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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.

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No. 184 SSM 20  
In the Matter of John Gebbie,  
Respondent,  
v.  
David Mammina, &c., et al.,  
Appellants.

Submitted by Richard S. Finkel, for appellants.  
Submitted by William A. DiConza, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed,  
with costs, and the judgment of Supreme Court reinstated.

In view of the broad discretion afforded zoning boards considering applications for area variances (see Matter of Pecoraro v Board of Appeals of Town of Hempstead, 2 NY3d 608, 612-613 [2004]), the denial of petitioner's application for area variances to subdivide his lot to create two nonconforming lots had a rational basis and was not arbitrary and capricious. The Board of Zoning Appeals rationally balanced and weighed the requisite statutory factors, and the Appellate Division erroneously substituted its judgment for that of the agency (see Town Law § 267-b [3] [b]).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and judgment of Supreme Court, Nassau County, reinstated, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided August 27, 2009