WESTCHESTER MUNICIPAL PLANNING FEDERATION

LAND USE TRAINING INSTITUTE

2021 CASE LAW UPDATE

DECISIONS RELATING TO SEQRA, ZONING BOARDS AND PLANNING BOARDS

Presented March 25, 2021

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SEQRA CASES

Standing – Courts have continued to strictly construe the requirements for standing to challenge a SEQRA determination.

Cady v Town of Germantown Planning Board, 184 A.D.3d 983 (3d Dept. 2020)

- Respondents' argued Petitioners lacked standing and the Court specifically held that the Petitioners had standing as their residence is directly adjacent to the proposed construction site, the proposed store is directly across the woods and the main parking lot in in the line of sight of Petitioners' property. The Court held the store could obstruct or interfere with the scenic views within the scenic viewshed overlay district from their property which was an injury in fact and actual harm that differs from the suffered by the public at large. Petition was however dismissed on the merits.

Schmidt v. City of Buffalo Planning Bd., 174 A.D.3d 1413 (4th Dept. 2019).

- Dismissing claim concerning project impacting historical property for lack of standing, where petitioner sought to challenge based upon (1) his interest in historic preservation generally; (2) his position as a member of a City advisory board dealing with historic preservation; (3) his interest in photographing the complex; (4) his visits to the complex; and (5) his status as a member of a protected class.

Tilcon New York, Inc. v. Town of New Windsor, 172 A.D.3d 942 (2d Dept. 2019).

- An asphalt company challenged a Town's lease of property to a competing asphalt business and approval of related land use applications. The Court held that petitioner lacked standing — it did not allege any actual or potential injury to itself or the public at large. Increased business competition was not a sufficient interest to confer standing.

Sheive v. Holley Volunteer Fire Company, Inc., 170 A.D.3d 1589 (4th Dept. 2019).

- Article 78 proceeding to enjoin any future "Squirrel Slam" hunting contests conducted by the fire company. Petitioner lived 50 miles from the area where the hunting contests are held. Court held petitioner had no standing to challenge, although she indicated she liked squirrels.

City of Rye v. Westchester County Bd. of Legislators, 169 A.D.3d 905 (2d Dept. 2019).

- City lacked standing to challenge County's proposed Playland Park development projects, applying the "balancing of public interests" test and determining that these projects were immune from local zoning and land use laws and therefore the City was not an involved agency under SEQRA. The individual petitioners were also found to not have an injury which would give rise to standing.

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Vasser v. City of New Rochelle, 180 A.D.3d 691 (2d Dept. 2020)

- Second Department held that petitioners who lived 1,200 and 1,800 feet away from the proposed development lacked standing to challenge a negative declaration and adoption of ordinance because: (1) their homes were not adjacent to, but rather, several streets away from the proposed development; and (2) the speculative and unsubstantiated claims of potential harm (increased noise and traffic) failed to make the requisite showing of direct "injury-in-fact" different in kind or degree than suffered by the public at-large.

Hohman v. Town of Poestenkill, 179 A.D.3d 1172 (3d Dept. 2020)

- The court found petitioners' position as adjacent landowners did not automatically confer standing on them to challenge the Town Board's negative declaration, having failed to allege any unique injury that they would suffer as a result of the Town's proposed land acquisition. Furthermore, the alleged injuries did not directly arise from the Town's potential land acquisition, but instead involved conditions that had preexisted the subject of acquisition for decades.

Agency Discretion

Town of Mamakating v. Village of Bloomingburg, 174 A.D.3d 1175 (3d Dept. 2019).

- Where there are competing expert opinions on the same issue arising during SEQRA review, the agency may credit the information of one expert over the other.

Frontier Stone, LLC v. Town of Shelby, 174 A.D.3d 1382 (4th Dept. 2019).

- SEQRA lead agency has "the discretion to select the environmental impacts most relevant to its determination and to overlook those of doubtful relevance."

Uncle Sam Garages, LLC v. Capital Dist. Transp. Auth., 171 A.D.3d 1260 (3d Dept. 2019).

- Agency's classification of an action as Type II is entitled to judicial deference.

Reasoned Elaboration/Hard Look Requirement

Frank J. Ludovico Sculpture Trail Corp. v. Town of Seneca Falls, 173 A.D.3d 1718 (4th Dept. 2019).

- Lead agency failed to take a hard look at impacts to endangered species and inland wetland habitats where it approved a sewer line, based on summary conclusions that land clearance in hibernation months would not impact endangered bat species.

Micklas v. Town of Halfmoon Planning Bd., 170 A.D.3d 1483 (3d Dept. 2019).

- Despite a clerical error characterizing a Type II action as unlisted, court held that negative declaration was reasonable, even if Planning Board could have provided a more reasoned

elaboration for the basis of the negative declaration. SEQRA sufficed by substance over form.

Brunner v. Town of Schodack Planning Board, 178 A.D.3d 1181 (3d Dept. 2019)

- Planning Board took a sufficient hard look in approving Type I Amazon distribution facility, where Board considered groundwater and stormwater impacts of road salt, traffic impacts, and public safety concerns.

Davis v. Zoning Board of Appeals of City of Buffalo, 177 A.D.3d 1331 (4th Dept. 2019)

- Petitioners commenced proceeding to challenge determinations of both the Zoning Board in granting variances and the Planning Board's SEQRA, site plan and subdivision approvals. The Court upheld the Planning Board SEQRA Findings and approvals where the Board issued a positive declaration, initially denoting the development may have an impact to neighborhood character. Following preparation of EIS and a lengthy review of the project, the Planning Board ultimately determined such impact would not be significant and set forth support in its written findings statement.

Cady v Town of Germantown Planning Board, 2020 WL 3271676 (3d Dept. 2020)

- Court overturned the Supreme Court and upheld the SEQRA determination and approvals, deferring to Planning Board's Findings which followed 4 years of analysis, modifications to reduce impacts, and preparation of a DEIS and FEIS and Findings. The Board had complied with the procedural and substantive requirements of SEQRA, taken the required hard look and required mitigation.

ZONING BOARD

Variances – Courts have continued to grant deference to the decisions of Zoning Boards of Appeal provided the Board conducts the required balancing and consideration of the factors, and the decision is based upon evidence in the record. Courts have overturned determinations which were based upon conclusory statements and not based on evidence.

Muller v. Zoning Bd. Of Appeals of the Town of Lewisboro, 2021 NY Slip Op. 1416 (2d Dept. 2021)

- Court affirmed the denial of a variance to special permit conditions to allow a private kennel with 11 dogs on a 2.1 acre parcel where the Code required 4 acres and a maximum of 10 dogs. The zoning board, in applying the balancing test, is not required to justify its determination with supporting evidence for each of the five statutory factors as long as its determination balancing the relevant considerations is rational. The evidence in the record supported the ZBA's findings that granting the requested variances would produce an undesirable change in the character of the neighborhood and have an adverse effect or impact on the physical or environmental conditions of the neighborhood, that the variances were substantial, and that any hardship was self-created.

Bernstein v. Putnam Valley Zoning Board of Appeals, 2021 NY Slip Op. 844 (2d Dept. 2021)

- Affirming ZBA's issuance of variance, and Building Inspector's issuance of a wetland permit waiver for construction of hot tub in wetland buffer. Waiver was properly issued where inspector had considered drainage issues and adverse impacts, found them minimal, and imposed conditions prohibiting discharges into the buffer. Variance was properly granted where the ZBA properly engaged in the required balancing test and considered the five factors.

Parsome, LLC v Zoning Board of Appeals of the Village of East Hampton, 2021 NY Slip Op. 849 (2d Dept. 2021)

- Court dismissed Article 78 proceeding to annul ZBA determination denying a parking variance for the addition of two additional office units to a commercial property and finding such addition was an intensification of the use. Court upheld ZBA determination finding the record demonstrated that the Board engaged in the required balancing test and considered the relevant statutory factors.

Simon v. Englert, 185 A.D.3d 940 (2d Dept. 2020)

- Finding ZBA denial of area variances as lacking rational basis where ZBA denied variances for impacts to the character of the neighborhood based solely on conclusory statements, where the ZBA determination diverged from the Planning Board's neg. dec., which found no substantial impacts.

Neeman v. Town of Warwick, 184 A.D.3d 570 (2d Dept. 2020)

- Finding grant of area variance an abuse of discretion, where applicant campground had placed nonconforming campsites within 100-foot property setback. Board discounted evidence of adverse impacts and ignored the observation that campsites could be provided elsewhere on the property.

Schweig v. City of New Rochelle, 170 A.D.3d 863 (2d Dept. 2019).

- Upholding ZBA denial of area variance to permit construction of home on 10k square foot lot where zoning required 15k square feet. Court deferred to ZBA's reasonable balancing of factors.

Mengisopolous v. Bd. of Zoning Appeals of City of Glen Cove, 168 A.D.3d 943 (2d Dept. 2019).

- ZBA's denial of an application for area variances was annulled because the ZBA failed to meaningfully consider the relevant statutory factors. Even though the proposed variances were substantial and the alleged difficulty was self-created, the ZBA's failure to cite to particular evidence regarding the questions of undesirable effect on the character of the neighborhood, adverse impact to physical and environmental conditions, or other detriments to the health, safety, and welfare of the community was enough to annul its action.

54 Marion Avenue LLC v. City of Saratoga Springs, 2019 WL 4307913 (3d Dept. 2019).

- The Third Department upheld a denial of a use variance where the record supported the conclusion that the hardship was not unique and was self-created.

Pangbourne v. Thomsen, 175 A.D.3d 547 (2d Dept. 2019)

- Annulling ZBA denial of area variances for failure to weigh the benefit of applicant's requested height variance against detriment to the community on the record. The Appellate Court overturned the Supreme Court decision and remitted the matter to the ZBA.

Matter of D.P.R. Scrap Metal, Inc. v Board of Zoning Appeals of Town of N. Hempstead, 187 A.D.3d 748 (2d Dept. 2020).

- Finding ZBA's denial of area variance arbitrary, where ZBA relied on unsubstantiated and anonymous complaints about applicant's metal recycling operations. No evidence was presented to exhibit the detrimental effect the variance would confer.

Circle T. Sterling, LLC v. Town of Sterling Zoning Board of Appeals, 187 A.D.3d 1542 (4th Dept. 2020)

- Finding ZBA denial of area variance proper, where the administrative record disputed assertions that a proposed mining project would generate de minimums noise. Meeting minutes reflected noise concerns were dispositive in denial of variance. Court deferred to the Board on the duty of weighing conflicting evidence.

Dean v. Town of Poland Zoning Board of Appeals, 185 A.D.3d 1485 (4th Dept. 2020)

- Annulling ZBA grant of use variance, where applicant failed to meet the burden to show unnecessary hardship. Applicants submitted evidence to show costs of asbestos remediation and demolition of existing structure to allow sale of vacant property to show hardship, but did not offer evidence that an alternative conforming use was not feasible. Further, applicant testimony was based on analysis of 2 acre portion of a greater parcel. The inquiry as to an inability to realize a reasonable return may not be segmented to examine less than all of an owner's property rights subject to a regulatory regime.

209 Hudson Street, LLC v. City of Ithaca Board of Zoning Appeals, 182 A.D.3d 851(3d Dept. 2020)

- Overturning denial of area variance, where the Board's environmental review found no negative impacts and the denial was premised mainly on community opposition and Planning Board's "conflicted feelings" about the appeal.

Kaye v. Zoning Board of Appeals of Village of North Haven 2020 NY Slip Op. 3912 (2d Dept. 2020)

- Zoning board did not act illegally or arbitrarily or abuse its discretion when it denied property owner's application for a variance to subdivide lot. The board engaged in the balancing test and considered the five factors. The requested variance would have permitted an undersized lot and the evidence in the record supported that the neighborhood was characterized by oversized lots.

deBordenave v. Village of Tuxedo Park Board of Zoning Appeals, 168 A.D.3d 838 (2d Dept. 2019)

- Board of zoning appeals' decision to grant area variances was supported by evidence that variances would not have undesirable effects on neighborhood.

Bennett v. Zoning Board of Appeals of Village of Sagaponack, 170 A.D.3d 716 (2d Dept. 2019)

- ZBA denial of application for a CO for a pre-existing 3rd floor dwelling unit was not illegal or arbitrary and was supported by evidence in the record. Affidavit presented by applicant as part of Article 78 proceeding was dehors administrative record, and therefore not relevant to analysis of ZBA rationale.

Nonconforming Uses

Nabe v. Sosis, 175 A.D.3d 500 (2d Dept. 2019).

- Deferring to ZBA determination that a change from one nonconforming use to another use would result in adverse traffic impacts, supporting a determination that it would be more detrimental than the existing use, thereby not permitting the change under a local law permitting such changes where the ZBA finds the new nonconforming use is less detrimental.

New York HV Donuts, LLC v. Town of LaGrange Zoning Bd. of Appeals, 169 A.D.3d 678 (2d Dept. 2019).

- A nonconforming gas station that was closed for more than a year due to a tanker truck accident and subsequent gasoline spill remediation activities was allowed to reestablish its nonconforming use. Remediation period was not a “discontinuance” of the nonconforming use.

Interpretations

Northwood School, Inc. v. Zoning Bd. of Appeals for the Town of North Elba and Village of Lake Placid, 171 A.D.3d 1292 (3d Dept. 2019).

- A group of boarding school students and their faculty advisor didn’t qualify as a “family,” and their school’s request to house them in a single-family residence donated to the school was therefore properly denied. Court deferred to this reasonable interpretation.

Casey v. Town of Arietta Zoning Bd. of Appeals, 169 A.D.3d 1231 (3d Dept. 2019).

- Finding that Zoning Officer's proper determination, upheld by the ZBA, that a barn did not qualify as an accessory structure, but was a principal building, was improper from a procedural standpoint. The Court held that the Zoning Board was not entitled to deference where it was a matter of a pure legal interpretation of the underlying code.

Yeshiva Talmud Torah Ohr Moshe v. Zoning Bd. of Appeals of The Town of Wawarsing, 170 A.D.3d 1488 (3 Dept. 2019).

- Holding the Town ZBA erred in determining that school facilities were not a "related on-site facility" to a religious use under the local Zoning Ordinance. Board was not entitled to deference on a pure legal interpretation.

Chestnut Ridge Associates, LLC v. Village of Chestnut Ridge ZBA, 169 A.D.3d 995 (2d Dept. 2019).

- The ZBA had no jurisdiction to interpret whether a landscaping business was permitted in the laboratory-office zoning district absent a prior determination from the building inspector.

Churchill v. Town of Hamburg, 187 A.D.3d 1559 (4th Dept. 2020).

- ZBA affirmed the Code Enforcement Officer's determination that a tourist home was not permitted in the district and ZBA agreed. However, Zoning Ordinance provided for tourist homes as a special permit use. The Court overturned the decision and held ZBA failed to apply the plain language of Town Zoning Ordinance, providing explicitly that special permit uses are permitted uses, subject to Planning Board authorization.

Matter of Committee for Environmentally Sound Dev. v Amsterdam Ave. Redevelopment Assoc. LLC, 2021 NY Slip Op 01228 (1st Dept. 2021)

- NYC Board of Standards and Appeals was entitled to deference with respect to its interpretation of the relevant Zoning Ordinance section, as the BSA's interpretation of a section subject to conflicting interpretations was based on a longstanding DOB interpretation, on which the BSA had relied for several years. As the provision was ambiguous the interpretation was rational.

Wilson v Dechance, 186 A.D.3d 1381 (2d Dept. 2020)

- Article 78 claim to set aside ZBA determination confirming Town Building Inspectors denial for correction of certificate of occupancy to legalize an existing bar. Building Inspector denied, as no building permit had been filed to permit completion of the bar's interior space. Court upheld the ZBA determination, noting that the record supported the determination.

PLANNING BOARD

Site Plan Review/Special Permits/Subdivision

Sagaponack Ventures, LLC v. Board of Trustees of the Village of Sagaponack, 171 A.D.3d 762 (2d Dept. 2019).

- Upholding Planning Board denial of site plan app due to site incompatibility with development. Court cited deference to the Board under arbitrary and capricious standard. PB had properly considered the specific factors set forth in the code relating to site plans as related to impacts of the development on the property and surrounding parcels.

Favre v. Plan. Bd. of Town of Highlands, 2020 NY Slip Op. 3779 (2d Dept. 2020)

- Petitioners challenged Planning Board approval of site plan and special exception use on adjacent lot. Alleged that the Planning Board erred by not requiring new public hearings and referrals following revision of the site plans. Court rejected claims, noting site plans did not substantially change the proposed action.

Matter of Empire Import-Export of USA, Inc. v Town of E. Hampton Planning Bd., 2020 NY Slip Op 04941 (2d Dept 9/16/20)

- Court upheld Site Plan denial of gas station canopy, holding that there was rational basis for determining that the canopy would be inconsistent with the neighborhood and the visual character of the area.

Biggs v. Eden Renewables LLC, 2020 NY Slip Op. 7011 (3d Dept. 2020)

- Planning Board review conformed with town's zoning ordinance and town's solar energy facilities law, in approving site plan and issuing special use permit. The Board could not deny special permit approval based solely on community objection.

Town of Mamakating v. Village of Bloomingburg, 174 A.D.3d 1175 (3d Dept. 2019)

- Planning Board application did not require referral back to the County Planning Dept. for an amendment to Site Plan and Subdivision approval where the particulars of the amended approval were embraced in the initial approval.