

Matter of Coyle v Petrone

2014 NY Slip Op 31755(U)

June 24, 2014

Sup Ct, Suffolk County

Docket Number: 06194/2013

Judge: Ralph T. Gazzillo

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SHORT FORM ORDER

Index No.: 06194/2013

Supreme Court - State of New York
IAS PART 6 - SUFFOLK COUNTY

MOT. SEQ: 001 MG

PRESENT:

Hon. RALPH T. GAZZILLO A.J.S.C.
-----X

In the Matter of Seamus Coyle,

Plaintiff(s),

Herbert L. Haas
Attorney for Plaintiff
34 Dewey Street
P.O. Box 1850
Huntington, N.Y. 11743

- against -

Frank P. Petrone, Susan A. Berland, Eugene Cook,
Mark A. Cuthbertson, and Mark Mayoka,
constituting the Town Board of the Town of

-----X

Upon the following papers numbered 1 to 26 read on this unopposed proceeding brought pursuant to CPLR Article 78; Notice of Petition, Petition and supporting papers numbered 1-26; it is,

ORDERED that the petition is granted in its entirety, and it is further

ORDERED that the Town Board's determination to deny the petitioner's application for a Certificate of Approval for the Town of Huntington Historic Preservation District is hereby annulled, and it is further

ORDERED that the provisions of the Mill Lane Historic District pursuant to Huntington Town Code §198-42A(12) shall not be applied to the petitioner's application(s) for the approval of construct a "three bay" automobile repair shop on its property located on 114 Prime Avenue (SCTM #0400-071-11-2.00-083.000) on an 8600 square foot portion of the premises on or to any other approvals previously issued for the proposed use by any department of the Town of Huntington, and it is further

Coyle v. Petrone, et.al.
Index No.: 6194/2013
Page 2 of 9

ORDERED that within thirty days of the date that a copy of this Short Form Order is served with Notice of Entry, the Town Board shall direct its departments and/or administrative agencies to issue any and all administrative permits necessary and consistent with all prior approvals for the aforementioned proposed land development, and it is further

ORDERED that counsel for petitioner shall serve a copy of this Order with Notice of Entry upon counsel for all other parties, pursuant to CPLR §§2103(b)(1), (2) or (3), within thirty (30) days of the date the order is entered and thereafter file the affidavit(s) of service with the Clerk of the Court.

The instant proceeding seeks relief pursuant to CPLR Article 78 annulling the determination of the Huntington Town Board dated February 5, 2013 which denied a Certificate of Approval for the Town's Historic District for the construction of a 3 bay automobile service shop in a Historic District pursuant to §198, Article VI of the zoning code of the Town of Huntington. The denial of this approval precluded the petitioner from constructing the proposed project even though the application had been under review for a period of approximately seven years and had received a special permit from the Huntington Town Zoning Board of Appeals (hereinafter ZBA), site plan approval Huntington Town Planning Board (hereinafter Planning Board) and a recommendation for approval from the Huntington Town Historic Preservation Committee and after this Court annulled its prior determination denying a Certificate of Approval for the Town's Historic District, dated February 6, 2012 as being arbitrary and capricious.

The detailed history of the application is as follows: Petitioner first made application to construct a "three bay" automobile repair shop on its property located on 114 Prime Avenue (SCTM #0400-071-11-2.00-083.000) on an 8600 square foot portion of the premises on or about June of 2004. The property is "split zoned" and is comprised of a total of approximately 13,900 square feet which is primarily zoned I-4 (Light Industry Zone). A small portion of the premises is located in the R-5 (Residential Zone). The applicable zoning has been in place on the premises since 1951. The property is improved with a single family residence with an attached rear deck and detached two-car garage. The house and garage structures presently existing on the premises are covered by a letter of pre-existing use dated July 20, 1983. The attached rear deck is covered by a Certificate of Occupancy dated August 17, 2000.

On or about June of 2004, petitioner applied to the Town's division of Building and Housing (hereinafter Building Department) for a permit to maintain the existing single family dwelling and accessory structures on a 5300 square foot portion of the premises (which includes

the residentially zoned land) and to construct an automobile repair shop on an 8600 square foot portion of the premises which is zoned I-4. Because the I-4 district only allows automobile service shops pursuant to a Special Use Permit (Huntington Town Code §198-68(A)(20), the Building Department denied the application. Thereafter (since it is necessary to obtain a denial from the Building Department prior to seeking relief from the ZBA in the form of a special use permit), petitioner made application to the Town of Huntington ZBA for a determination as follows: 1) for a special use permit pursuant to Huntington Town Code §198-68(A)(20) to allow the construction of an automobile repair shop, 2) a special use permit pursuant to Huntington Town Code §198-170(B) for overnight storage of vehicles, 3) variances to sections 198-10(G) and 198-170(B) of the Huntington Town Code to legalize the existing structures on the parcel and 4) an area variance from the requirements of Huntington Town Code §198-37(F) for lot area, lot width and lot frontage.

Following receipt of petitioner's complete application, the ZBA held a public hearing at which petitioner submitted evidence and testimony on behalf of the application and at which public commentary was received. Specifically, petitioner testified that the hours of operation of the automobile repair shop would be from 8:00 am through 6:00 pm Monday through Friday and from 8:00 am through 3 pm on Saturdays. Further, petitioner testified that all work would be performed inside the building, work would be performed by petitioner and two additional employees, that no more than five vehicles would be stored outside overnight, no collision or body work would be performed on the site and that waste oil would be disposed of pursuant to applicable laws and regulations. Petitioner also provided an expert witness, i.e. Wayne A. Muller, P.E., who was recognized by the ZBA as a traffic expert and who testified that the traffic expected would not produce undue adverse traffic impacts and that there was adequate parking planned for the site. Alternatively, Mr. Muller testified that based upon the existing zoning, the existing residence on the site could be demolished and a 3,400 square foot medical or similar office could be constructed on the site as an "as of right" permitted use. However, Mr. Muller testified that such a use would generate greater traffic impacts than the use proposed by petitioner. In addition, in support of his application, petitioner introduced John J. Breslin, Jr., a real estate appraiser who was also recognized by the ZBA as an expert witness with regard to real estate and real estate valuation. Mr. Breslin testified that the parcel is contiguous to other parcels zoned I-4 and in close proximity to parcels zoned C-6, General Business. Mr. Breslin further testified that the proposed use would not adversely affect the value of the neighboring properties, the character or pattern of development within the neighborhood and that relief sought by petitioner in the form of area variances requested could not be achieved by any other means.

Following the hearing and upon due consideration of the petitioner's application, the ZBA granted the petitioner's application with conditions. Specifically, the ZBA, outlining its deliberation and reasoning in a 5 page determination, granted petitioner a special permit determining that the applicant "satisfied the special permit criteria as well as the variance standards". The ZBA further determined that "[t]he Board is of the opinion that with adherence to the conditions imposed herein no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created." Further, the ZBA found that because the applicant sought to maintain the residential structure that the overall commercial development would be less than that could be anticipated if the applicant demolished the home and developed the property in accordance with the applicable zoning. Significantly, the ZBA determined that the development on the "subject property will be properly located in regard to transportation, water supply, waste disposal, fire protection and other facilities; that the proposed use will not create undue traffic congestion or traffic hazard nor will it adversely affect the value of property, character of neighborhood or pattern of development; that the grant of the requested special use permits will encourage an appropriate use of the land consistent with the needs of the town; and that the proposed use will not impair public health or safety and will be reasonably necessary for the public health or general welfare and interest."

Thereafter, at the petitioner's request, and after a second public hearing on the application, on June 2, 2005, the ZBA modified the conditions to the special permit issues on February 3, 2005¹.

Coincidentally, just five days following the ZBA's second grant, the Huntington Town Board designated the petitioner's premises, along with several others, as part of the Mill Lane Historic District pursuant to Huntington Town Code §198-42A(12).

In early May 2006, petitioner made application to the Department of Planning and Development for Site Plan approval. Nearly four years later, the Department of Planning and Environment notified the petitioner that although the site designs had been approved, formal Site Plan approval could not be granted until the petitioner filed the Declaration of Covenants and Restrictions required as a condition of the ZBA's grant of petitioner's application for special permits. Accordingly, the Declaration of Covenants and Restrictions was filed on October 21,

¹Petitioner did commence an Article 78 proceeding to challenge the conditions placed upon the ZBA's February 2, 2005 determination granting the petition, but later withdrew the petition when the ZBA adopted the modifications to those conditions.

2011. On November 7, 2011, the Department of Planning and Environment stamped petitioner's plans with approval and issued a letter to the petitioner stating that he was authorized to proceed to file for building permits subject to the posting of a bond as was also required as a condition of the ZBA approval. On June 2, 2010, the Huntington Town Planning Board granted the petitioner site plan approval for the project.

Thereafter, the petitioner made application to the Building Department for its building permits. The Building Department forwarded the application and plans to the Town of Huntington Historic Preservation Committee (hereinafter "the Committee"), an advisory committee, for review and approval pursuant to §198-41C of the Huntington Town Code. On November 28, 2011, the Committee held a meeting to consider the application for a Certificate of Approval at which petitioner and his counsel were in attendance. Following the meeting, on November 30, 2011, the Commission sent a memorandum to the respondent Town Board recommending that the Town Board issue the petitioner a Certificate of Approval for the construction of a three bay automobile repair shop in accordance with petitioner's plans dated November 10, 2010 and stamped the petitioner's plans with the Commission's stamp indicating approval.

On February 6, 2012, the respondent Town Board held a public hearing regarding the petitioner's application to consider approval of its November 15, 2010 plans pursuant to Town's Historic District regulations. At the hearing, petitioner's counsel made a presentation outlining the history of the prior approvals granted to the petitioner for the proposed project. The public was also permitted to comment on the application. Although there were many public comments, those comments consisted exclusively of generalized objections as to perceived (but unsubstantiated) negative environmental impacts of the proposed use on noise, flooding, potential reduction in property value, emissions, fumes, traffic, parking, chemicals and pollution. In addition, members of the public discussed other properties owned by the applicant and Newsday reports regarding the applicant's alleged arrest record. No expert witnesses testified in opposition to the application². The public hearing was closed on January 10, 2012. On

² In response to the second Article 78 proceeding commenced as a result of the Town Board's determination dated February 6, 2012 which denied the Certificate of Approval, counsel for the Town had included in its return of record copies of numerous photographs which include nearby properties as well as Heckscher Park, which is nearby the subject property as well as copies of petitions in opposition to the project apparently submitted to the Town Board outside of the public hearing. Counsel acknowledged that these photographs and petitions were not properly part of the official record on the application. Accordingly, the Court did not consider them. "An Article 78 proceeding is limited to

February 6, 2012, the Town Board unanimously adopted a resolution denying the petitioner's application for a Certificate of Approval in a Historic District stating only as follows:

"HAVING DETERMINED that the proposed building would have an adverse impact on the historic character of the Mill Lane Historic District because the proposed use of the building is not compatible with the historic residential character of the district.

HEREBY DENIES the aforesaid application of Seamus Coyle for a Certificate of Approval."

No factual recitations or findings of fact were set forth in the resolution and no analysis was provided in the resolution outlining the deliberations of the Town Board in reaching its determination.

Clearly, based upon the record, the February 6, 2012 determination of the Town Board in denying the petitioner's application for a Certificate of Approval in a Historic District, which was in complete contravention with the prior detailed findings and determinations of the ZBA and the Planning Board and recommendations of the Historic Preservation Committee, was arbitrary, capricious and an abuse of discretion. There was not a scintilla of evidence in that record to support the denial of the application based upon its failure to comply with the requirements of the Town's Historic District. The Town Board failed to make findings of fact or to in any other way support their determination to deny the application. Moreover, the Town Board failed to distinguish its determination in any way from the strong precedent created by the ZBA, Planning Board and Historic Preservation Committee with respect to the application.

Specifically, in granting the petitioner's special permit, the ZBA made findings of fact regarding the compatibility of the proposed use with the requirements of the Town Code. Specifically, in rendering its determination, the ZBA articulated its findings as follows:

"[t]he Board is of the opinion that with adherence to the conditions imposed herein no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created."

consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and "[t]he function of the court ... is to determine ... whether the determination had a rational basis in the record or was arbitrary and capricious" (see, *HLV Associates v. Aponte*, 223 A.D.2d 362 at 363 citing *Matter of Fanelli v. New York City Conciliation & Appeals Bd.*, 90 A.D.2d 756, 757, 455 N.Y.S.2d 814, affd 58 N.Y.2d 952, 460 N.Y.S.2d 534, 447 N.E.2d 82).

Further, the ZBA determined that:

“ the subject property will be properly located in regard to transportation, water supply, waste disposal, fire protection and other facilities; that the proposed use will not create undue traffic congestion or traffic hazard nor will it adversely affect the value of property, character of neighborhood or pattern of development; that the grant of the requested special use permits will encourage an appropriate use of the land consistent with the needs of the town; and that the proposed use will not impair public health or safety and will be reasonably necessary for the public health or general welfare and interest.” Furthermore, the Planning Board approved the petitioner’s site plan, and perhaps more importantly, the Town’s own Historic Preservation Commission, recommended that the application be approved.

Nowhere in the Town Board’s February 6, 2012 determination was then lengthy history of the application mentioned, nowhere was the Town Board’s determination explained or supported by evidence contained in the record and nowhere was its determination in any way distinguished from the ZBA determination which granted the application and made specific findings as to why the subject application conformed to the requirements of the Town Code regarding the requirements for special permits. Nowhere in the Town Board’s decision was the prior Planning Board site plan approval for the project considered or even mentioned. Finally, nowhere in the resolution did the Town Board explain or provide any reasoning for its determination to ignore the Historic District Preservation Committee’s recommendation that the petitioner’s application be approved. Accordingly, the Town Board’s determination was annulled (see, *Matter of Lafayette Storage & Moving Corp.* 77 N.Y.2d 823, see also, *Matter of Charles A. Field Delivery Service, Inc.*, 66 N.Y.2d 516).

Although it was clear from the record that there was substantial community opposition to the project, such opposition without supporting evidence and in the form of generalized, unsubstantiated objections, is insufficient to support the denial of the application (see, *Matter of Robert Lee Realty Co. v. Village of Spring Val.*, 61 N.Y.2d 892).

Accordingly, petitioner thereafter commenced and Article 78 proceeding challenging the February 6, 2012 determination. That petition was granted in its entirety pursuant to Short Form Order of this Court dated December 8, 2012 and entered December 12, 2012 and remitted the matter to the Town Board for reconsideration.

In accordance with that determination which annulled the February 6, 2012 Town Board resolution, at a regular meeting on January 28, 2013, the Huntington Historic Preservation Commission again reviewed the plans for a three (3) bay service station with unfinished second floor storage and once again issued a Memorandum recommending (by Memorandum dated January 29, 2013) that the Town Board issue a Certificate of Approval for the design the project in accordance with the plans therefore dated November 15, 2010.

Thereafter, on February 5, 2013, the Town Board once again held a public hearing to consider the petitioner's application. The agenda of that Town Board meeting which was prepared prior to the meeting itself contained a draft resolution denying the application which resolution (Resolution #2103-70) was, after public discussion, duly (and unanimously) adopted. The resolution denying the Certificate of Approval contained a Finding of Fact which stated that the determination was based upon testimony given and documentation presented at the public hearings held on January 10 2012 and February 5, 2013 despite the fact that, after the January 10, 2013 hearing the Commission recommended the issuance of a Certificate of Approval for the project as being consistent with the design criteria of the Historic District Preservation District requirements and that the February 5, 2013 hearing had yet to be held. No additional, specific or independent findings were made by the Town Board with regard to the February 5, 2013 public hearing.

Similar to the now annulled February 6, 2012 determination which denied the petitioner's Certificate of Approval for the Town's Historic District, nowhere in the Town Board's February 5, 2013 determination is the now approximately ten year history of the application mentioned, nowhere is the Town Board's conclusory resolution or "findings" is its determination explained or supported by evidence contained in the record and nowhere is its determination in any way distinguished from the ZBA determination which granted the application and made detailed and specific findings as to why the subject application conformed to the requirements of the Town Code regarding the requirements for special permits. Nowhere in the Town Board's decision is the prior Planning Board site plan approval for the project considered or even mentioned. Finally, nowhere in the resolution did the Town Board explain or provide any reasoning for its determination to ignore the Historic District Preservation Committee's second recommendation (dated January 29, 2013) that the petitioner's application be approved. Based upon the failure of the Town Board to provide a rational basis for its determination, its February 5, 2013 determination is again arbitrary, capricious and an abuse of discretion and therefore must be annulled (see, *Matter of Lafayette Storage & Moving Corp.* 77 N.Y.2d 823, see also, *Matter of Charles A. Field Delivery Service, Inc.*, 66 N.Y.2d 516). Although it is again clear from the record that there continues to be substantial community opposition to the project, such opposition without supporting evidence and in the form of generalized, unsubstantiated objections, is insufficient to support the denial of the application (see, *Matter of Robert Lee Realty Co. v. Village of Spring Val.*, 61 N.Y.2d 892).

Moreover, since the continued unsubstantiated denial of this application tends to show bad faith on the part of the respondents who have repeatedly acted in an arbitrary way toward the petitioner for the apparent purpose of preventing the project from being developed in spite

of the many prior approvals and positive recommendations it has received since it was first filed in 2004, it is appropriate to consider the petitioner's application under the law as it existed prior to the inclusion of the petitioner's property within Mill Lane Historic District pursuant to Huntington Town Code §198-42A(12), which conspicuously occurred *after* the petitioner's special permit application was granted by the ZBA and which ultimately generated the bad faith denial of the application on February 5, 2013 (see, *Figgie Intern., Inc. v. Town of Huntington*, 203 A.D.2d

416).

Finally, this motion is unopposed and the lack of opposition is tantamount to consent (see, *Tortorello v Larry M. Carlin*, 260 AD2d 201).

Accordingly, the petition is granted as set forth herein.

Dated: 6/25/14

Riverhead, N.Y.



Hon. Ralph T. Gazzillo
A.J.S.C.