At a term of the Supreme Court held in and for the County of Wyoming, at the Courthouse in Warsaw, New York, on the 1st day of April, 2013.

PRESENT: HONORABLE MARK H. DADD
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT: COUNTY OF WYOMING

In the Matter of the Application of

MELANIE BOOTH,
MELODY D. DIETZ,
CAROLYN E. GRIEVE,
MILDRED M. MANDEVILLE,
GENEVIEVE M. MATACZ and
STEPHEN A. MATACZ
Petitioners

v.

VILLAGE PLANNING BOARD
OF THE VILLAGE OF PERRY,
PERRY PUBLIC LIBRARY, and
PHILIP COWIE
Respondents

MEMORANDUM AND JUDGMENT

Index No. 45250

By petition pursuant to CPLR Article 78 and §3001, verified on November 21, 2012, the petitioners seek an order: 1) annulling and setting aside the June 27, 2012, resolution adopted by the Village Planning Board of the Village of Perry [hereinafter, the "Planning Board"] which found that the proposed action of the Perry Public Library [hereinafter, the "Library"], involving the construction of a parking lot upon an adjacent parcel of land acquired by the Library for this purpose at 72 North Main Street, was a "Type II Action" under the State Environmental Quality Review Act [hereinafter, "SEQRA"] requiring no further environmental impact review; 2) annulling and setting aside the November 14, 2012, determination of the Planning Board which granted the Library's site plan application with certain conditions or

stipulations attached; and 3) declaring that the Library may not proceed with the construction of the proposed parking lot unless and until it obtains variances from Village Zoning Law §§490-35 [relating to lot grading and drainage], 490-33(A)(3) [relating to screening requirements for an automotive use area] and 490-33(A)(4) [relating to access requirements for an automotive use area]. The Library and the Planning Board ask that the petition be denied and the proceeding dismissed upon the answers, both verified on December 13, 2012, which have been submitted by Ronald G. Hull, Esq., for the Library, and David M. Roach, Esq., for the ZBA and the Planning Board. Respondent, Philip Cowie, the owner of the house at 76 North Main Street in which petitioner Melanie Booth resides as a tenant, has been made a respondent pursuant to CPLR 1001 as a person "who might be inequitably affected by a judgment" in this case. Although served, he has not appeared in the action.

NOW, upon the petition, the verified answers and the certified record, and upon consideration of the Memorandum of Law of David M. Roach, Esq, dated December 13, 2012, together with the annexed exhibits, the Memorandum of Law of Ronald G. Hull, Esq., dated December 13, 2012, the verified reply of Arthur J. Giacalone, Esq., dated December 18, 2012, together with the annexed exhibit and one-page addendum to the record, the responding affirmation of David M. Roach, Esq., dated December 28, 2012, the responding affirmation of Ronald G. Hull, Esq., dated December 30, 2012, together with the annexed exhibits, and the post-argument affirmation of Arthur J. Giacalone, Esq., dated December 26, 2012, together with the annexed exhibit, and upon due deliberation after hearing Arthur J. Giacalone, Esq., for the petitioners, David M. Roach, Esq., for the Planning Board and Ronald G. Hull. Esq., for the Library, the Court decides as follows.

The case stems from the plan of the Library, situated at 70 North Main Street in the Village of Perry, to acquire the property next-door at 72 North Main Street in order to use it for the construction of a Library parking lot. The Library entered into a contract to purchase 72 North Main Street in 2009. The Court notes that one of the petitioners, Carolyn Grieve, challenged on SEQRA grounds the purchase of the property and the Library's adoption of the parking lot plan in an Article 78 proceeding filed in 2010. This Court ultimately dismissed her

action on procedural grounds in a decision and order dated January 23, 2012 . Subsequently, according to the affirmation of counsel to the Library, the Library Board of Trustees determined in March of 2012 that the parking lot project was an "unlisted action" under SEQRA, and, after conducting an environmental review, concluded that it would not result in any significant environmental impact. Whereupon, the Board issued a "negative declaration" upon a SEQRA "Short Environmental Assessment Form" (copy submitted as "Exhibit A" attached to the December 30, 2012, affirmation of Ronald G. Hull, Esq.). Pursuant to a demolition permit issued on June 6, 2012, the Library then demolished the house and other structures at 72 North Main Street property in preparation for the construction of the parking lot.

In this proceeding, the petitioners challenge actions taken by the Planning Board relating to the parking lot project. Specifically, they ask the Court to annul the Planning Board's determination that the project is a "type II action" under SEQRA, and the Planning Board's decision to approve the Library's site plan after attaching to it certain conditions and stipulations.

Initially, the Court finds that the petitioners have standing to proceed. All are residents of properties abutting the Library and/or the adjacent parcel at 72 North Main which the Library acquired for its parking lot project. Their close proximity to the site in question is sufficient to allow an inference of actual injury, and their alleged injuries "[fall] within the zone of interests to be protected by SEQRA and the [Villages's] zoning laws" (Matter of Youngewirth v. Town of Ramapo Town Board, 98 A.D.3d 678, 680 [2nd Dept, 2012]).

With respect to SEQRA compliance, the Court finds no basis for overturning the Planning Board's determination that the parking lot project is a "type II action." In this area, the Court's review power is limited. So long as the determination under review was made in accordance with lawful procedure, was not affected by an error of law and was not arbitrary and capricious or an abuse of discretion, it must be upheld (see, Akpan v Koch,75 N.Y.2d 561, 570 [1990]). Here, the Planning Board's SEQRA determination clearly had a rational basis. Projects which are "routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area . ." are exempted from SEQRA review by 6

NYCRR §617.5(c)(8). Pursuant to this section, the Planning Board reasonably found the Library's small parking lot to be exempt. Contrary to the contention of the petitioners' counsel, nothing in the language of this section mandates that an educational institution's expansion plan involve only land already owned by the institution. Therefore, the regulation does not require that Library's project be excluded from "type II" treatment simply because the Library intends to build its parking lot on a newly acquired adjacent lot. Rather, in the language of 6 NYCRR §617.5(c)(8) it is the square footage of the project, not the prior ownership of the property on which the project will be built, which is used as the criterion for determining whether an expansion plan is, or is not, likely to have a significant environmental impact. Thus, given that the proposed parking lot is under the 10,000 square foot size limit, the Planning Board could properly classify it as a "type II action" under 6 NYCRR §617.5(c)(8).

With respect to petitioners' counsel's contention that SEQRA review was improperly segmented in this case, the Court notes that, generally, determinations on "type II actions" may properly be segmented from review of other actions (see, Matter of Rogers v. City of North Tonawanda, 60 A.D.3d 1379, 1379-1380 [4th Dept., 2009]); and, moreover, the Court finds none of the "dangers" attributable to improper segmentation to be present in this case (see Matter of Foreman v. Trustees of the State University of New York, 303 A.D.2d 1019 [4th Dept., 2003]).

The Court finds that the Planning Board's approval of the Library's site plan application must be vacated, however. Although there is no merit in the petitioners' claims that the Planning Board, in approving the plan, failed to properly apply the balancing test required by the "accommodation standard" used for educational institutions (see Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 [1986]), or that it erred in finding that the plan complied with the zoning ordinance relating to lot grading and drainage (Village Zoning Law §490-35), the Court finds that the petitioners are correct in charging that the Planning Board relied upon an erroneous interpretation of the Village Zoning Law when it concluded that the site plan was fully in compliance with all applicable zoning ordinances (see, Village Zoning Law §490-17[E][1]). Specifically, the Planning Board ruled that the Library need not comply with Village

Zoning Law §490-33(A)(3) and §490-33(A)(4) because those sections do not apply to the Library's proposed parking lot. After examining the statutes, the Court has concluded that §490-33(A)(3) and §490-33(A)(4), in fact, do apply. As a consequence, the site plan cannot properly be approved unless and until the Library obtains additional variances for these two zoning ordinances.

Questions of statutory interpretation are purely legal in character. Thus, the Planning Board's reading of the zoning law is not entitled to deference (Matter of Erin Estates v. McCracken, 84 A.D.3d 1487, 1489 [3rd Dept., 2011]; see also, Matter of New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413, 419 [1998]; Matter of Toys "R" Us v. Silva, 89 N.Y.2d 411, 419 [1996]). The Court must interpret the meaning of the zoning ordinances, and in doing so it must construe the statute as a whole, "reading all of its parts together to determine the legislative intent and to avoid rendering any of its language superfluous" (Erin Estates, supra).

Village Zoning Law §490-33 is entitled "Automotive use areas, gasoline service stations and public garages." Subsections (A)(3) and (4) read as follows:

> A. Any portion of a lot, with the exception of one-and two-family homes, used for open off-street parking and, but not limited to, reservoir space for open sales, service or storage areas for motor vehicles, contractor's equipment or boats shall be deemed an automotive use area and shall be subject to the following requirements:
>
> [. . .]
>
> (3) Screening. Every automotive use area, except off street parking for fewer than five vehicles, shall be screened from any adjoining lot in any R District by a landscaped buffer of no less than five feet

> in width. Such buffer shall be landscaped and maintained by the owner.
>
> (4) Access. No entrance or exit to an automotive use area shall be permitted within 30 feet of any street line, and, except for permitted residential off-street parking areas, no entrance or exit shall be permitted within 10 feet of a lot in any R District.

Subsection 5 states:

> (5) Setback. No building, pump, motor vehicle or any equipment shall be closer than 20 feet to any street line.

In the interpretation of this ordinance used by the Planning Board, which the respondents argue is the correct one, §490-33(A) applies only to "enterprises with a commercial function specific to the vehicles, boats, equipment, etc. . . stored in the subject space" (Record, tab 48a, Site Plan Review Worksheet, page 3). According to the Board, "[t]here would be no need to specifically define 'automotive use area,' which contains a distinct conjunction with a commercial enterprise, if off-street parking and 'automotive use areas' were always one and the same" (Ibid.).

The sections of the ordinance quoted above are sufficient to show that the Planning Board's reading cannot be correct. If the drafters had intended that the defining characteristic of an "automotive use area" should be the use of an off-street parking area for "reservoir space for open sales, service or storage areas for motor vehicles, contractor's equipment or boats," they would hardly have preceded the statement of this essential requirement with the phrase "and, but not limited to." Indeed, by placing the words "but not limited to" before the list of additional uses contemplated by the ordinance, the drafters have signaled that the list was intended to be open ended. Its function, then, is not to restrict the definition of "automotive use area," but to expand and clarify it. By including the open ended

list of additional uses in the definition, the drafters have made clear, for instance, that even when a parking area is devoted primarily to a different use – such as the storage of equipment or boats – it does not thereby cease to be an "automotive use area."

Moreover, if the ordinance is read to restrict the definition of "automotive use area" to the parking areas of "enterprises with a commercial function specific to the vehicles, boats, equipment, etc. . . stored in the subject space" as urged by the respondents, then the exemption for "permitted residential off-street parking areas" contained in subsection (4) is rendered superfluous. On the contrary, in the context of the Zoning Law as a whole, the exemption in subsection (4) is necessary precisely because the definition of "automotive use area" applies to all off-street parking facilities, including residential ones for single or multifamily dwellings.

All ambiguity on this point is erased by Section §490-44, which establishes the required "off-street parking loading and stacking facilities" that must be provided for the various types of permitted buildings – the requirements for the three types of "dwellings" are stated in §490-44(B), as are the requirements for a "[l]ibrary, museum or art gallery." Section §490-44(E)(1) then flatly declares that "[a]ll off-street parking, loading and stacking facilities shall be considered automotive use areas . ." From this, the conclusion is inescapable that the Library's proposed parking lot is an "automotive use area." Furthermore, since the Library is manifestly not a "one- and two-family home," and its proposed parking lot will not be a "permitted residential off-street parking area," the proposed lot is clearly not exempt from the requirements of Village Zoning Law §§490-33(A)(3) and (4).

The Planning Board rejected this interpretation of the statute on the grounds that it caused §490-44(E)(2) and (3) (prohibiting off-street parking within 10 feet of a street line and nonresidential off-street parking within 10 feet of a lot line in any R District) to conflict with §490-33(A)(4) and (5) (setting access and setback requirements for "automotive use areas"). The Court fails to perceive any contradiction or disharmony between the sections. Rather, since the drafters restricted the scope of §490-33(A) through the exclusion of parking for "one-and two-family homes," it is evident that the 20 foot street line setback requirement contained in §490-

33(A)(5) applies only to other sorts of "automotive use areas," and therefore it does not conflict with or make superfluous the 10 foot street line proximity limit contained in §490-44(E)(2), which has an unrestricted scope embracing all off-street parking including parking facilities for "one- and two-family homes."

NOW, THEREFORE, it is hereby

ORDERED that the petition is granted to the extent that the November 14, 2012, determination of the Planning Board approving the Library's site plan application with certain conditions or stipulations attached is annulled and set aside; and it is further

DECLARED that, upon its re-submission to the Planning Board, the Library's site plan may not be approved as written unless and until the Library obtains variances from the requirements of Village Zoning Law §§490-33(A)(3) and 490-33(A)(4); and it is further

ORDERED that the petition is in other respects denied.

Dated: April 1, 2013

Acting Supreme Court Justice