that the Petitioner did not submit evidence to rebut that presumption.

The Court determined that the property was not grandfathered in as a bed and breakfast because the Village code had a provision that stated that if the use had been discontinued for 365 days, the nonconforming use shall not be reestablished.

Gabriele v. Zoning Board of appeals of the Town of Eastchester, 228 A.d.3d 659 (2d Dep't 2024)

Facts:

- Developer applied for a building permit to build a residential apartment complex
- The Town Code Enforcement Officer referred the case to the Town ZBA for several area variances.
- A public hearing was held, and, the applicant presented. The public hearing was then closed.
- The Applicant attempted to file a "post-hearing brief", however, the ZBA indicated that they would not consider it.
- The ZBA renders a decision, going through the five (5) statutory criteria, and, denies the variances.
- Developer brings an Article 78 challenging the ZBA's determination?
- Issue: Whether the ZBA's determination should be overturned?

Holding

- The ZBA went through the five (5) statutory criteria, and, its decision was not arbitrary and capricious
- The ZBA had no obligation to consider a “post-hearing brief” where the Applicant was given sufficient opportunity to be heard at the public hearing (i.e., no due process violation).

Supinksy v. Town of Huntington, 234 A.D.3d 857 (2d Dep't 2025)

Facts:

- Developer applied for area variances with the ZBA and was denied.
- Developer filed a FOIL request seeking "a memorandum prepared by the Chair of the Town of Huntington Zoning Board of Appeals" related to the requested variances.
- Developer also filed an Article 78 challenging the denial of the variances.
- Judge dismissed the Article 78 stating that the ZBA did not act in an arbitrary and capricious matter.
- Following the dismissal of the Article 78, the Town took the position that it no longer needed to respond to the FOIL request.
- Issue: Whether the Town's obligations under FOIL survived dismissal of the Article 78 lawsuit?

Holding

- Yes, regardless of the outcome under the Article 78, the Town’s obligations pursuant to FOIL still survive, and, it still must comply with the FOIL statute.

Smith v. Town of Thompson Planning Board, 233 A.D.3d 1107 (3d Dep't 2024)

Facts:

- Developer submits a site plan application to the Town of Thompson Planning Board related to the construction of a massive building.
- The zone in which the proposed building sits allows for warehousing centers, but, does not allow for distribution centers.
- The building is labeled on the site plan map as "warehouse/distribution center"
- The Town of Thompson's Planning Board planning consultant states that, in their opinion, based upon the layout of the site, the likely intent of the site is distribution.
- The Developer's Attorney submits a letter to the Planning Board stating that the intended use of the site is warehousing.
- The Town Planning Board found that the intended use of the site is warehousing, and, approves the site plan.
- Issue: Whether the Town Planning Board acted arbitrarily and capriciously?

Holding

- Yes, the Planning Board acted arbitrarily and capriciously.
- The Planning Board acted arbitrarily and capriciously by rendering a use interpretation under the Code, and, then issuing a site plan approval (the Planning Board usurped the role of the Code Enforcement Officer).
- A use determination should have been made in the first instance by the Code Enforcement Officer. If the Code Enforcement Officer determined that the proposed use was allowed, the application for site plan approval could move forward.
- Remanded back to the Town for a use determination by the Code Enforcement Officer.

Hudson View Park Company v. Town of Fishkill, 234 A.D.3d 40 (2d Dep't)

Facts:

- Developer proposed building a mixed-use project on a split-zoned parcel.
- The project required a re-zone of a portion of the parcel.
- In 2017, the Developer, the Planning Board and the Town Board entered into a Memorandum of Understanding in which it was agreed that the:
  - "The Town Board shall not terminate its review of the Zone Change Petition, and the project in general, until it reaches a final determination on the merits in its legislative judgment regarding the best interests of the Town based upon empirical data and other objective factual bases" AND
  - The Agreement was binding upon the Parties' successors
- In April 2020, a newly elected Town Board issued a resolution terminating its review of Developer's Zone Change Petition prior to rendering a determination
- Issue: Whether the Town Board acted properly?

Holding

The Town Board acted properly for the following reason:

- A previous Town Board cannot tie the hands of other successor Boards in matters related to its legislative function (i.e., zoning)

Based upon the above, the MOU was void and unenforceable.

Henry v. Town Board of Town of Manlius, 225 A.D.3d 1142 (4th Dep't 2024)

Facts:

- Town of Manlius implements a solar law that requires the Town Planning Board to issue special permits for solar farms within the Town.
- The Town of Manlius desires to lease its landfill to a solar developer for a solar farm
- Developer applies to the Town Planning Board for a special permit
- A public hearing is held on the special permit, and, there is a lot of public opposition to the development
- The applicant withdraws its application
- The Town Board changes solar its law and exempts solar farms on its own land (i.e., the landfill) from having to receive a special permit
- The solar development moves forward
- Neighboring property owners bring an Article 78, and, claim that the Town acted improperly and that they have a "vested right" under the prior solar law to force planning board review of the project
- Issue: Did the Town act properly?

Holding

- Rule: Pursuant to the New York Constitution, and, New York Home Rule Law, a municipality may adopt local laws governing the health, safety and welfare of its residents so long as such legislation is not unconstitutional
- By enacting the revised solar law, the Town was exercising a core legislative function (regulating for the health, safety and welfare of its residents), and, it was constitutional (i.e., the Town Board can give the Planning Board special permit powers, and, it can also take them away).
- Furthermore, allowing a neighboring property owner to claim they have a “vested right” in their neighbor’s prior zoning designation would strip municipalities of their zoning powers

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