Matter of Feliciano v Board of Zoning Appeals of the Town of Islip
2008 NY Slip Op 33766(U)
October 3, 2008
Supreme Court, Suffolk County
Docket Number: Index No. 34423-07
Judge: Denise F. Molia

Index No.: 34423-07

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA,**
Justice

Application of JOSE A. FELICIANO, SHELDON MILO, ROBERT WENDT and DEAN RAIO,

Petitioners,

For a Judgment Pursuant to Article 78 of the CPLR,

- against -

BOARD OF ZONING APPEALS OF THE TOWN OF ISLIP,

Respondent.

CASE DISPOSED: YES
MOTION R/D: 11/29/07
SUBMISSION DATE: 8/8/08
MOTION SEQUENCE NO.: 002 MD

ATTORNEY FOR PETITIONER
John N. Prudenti, Esq.
1235 Montauk Highway
Mastic, New York 11950
ATTORNEYS FOR RESPONDENT
Islip Town Attorney
655 Main Street
Islip, New York 11751

Upon the following papers filed and considered relative to this matter:

Notice of Petition and Verified Petition dated October 2007; Exhibits A through E annexed thereto; Verified Answer dated April 25, 2008; Affirmation dated April 25, 2008; Certified Return; Respondent's Memorandum of Law; and upon due deliberation; it is

ORDERED, that the petition of Jose A. Feliciano, Sheldon Milo, Robert

Wendt and Dean Raio, pursuant to CPLR Article 78, for a judgment annulling, vacating and setting aside the action of the respondent Board of Zoning Appeals denying petitioner's application for a variance; and for an Order directing the said Board to approve petitioner's application in all respects, is denied.

The petitioners are the owners of a "through lot" located on the west side of Crooked Hill Road in Brentwood, Town of Islip, New York, which runs from Crooked Hill Road to MacArthur Avenue. The subject lot is 50 feet wide on Crooked Hill Road and 75 feet on MacArthur Avenue. The MacArthur tax lot is currently improved with a one family dwelling. The record indicates that the petitioners want to subdivide the entire through lot into two separate lots,, leaving one conforming lot on MacArthur and resulting in the creation of a new building lot on Crooked Hill Road.

The subject parcel is located in a Residential "A" zoning use district pursuant to the Islip Town Code, which requires an area of 11,250 square feet, a floor area ration of 25% , and a minimum lot width or 75 feet for the construction of a single family dwelling.

The petitioners filed an application with the respondent Board of Zoning Appeals for permission to subdivide one lot into two lots, and for permission to construct a two story single family dwelling on the newly created substandard lot having a width of only 50 feet and a lot area of only 6,000 square feet. Two separate public hearings were held on the application on June 12, 2007 and July 17, 2007.

In making determinations on area variance applications, Town Law §267-b(3)(B) requires a Zoning Board of Appeals to consider whether:

1. an undesirable change will be produced in the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

2. the benefit sought by the applicant can be achieved by some other, feasible method;

3. whether the requested area variance is substantial;

4. the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and

5. the alleged difficulty was self created, which consideration shall be relevant to the decision of the Zoning Board, but shall not necessarily preclude the granting of the area variance.

By decision dated October 2, 2007 and entered in the Office of the Islip Town Clerk on October 3, 2007, the respondent Board denied the petitioners' application. In its decision, the Board discussed the history of the subject parcel, including the fact that the reliefs as to width and area sought herein would not qualify the parcel as single and separate under the Code. The Board discussed other variances that had been granted in the neighborhood and distinguished them from the petitioners' application, noting as well that at least one of the prior variances was granted only because the Board had been provided with incorrect information within the application. The decision commented on the substantial nature of the variance sought, as well as the finding that the granting of the application would result in the effective creation of nine substandard lots in the vicinity, thereby adversely affecting the nature and character of the area. The Board believed that such action would create a precedent not in the best interests of the area.

The instant proceeding was subsequently commenced by the petitioners, alleging that the aforesaid decision of the respondent Board was irrational, arbitrary and capricious, and not supported by the evidence submitted and the record before it.

The Court of Appeals has reaffirmed the limited role of the courts in the review of decisions issued by local land use boards as follows:

> "As with board determinations on variances, a reviewing court is bound to examine only whether substantial evidence supports the determination of the board. Where substantial evidence exists, a court may not substitute its own judgment for that of the board, even if such a contrary determination is itself supported by the record."

Retail Property Trust v. Bd. of Zoning Appeals of Town of Hempstead, 98 N.Y.2d

190, 196. (See also, Matter of P.M.S. Ltd. v. Zoning Board, 98 N.Y.2d 683; Matter of Ifrah v. Utschig, 98 N.Y.2d 304)

The reason for the limited scope of judicial review was set forth by the Court of Appeals in Cowan v. Kern, 41 N.Y. 2d 591 at 599, as follows:

> "The crux of the matter is that the responsibility for making zoning decisions has been committed primarily to quasi-legislative, quasi-administrative boards composed of representatives from the local community. Local officials generally possess the familiarity with local conditions necessary to make the often sensitive planning decisions which affect the development of their community. Absent arbitrariness, it is for the locally selected and locally responsible officials to determine where the public interest in zoning lies. (McGowan v. Cohalan, 41 N.Y.2d 434, 438, supra.) Judicial review of local zoning decision is limited; not only in our court but in all courts. Where there is a rational basis for the local decision, that decision should be sustained."

Under the circumstances presented, the Court finds that the findings of the respondent Board are rational and supported by the substantial evidence on the record, and are not found to be arbitrary, capricious, or erroneous as a matter of law, or an abuse of discretion. Accordingly, the petition is dismissed.

The foregoing constitutes the Order of this Court.

Dated: October 3, 2008

DENISE F. MOLIA

HON. DENISE F. MOLIA J.S.C.