

SHORT FORM ORDER

Index No. 612910/2023

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

P R E S E N T:

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

MOTION DATE: 6/21/2023
ADJOURN DATE: 10/02/2023
Mot. Seq. # 001-MD

-----X
In the Matter of the Application of

ROBERT SPOTTE
and JACQUELINE SPOTTE,

Petitioners,

for a judgment pursuant to Article 78 of the
Civil Practice Law and Rules

- against -

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS,
BRAD HAMMOND, as CHIEF BUILDING
INSPECTOR FOR THE VILLAGE OF
WESTHAMPTON BEACH and LISA CANTY,

Respondents.
-----X

WALSH MARKUS
McDOUGAL & DEBELLIS, LLP
Attorneys for Petitioners
229 Seventh Street, Suite 200
Garden City, New York 11530

ESSEKS, HEFTER, ANGEL,
DI TALIA & PASCA, LLP
Attorneys for Respondents VILLAGE OF
WESTHAMPTON BEACH ZONING
BOARD OF APPEALS and BRAD HAMMOND,
as Chief Building Inspector

THOMAS GIBBONS, ESQ.
Attorney for Respondent
LISA CANTY
P.O. Box 3070, 6 Oak Street
Southampton, New York 11968

Upon the E-file document list numbered 1 to 41 read on the petitioners' Article 78 petition to reverse, annul and set aside a determination by the Westhampton Beach Zoning Board of Appeals; it is

ORDERED that this Article 78 petition to reverse, annul and set aside a determination by the Westhampton Beach Zoning Board of Appeals dated April 20, 2023 is denied, and the petition is dismissed in its entirety for the reasons set forth herein.

Before the Court is a CPLR Article 78 petition challenging the decision of the Village of Westhampton Beach Zoning Board of Appeals ("Board" or "ZBA") respecting a request for individual and aggregate side yard variances. The subject premises is an improved waterfront lot on Dune Road

Sprotte v Vlg. Of Westhampton Beach ZBA, et al.
Index No.: 612910/2023
Page 2

within the jurisdictional limits of Westhampton Beach, with frontage to the north on Dune Road and the Atlantic Ocean to the south. The paper appealed from at the Board level was a letter of denial from the Village Building & Zoning Administrator dated January 25, 2023. The applicant before the Board and co-respondent herein, Lisa Canty, sought individual side yard variances of 6.8 and 6.9 feet and 13.7 feet in the aggregate. Area standards in the R-3 zone wherein the subject property is situate require minimum side yards of 20 feet and 50 feet in the aggregate. This application was heard on a number of occasions in 2022 and 2023. The matter was framed for decision following the issuance of the revised January 25, 2023 denial letter that followed a predecessor undated denial letter.

Photographs made a part of the return of the record comport with the commonly understood pattern of development on Dune Road. The lots are narrow. This is commonplace for waterfront residential development throughout Suffolk County; owing to the human desire of many to dwell, play and relax in close proximity to surrounding tidal waters. While narrow lots create more opportunities for residential development and use, they likewise generate angst and litigation by and between neighbors, such as this matter before the Court.

The co-respondent, Lisa Canty, appeared before the Board at a series of public hearings commencing on November 16, 2022. Ms. Canty was assisted first by a lay representative and later by counsel. Neighboring property owners and petitioners herein Robert and Jacqueline Sprotte appeared in opposition initially for themselves and later by counsel. Advertence to the transcripts of hearing and the plans submitted discloses that Ms. Canty sought to supplant existing decking and steps on the street-side of the home with enclosed living space. As revealed in the addendum to the second application submitted by counsel to Ms. Canty and borne out in the hearing transcripts, Ms. Canty proposed removal of decking on the ocean side of the home so as avoid the need for a lot coverage variance.

Colloquy between Board Members on the one hand and the Sprottes and their attorney on the other, centered on complaints about a fourth bedroom previously created inside the Canty home without benefit of a building permit. That was properly turned about by the Board Chairman on the record who explained the review functions of the Board and the separate code enforcement jurisdiction not vested in the Board. Opposition also was raised about inaccuracies of the survey that were later cured with a new instrument. Generalized complaints about the addition were made. In a nod to hyperbole it was alleged that the completed addition would result in a "monstrosity." The photos in the record disclose that the subject home with the contemplated improvements, comports with other nearby residential development. A claim of inconsistency was posited by advertence to other nearby side yard variances granted to a lesser degree. The credible evidence in the record revealed such relief to have been granted for entirely new construction and not the remodeling of existing homes. Such distinction made by the Board is rational and will not be disturbed by this Court.

Created by the state legislature, the charge of a zoning board of appeals as an appellate body is to balance the benefit to the applicant as against the detriment to the community in terms of its health, safety and welfare. (*Matter of Blandeburgo v Zoning Bd. of Appeals of Town of Islip*, 110 AD3d 876, 973 NYS2d 693 [2d Dept 2013] quoting *Matter of Colin Realty Co., LLC v Town of N. Hempstead*, 107 AD3d 708, 710, 966 NYS2d 501 [2d Dept 2013] affd 24 NY3d 96, 996 NYS2d 559 [2014]). "The Board must consider whether (1) an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will result by the granting of the area variance, (2) the benefit sought by the applicant can be achieved by some feasible method other than an area variance, (3) the requested area variance is substantial, (4) the proposed variance will adversely impact the physical or environmental conditions in the neighborhood if it is granted, and (5) the alleged difficulty was self-created" (*Matter of*

Sprotte v Vlg. Of Westhampton Beach ZBA, et al.
Index No.: 612910/2023
Page 3

Blandeburgo v Zoning Bd. of Appeals of Town of Islip, 110 AD3d at 877-878; see Village Law §7-712-b[3][b]). “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” (*Matter of Traendly v Zoning Bd. of Appeals of Town of Southold*, 127 AD3d 1218, 1218-1219, 7 NYS3d 544 [2d Dept 2015]).

Local Zoning Boards of Appeal have broad discretion in determining matters on appeal from the denial of the building official, and judicial review is limited to determining whether the action taken was illegal, arbitrary, or an abuse of discretion (*Matter of Ifrah v Utschig* 98 NY2d 308, 746 NYS2d 667 [2002]; *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburg*, 68 AD 3d 62, 73, 886 NYS2d 442 [2d Dept 2009]). Where a zoning board’s determination is made following a public hearing its determination should be upheld if it is supported by evidence in the record (see *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 781 NYS2d 234 [2004]; *Matter of Sasso v Osgood*, 86 NY2d 374, 633 NYS2d 259 [1995]). A zoning board of appeals is charged with applying the statutory balancing test and must weigh the benefit to the applicant against the detriment to the health, safety, and welfare of the community (*Matter of Nataro v DeChance* 149 Ad 3d 1081, 53 NYS3d 156 [2d Dept 2017]). This ZBA engaged in the required balancing test and, as borne out by the transcript as well as the written decision, considered the relevant statutory factors (see *Matter of Goldman v City of Long Beach*, 128 AD3d 1064, 10 NYS2d 303 [2d Dept 2015]).

The petitioners have not demonstrated that the Board failed in applying the balancing test in this matter and similarly, did not establish that the Board granted relief here that was in any way inconsistent with its prior quasi-jurisprudence. Other contentions raised by the petitioners are without merit.

Accordingly, the petition is denied in its entirety and the proceeding is dismissed.

The foregoing constitutes the decision and Order of the Court. The respondent Board shall submit Judgment on notice (See CPLR §411).

Dated: October 10, 2023


HON. CHRISTOPHER MODELEWSKI, J.S.C.

X FINAL DISPOSITION NON-FINAL DISPOSITION