

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 43

ROBIN WAMBOLD,

Petitioner,

- against -

VILLAGE OF SOUTHAMPTON ZONING BOARD OF APPEALS, KEVIN GUIDERA as Chairman, DAN GUZEWICZ, JAMES ZUHUSKY, ROB DEVINNEY, GERRY FERRARA, as Members of the Village of Southampton Zoning Board of Appeals; JONATHAN FOSTER, as Building Inspector of the Village of Southampton, and PHILIP M. EDWARDS and NINA S. EDWARDS, as TRUSTEES of the Credit Trust,

Respondents.

By Pitts, J.S.C.  
Dated: July 14, 2014

**COPY**

Index No. 13-21238  
Mot. Seq. # 001 - MD; CDISPSUBJ

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In this CPLR Article 78 proceeding, petitioner seeks a judgment annulling and setting aside a determination adopted by respondent Village of Southampton Zoning Board of Appeals (ZBA) on July 25, 2013, which granted the application by respondents Philip Edwards and Nina Edwards (hereinafter the Edwards) for a variance to replace an existing guest house with a new guest house on their residential property located at 395 First Neck Lane, Southampton, New York. Petitioner is the owner of residential property located at 60 Great Plains Road, Southampton, New York, which adjoins the Edwards' property.

The subject premises is located in a one-family residence district in the Village of Southampton, and is improved with a one-family dwelling, an accessory dwelling (commonly referred to as a guest house), and various accessory structures, including a detached garage, a swimming pool and a pool house. The Edwards submitted an application for a variance to replace the guest house, which is located within a regulated wetlands area, with a new guest house situated outside the wetland area. The existing guest house contains 728 square

feet of floor area, and the proposed new guest house would contain 1,738 square feet of floor area. The Court notes the pre-existing guest house previously had a floor area of 570 square feet, but, by decision of the ZBA on May 25, 2000, a variance was granted allowing the guest house to be enlarged to 728 square feet.

In its decision, the ZBA states that it could not grant the application by the Edwards respondents pursuant to the specific authority contained in § 116-28 (C)(1)(a) of the Zoning Code, as it contains a specific limitation that any enlargement shall not exceed 50% of the pre-existing floor area. The pre-existing floor area of the guest house being 570 square feet, would limit the total floor area to be enlarged to 855 square feet. However, the ZBA states that its power to grant variances contained in § 7-712-b of the Village Law is not subject to the specific 50 % limitation.

The ZBA further states in its decision that there is no evidence the Edwards' requested variance would create a detriment to petitioner's parcel or to other nearby properties. Moreover, it states that there is no evidence granting the requested variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood, and that the significant increase in wetland setbacks would enhance and improve the environmental conditions in the neighborhood. Furthermore, it states that the requested variance would not produce an undesirable change in the character of the neighborhood, as the subject parcel will continue to have a one-family dwelling and a guest house.

The ZBA also addresses in its decision petitioner's contention that the Edwards require a use variance as opposed to an area or dimensional variance. The ZBA explains that where a lot in a one-family residence district contains an existing one-family detached dwelling and a proposed second one-family detached dwelling is to be constructed, and both dwellings are used for a conforming use, an area or dimensional variance, not a use variance, would be required for the proposed second dwelling. The ZBA concluded that an area variance for the proposed second dwelling is warranted pursuant to § 7-712-b of the Village Law.

Petitioner commenced the instant Article 78 proceeding challenging the ZBA's determination granting the Edwards' application for an area variance on the basis that the determination was arbitrary and capricious, and lacked a rational basis. Specifically, petitioner asserts that a use variance is required to expand a nonconforming use beyond the 50% limitation of the Village code and that the subject guest house is deemed a nonconforming use under the Village zoning ordinance. Petitioner also argues that the relocation of a nonconforming use violates the zoning restrictions, and that the ZBA did not have the right to adopt a policy inconsistent with the Village and the State policy favoring the elimination of nonconforming uses.

The court's role in reviewing an administrative decision is not to decide whether the agency's determination was correct or to substitute its judgment for that of the agency, but to ascertain whether there was a rational basis for the determination (*see Matter of Sasso v Osgood*, 86 NY2d 374, 633 NYS2d 239 [1995]; *Matter of Chemical Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 626 NYS2d 1 [1995]; *Matter of Warder v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 440 NYS2d 875 [1981]). It is fundamental that when reviewing a determination that an administrative agency alone is authorized to make, the court must judge the propriety of such determination on the grounds invoked by the agency; if the reasons relied on by the agency do not support the determination, the administrative order must be overturned (*Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 758, 570 NYS2d 474 [1991];

see *Matter of National Fuel Gas Distrib. Corp. v Public Serv. Commn. of the State of N.Y.*, 16 NY3d 360, 922 NYS2d 224 [2011]; *Matter of Filipowski v Zoning Bd. of Appeals of Vil. of Greenwood Lake*, 77 AD3d 831, 909 NYS2d 530 [2d Dept 2010]; see *Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale*, 74 AD3d 961, 902 NYS2d 662 [2d Dept 2010]; *Matter of Stone Landing Corp. v Board of Appeals of Vil. of Amityville*, 5 AD3d 496, 773 NYS2d 103 [2d Dept 2004]).

A local zoning board has broad discretion in considering applications for area variances (see *Matter of Pecorano v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 781 NYS2d 234 [2004]; *Matter of Cowan v Kern*, 41 NY2d 591, 394 NYS2d 579 [1977]), and its interpretation of the local zoning ordinances is entitled to great deference (see *Matter of Toys “R” Us v Silva*, 89 NY2d 411, 654 NYS2d 100 [1996]; *Matter of Gjerlow v Graap*, 43 AD3d 1165, 842 NYS2d 580 [2d Dept 2007]; *Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, N.Y.*, 30 AD3d 515, 817 NYS2d 361 [2d Dept 2006]; *Matter of Ferraris v Zoning Bd. of Appeals of Vil. of Southampton*, 7 AD3d 710, 776 NYS2d 820 [2d Dept 2004]). Nevertheless, a court may set aside a zoning board’s determination if the record reveals that the board acted illegally or arbitrarily, or abused its discretion, or simply succumbed to generalized community pressure (see *Matter of Pecorano v Board of Appeals of Town of Hempstead*, *supra*; *Matter of Cacsire v City of White Plains Zoning Bd. of Appeals*, 87 AD3d 1135, 930 NYS2d 54 [2d Dept], *lv denied* 18 NY3d 802, 938 NYS2d 859 [2011]). “In applying the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis . . . [a] determination will not be deemed rational if it rests entirely on subjective considerations, such as general community opposition, and lacks an objective factual basis” (*Matter of Kabro Assoc., LLC v Town of Islip Zoning Bd. of Appeals*, 95 AD3d 1118, 1119, 944 NYS2d 277 [2d Dept 2012]; see *Matter of Ifrah v Utschig*, 98 NY2d 304, 746 NYS2d 667 [2002]; *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, 68 AD3d 62, 886 NYS2d 442 [2d Dept 2009], *lv denied* 13 NY3d 716, 895 NYS2d 316 [2010]). Further, the decision of an administrative agency “which neither adheres to its own prior precedent nor indicates a reason for reaching a different result on essentially the same facts is arbitrary and capricious” (*Matter of Charles A. Field Delivery Serv. (Roberts)*, 66 NY2d 516, 517, 498 NYS2d 111 [1985]; see *Matter of Knight v Amelkin*, 68 NY2d 975, 510 NYS2d 550 [1986]; *Matter of c/o Hamptons, LLC v Zoning Bd. of Appeals of Vil. of E. Hampton*, 98 AD3d 738, 950 NYS2d 386 [2d Dept 2012]; *Matter of Lucas v Board of Appeals of Vil. of Mamaroneck*, 57 AD3d 784, 870 NYS2d 78 [2d Dept 2008]).

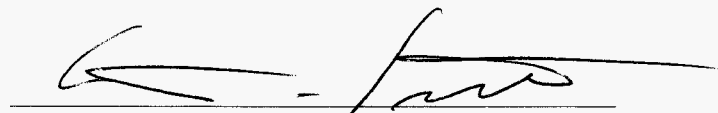
Pursuant to Village Law §7-712-b (3)(b), a zoning board considering a request for an area variance must engage in a balancing test, weighing the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the surrounding neighborhood or community (see *Matter of Pinnetti v Zoning Bd. of Appeals of Vil. of Mt. Kisco*, 101 AD3d 1124, 956 NYS2d 565 [2d Dept 2012]; *Matter of Jonas v Stackler*, 95 AD3d 1325, 945 NYS2d 405 [2d Dept 2012]; see also *Matter of Pecorano v Board of Appeals of Town of Hempstead*, *supra*; *Matter of Ifrach v Utschig*, *supra*). A zoning board also must consider whether the granting of an area variance will produce an undesirable change in the character of the neighborhood or a detriment to neighboring properties; whether the benefit sought by the applicant can be achieved by some other feasible method, rather than a variance; whether the requested variance is substantial; whether granting the variance will have an adverse impact on the physical or environmental conditions in the neighborhood; and whether the alleged difficulty is self-created (Village Law §7-712-b [3][b]; see *Matter of Blandeburgo v Zoning Bd. of Appeals of Town of Islip*, 110 AD3d 876, 972 NYS2d 693 [2d Dept 2013]; *Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale*, *supra*; see also *Matter of*

*Schumacher v Town of E. Hampton, N.Y. Zoning Bd. of Appeals*, 46 AD3d 691, 849 NYS2d 72 [2d Dept 2007]). However, a zoning board is not required to justify its determinations with evidence as to each of the five statutory factors, as long as its determinations “balance the relevant considerations in a way that is rational” (see *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, *supra*; *Matter of Merlotto v Town of Patterson Zoning Bd. of Appeals*, 43 AD3d 926, 841 NYS2d 650 [2d Dept 2007]).

The ZBA’s determination granting the application for an area variance permitting the replacement of the existing guest house with the proposed enlarged guest house at a new location was not arbitrary or capricious and was supported by substantial evidence in the record (see *Matter of DiPaolo v Zoning Bd. of Appeal of the Town/Village of Harrison*, 62 AD3d 792, 879 NYS2d 507 [2d Dept 2009]; *Matter of Kraut v Board of Appeals of Vil. of Scarsdale*, 43 AD3d 923, 841 NYS2d 369 [2d Dept 2007]). Generally, an area variance involves no change in the essential character of the zoned district; thus, the neighborhood considerations are not as strong as in a use variance (see *Khan v Zoning Bd. of Appeals of Vil. of Irvington*, 87 NY2d 344, 639 NYS2d 302 [1996]; *Wilcox v Zoning Bd. of Appeals of City of Yonkers*, 17 NY2d 249, 270 NYS2d 569 [1966]; *Matter of Hoffman v Harris*, 17 NY2d 138, 269 NYS2d 119 [1966]). Here, the Edwards’ application for a variance to enlarge the floor area and density seeks an area variance because the essential use of the land is not being changed (see *Wilcox v Zoning Bd. of Appeals of City of Yonkers*, *supra*, *Dawson v Zoning Bd. of Appeals of Town of Southold*, 12 AD3d 444, 785 NYS2d 84 [2d Dept 2004]). Moreover, while petitioner’s counsel contends that the proposed guest house is deemed a nonconforming accessory use pursuant to §116-19 (H) of the Zoning Code, the ZBA’s determination that the second accessory building is incidental to the primary building has a rational basis. Furthermore, the ZBA stated in its decision that §116-19 (H) does not contain any language that states that enlargement of a guest house requires a use variance pursuant to use variance criteria. With regard to the Edwards’ application to build a guest house containing 1,738 square feet of floor area, the ZBA explained that the new location of the guest house would significantly increase the wetland setbacks, which would enhance and improve the environmental conditions in the neighborhood. Specifically, in the ZBA’s determination, it cited to §116-19.4 (E) of the Zoning Code, which states that “the approving authority shall seek to achieve the maximum feasible setback from the wetlands for buildings, structures, septic systems, pools and dry wells, roads, driveways and fertilized vegetation which would ensure wetlands protection.” Thus, under the circumstances, the ZBA’s determination had a rational basis and was not arbitrary and capricious (see *Matter of King v Town of Islip Zoning Bd. of Appeals*, 68 AD3d 1113, 892 NYS2d 174 [2d Dept 2009]; *Matter of Gomez v Zoning Bd. of Appeals of Town of Islip*, 293 AD2d 610, 740 NYS2d 139 [2d Dept 2002]; *Matter of Brady v Town of Islip Zoning Bd. of Appeals*, 65 AD3d 1337, 886 NYS2d 465 [2d Dept 2009]).

Accordingly, the petition is denied and the proceeding is dismissed.

Submit judgment.



J.S.C.