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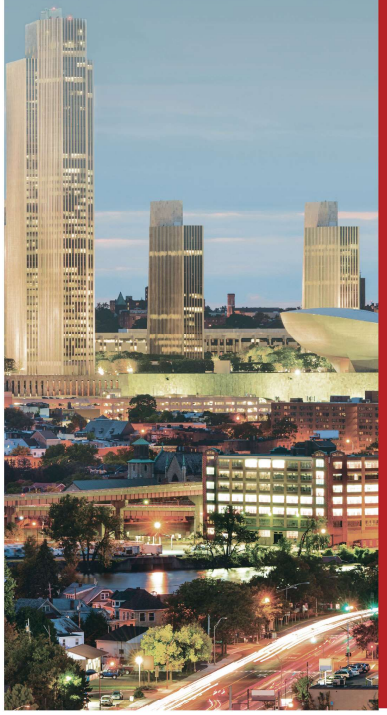

Case Law Update

April 18, 2023

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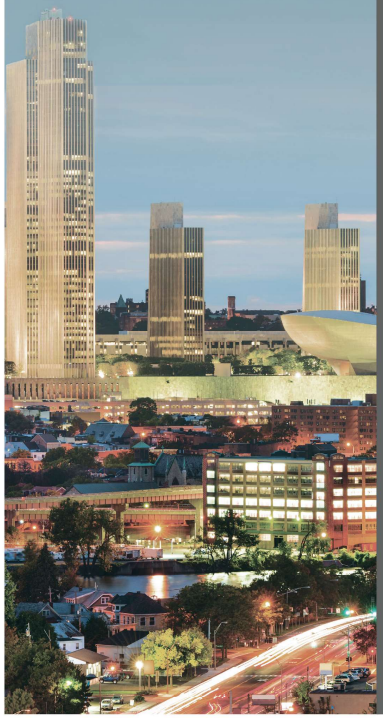

ZONING LAW

61 Crown St., LLC v City of Kingston Common Council, 206 A.D.3d 1316 (3rd Dep't, 2022)

- **FACTS**

- The City owned several contiguous parcels in the commercial zoning district of a mixed-use overlay district of the city. One city-owned parcel had a picnic table, which the public used recreationally.
- The City proposed redeveloping the parcel for mixed-use business, apartment and parking garages, amending the zoning of one privately owned parcel.
- The petitioners filed an Article 78 claiming that the City impermissibly amended the zoning, **spot zoning** the parcel for the redevelopment.
- The lower court dismissed the complaint, from which Plaintiffs appeal.

61 Crown St., LLC v City of Kingston Common Council, 206 A.D.3d 1316 (3rd Dep't, 2022) Cont'd

- **HOLDING**
  - Where a zoning amendment is part of a "comprehensive plan, it will be upheld if it is established that it was adopted for a legitimate governmental purpose and there is a reasonable relation between the end sought to be achieved and the means used to achieve that end."
  - In reviewing zoning amendments, courts will also consider whether the proposed use is compatible with surrounding uses, whether other suitable parcels are available, and recommendations from the Professional Planning Staff.

Matter of Committee for Environmentally Sound Dec v Amsterdam Ave. Redevelopment Assoc. LLC, 194 A.D. 3d 1 (1st Dep't, 2021)

- **FACTS**
  - Respondent proposed developing 55-unit condominium housing.
  - Board of Standards and Appeals (BSA) approved the application, relying on an interpretation of a resolution consistent with the longstanding interpretation of the zoning resolution.
  - Petitioners filed an Art 78.
  - The Supreme Court annulled the BSA decision and ordered demolition of constructed floors of the project.
  - Respondent appealed.

Matter of Committee for Environmentally Sound Dec v Amsterdam Ave. Redevelopment Assoc. LLC, 194 A.D. 3d 1 (1st Dep't, 2021), Cont'd

HOLDING

Re Standing

Petitioners must suffer direct harm, injury different from the public at large to establish standing.

Close proximity can, but Economic or speculative harm does not establish standing.

Re Ambiguous Language and Precedent

Zoning Resolution ambiguous

BSA rationally interpreted the resolution, based on past interpretation.

The lower court should have deferred.

Veteri v. Zoning Board of Appeals of the Town of Kent,
163 N.Y.S. 3d 231 (2nd Dep't, 2022)

Facts:

Developer rehabbed abandoned concrete facility as a legal nonconforming use in a residential zoning district.
CEO revoked building permit stating the use was abandoned.
ZBA reversed CEO determination, enabling permit reissuance.
Neighbors filed the Article 78, which the lower court dismissed.

Holding:

Standing is based on injury in-fact within the zone of interest sought to be protected by the statute.
Here the adjacent neighbors had standing because the district was zoned residential.
Manufacturing would create nuisances that zoning sought to protect residential.

Titan Concrete, Inc. v. Town of Kent, 202 A.D.3d 972 (2nd Dep't, 2022)

Facts:

- Titan obtained a use variance to operate a concrete plant. After Titan received the use variance, the Town Board enacted Local Law No. 4–2017 prohibiting the production and manufacture of concrete, and the operation of a concrete products plant, in all districts of the town except the Industrial–Office–Commercial District.
- Titan property was not situated within the Industrial–Office–Commercial District. The local law provides that anyone lawfully engaged in such uses in other districts shall become engaged in a legal nonconforming use which shall terminate by amortization within two years
- When drafting the Local Law No. 4, the Town Supervisor failed to recuse herself since she was the plaintiff in a proceeding and action seeking to annul the ZBA's determination regarding Titan's use variance.
- Titan brought an action against the Town to annul the local law.

Holding:

- The supervisor's limited recusal from proceedings that led to ordinance's passage did not remedy supervisor's conflict of interest, and
- The Supervisor's conflict of interest tainted passage of ordinance and rendered it invalid.

Matter of Affiliated Brookhaven Civic Orgs., Inc. v Planning Bd of the Town of Brookhaven, 209 A.D.3d 854 (2nd Dep't, 2022)

Facts:

- Solar project application for a special use permit deemed complete on September 29, 2016.
- The Town passed a local law amending the requirements for solar.
- The new law only permitted sites cleared prior to January of 2016 AND exempted applications where the submission was deemed complete prior to the effective date of the local law.

Matter of Affiliated Brookhaven Civic Orgs.,Inc. v Planning Bd of the Town of Brookhaven, 209 A.D.3d 854 (2nd Dep't, 2022) Cont'd

Holdings:

Statutory language and **legislative intent** are gleaned from:

- The plain language of the local law which is the clearest indication of interpretation.
- The context of conditions in existence when the local law was passed.
- Examination of the legislative history if the language is ambiguous.

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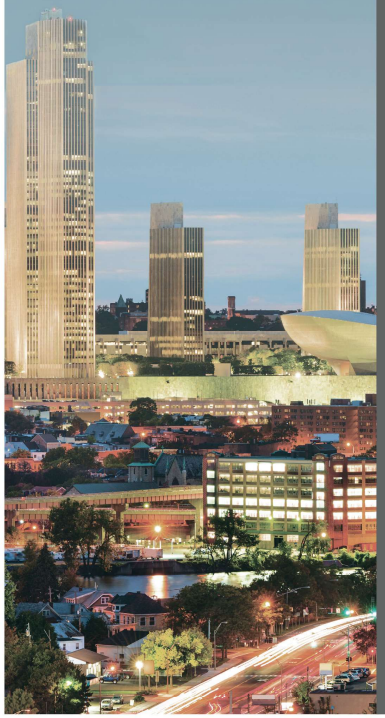

Site Plan Review

Gershow Recycling of Riverhead, Inc. v. Town of Riverhead, 193 A.D.3d 731 (2d Dep't 2021)

- **Facts**:
  - The Town Code authorized the Administrator of the Building Department "to review evaluate, judge, and advise on applications related to the Town Code," and "to make issue and render determinations regarding compliance with provisions of the Zoning Code for site plan applications."
  - Town Code contained specific provisions vesting the Planning Board with the authority to act on site plan applications
  - Town Building and Planning Administrator denied the site plan application of petitioners and informed petitioners they had a right to appeal to the Zoning Board of Appeals
  - Supreme Court granted petitioners Article 78 petition, annulled determination, and remitted the matter to the Planning Board

Gershow Recycling of Riverhead, Inc. v. Town of Riverhead, 193 A.D.3d 731 (2d Dep't 2021) CONT'D

- **Issue**:
  - Whether Town Building and Planning Administrator had authority under Town Code to deny site plans.

- **Holding:**
  - Appellate Court explained that specific provisions prevail over general ones – Town Code specifically vested Planning Board with authority to act on site plan applications

  - Appellate Court held that the Administrator of the Building Department's denial of the site plan application "was an action wholly beyond his grant of power," and "petitioners were not required to exhaust their administrative remedies by appealing to the Town's Zoning Board of Appeals."

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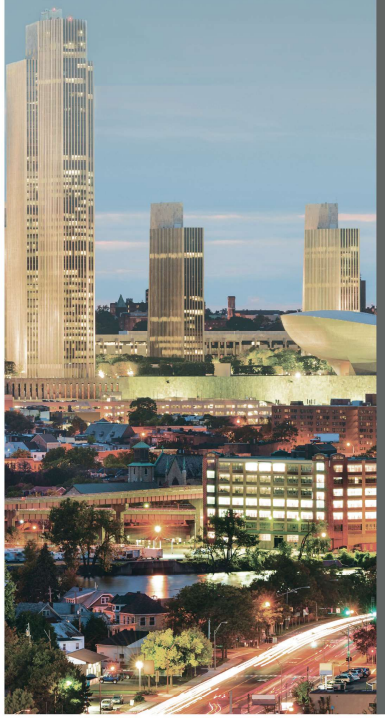


Special Use Permit

Matter of Barnes Rd. Area Neighborhood Assn v Planning Bd of the Town of Sand Lake, 206 A.D.3d 1507 (3d Dept, 2022)

Facts:

- Applicant applied for a Special Use Permit and Site Plan approval to construct a barn to operate a seasonal party venue.
- Planning Bd approved the applications.
- Petitioners filed an Article 78 to annul the approvals.

Holding:

1. When a zoning law lists a permitted use allowed by special use permit, "it is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood."
2. The Special Use Permit must comply with "legislatively imposed conditions on an otherwise permitted use."
3. Court review is limited to ensuring the board "followed lawful procedures, did not effect an error of law and was not arbitrary or capricious."

Matter of 1640 State Rte 104, LLC v. Town of Ontario Planning Bd, 207 A.D.3d 1101 (4th Dep't, 2022)

Facts:

- Applicant received Site Plan Approval in 2018 to operate a nursery and landscaping business.
- Condition (#2) allowed stockpiling of clippings on a portion of the parcel for processing as mulch.
- Applicant submitted a new site plan application to expand business and mulch on the parcel in 2020.
- It was determined that mulching requires, and the Applicant applied for, a Special Use Permit.
- The Planning Board denied the Special Use Permit application and repealed condition #2 from the prior site plan approval.

Matter of 1640 State Rte 104, LLC v. Town of Ontario Planning Bd, 207 A.D.3d 1101 (4th Dep't, 2022) CONT'D

Holdings:

- Deference is given to the Planning Board in interpreting the site plan approval and conditions from 2018.
- Denial of the Special Use Permit was not arbitrary and capricious. The applicant is not entitled to the approval – it's tantamount to a finding the use is harmonious with the zoning district. The applicant must establish conformance with conditions in the zoning code.
- **Failure to meet any one standard for granting a Special Use Permit constitutes grounds for denial.**
- The Planning Board is vested with enforcement of its own approvals.
- Injunction is an appropriate remedy for enforcement.

Matter of Manocherian v. Zoning Bd of Appeals of the Town of New Castle, 201 A.D.3d 804 (2nd Dep't 2022)

- **Facts:**
  - Sunshine received a **Special Use Permit** as a nursing facility for children with asthma, which evolved over time to include treating children with additional chronic or terminal illnesses
  - The ZBA **amended** the existing special use permit and granted an **area variance** in response to a request to expand the children's rehab center
  - Article 78 petitioner challenged the special use permit amendment as improper since the use changed and the variance as unnecessary if the special use permit was issued

Matter of Manocherian v. Zoning Bd of Appeals of the Town of New Castle, 201 A.D.3d 804 (2nd Dep't 2022) Cont'd

- **Holdings:**
    - The Special Use Permit was properly amended as a preexisting legal nonconforming use, a nursing home for disabled and chronically sick children. (Implies a differentiation between land use and specifics such as the illness suffered.)
    - The ZBA is authorized to grant an area variance from any provision in the zoning regulation, including special use permit requirements.

999 Hempstead Turnpike v. Board of Appeals of the Tonw of Hempstead, 207 A.D.3d 716 (2nd Dep't 2022)

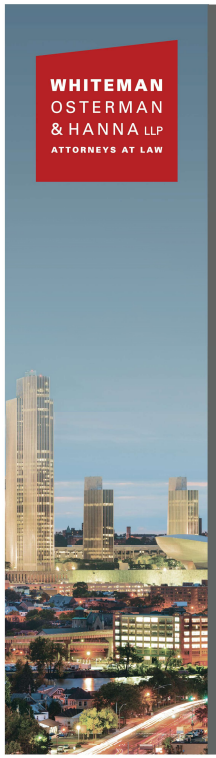
Facts:

- Applicant applied for a special exception permit and an area variance in connection with the construction of a self-storage facility.
- A hearing was held before the ZBA and pursuant to Town Law § 267–a(8), the ZBA is required must render a decision within 62 days after the close of the hearing. The Town Law also contains a default provision which provides that if the Board, in exercising its appellate jurisdiction, fails to render a decision within 62 days of the hearing, the application is deemed denied.
- ZBA did not make a determination within the 62-day statutory period and the Applicant brought an Article 78 proceeding against the ZBA.
- Supreme Court granted the petitioner's unopposed motion for leave to enter a default judgment, granted the petition, annulled the purported default determination, and, in effect, directed the Board to issue the requested special exception permit and area variance. Thereafter, the Board moved, inter alia, to vacate the order and judgment.

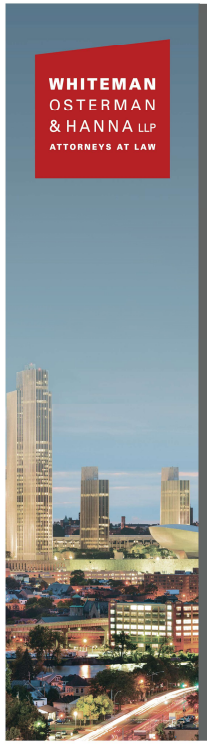
Holding:

- A proceeding to annul a determination by an administrative body "should not be concluded in the [applicant's] favor merely upon the basis of a failure to answer the petition on the return date thereof, unless it appears that such failure to plead was intentional and that the administrative body has no intention to have the controversy determined on the merits"
- The Board exercised its original jurisdiction in special exception, therefore, there was no denial by default of the Applicant's application for a special exception permit.
- With no final determination having been rendered on the application for a special exception permit, that issue was not ripe for judicial review, and the Supreme Court lacked subject matter jurisdiction over that issue.

AREA VARIANCES



1. Will the proposal produce an undesirable change in the neighborhood?
2. Can the benefit sought be achieved by a feasible method other than an area variance?
3. Is the variance substantial?



4. Will the proposal adversely impact the physical or environmental conditions in the neighborhood if granted?
5. Was the alleged difficulty self-created?

Matter of Grosso v. DeChance, 205 A.D.3d 1026 (2nd Dep't, 2022)

FACTS

- Applicants' family owned a 7,378sf parcel for since 1954.
- The Town rezoned the area, increasing minimum lot size requirements to 40,000sf.
- Applicant sought an area variance to construct a dwelling on the parcel.
- ZBA denied the area variance, dismissing the Art 78 proceeding.

HOLDING

The ZBA did not need supporting evidence for each of the five factors so long as the board determined that the detriment to the neighbors outweighed any benefit to the applicant as found during a balancing of the five factors.

Sticks and Stones Holdings LLC v. Zoning Board of Appeals of the Town of Milton (2nd Dep't, 2022)

FACTS

- Applicant purchased a 3–acre parcel of real property that contained a "dilapidated double wide mobile home" and multiple human burial sites.
- Applicant sought an area variance from the 5–acre minimum lot requirement to allow it to construct a new 2,500–square–foot, single-family home
- Applicant agreed to comments from the Office of Parks, Recreation and Historic Preservation but otherwise failed to comply with any of Town's requests, including consistently denying access to the site to any of Town representatives.
- ZBA denied the variance request

Sticks and Stones Holdings LLC v. Zoning Board of Appeals of the Town of Milton (2nd Dep't, 2022)(continued)

HOLDING

- In rendering determination regarding whether to grant area variance, zoning board is not required to justify its determination with supporting evidence with respect to each of five statutory factors, so long as its ultimate determination balancing relevant considerations was rational. N.Y. Town Law § 267-b(3)(b).
- Record showed Town carefully weighed the statutory factors and balanced the benefit to petitioner against the detriment to the community, and we decline to disturb its determination

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1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance will not alter the essential character of the neighborhood;
4. The alleged hardship is not self-created.

USE VARIANCES

5055 Northern Blvd LLC v. Village of Old Brookville, 201 A.D.3d 932 (2nd Dep't, 2022)(continued)

FACTS

- Applicant sought a building permit for a preexisting variance for the sale and storage of gasoline and gasoline-related products
- Building Inspector denied the building permit, determining that the prior nonconforming use of the subject property as a gasoline service station had been abandoned.
- Applicant brought an action against the Village and Building Inspector claiming the Building Inspector's determination was arbitrary and capricious and that the determination that the nonconforming use had been abandoned constituted an unconstitutional taking.
- The Village Defendants moved pursuant to CPLR 3211(a) and 7804(f) to dismiss the action for failure to exhaust administrative remedies.

HOLDING

- The Applicant's denial was appealable to the Village's ZBA. The Applicant failed to pursue that administrative remedy prior to commencing action and failed to prove that appealing to the ZBA would be futile.

- Additionally, the court found the mere assertion that a constitutional right is involved will not excuse the failure to pursue established administrative remedies that can provide the required relief. The Applicant was still required to exhaust all administrative remedies.

Matter of WCC Tank Tech., Inc. v Zoning Bd of Appeals of the Town of Newburgh, N.Y., 190 A.D.3d 860 (2nd Dep't, 2021)

Facts:

- Parcel received a use variance in 1984 and continued operating as a fuel tank lining business under that use variance since issuance.
- The Petitioner began storing vehicles with mounted hydrovac-equipment inside the building.
- Code compliance office issued an Order to Remedy.
- Applicant requested an interpretation and use variance which the ZBA denied.
- Applicant filed an Article 78 which was dismissed.

Holding:

- Petitioners failed to show "by dollars and cents proof that they cannot yield a reasonable rate of return absent the requested use variance."
- The remaining factors did not require consideration without the financial evidence the property could not be used for a permitted purpose.
- The lower court's dismissal of matter was upheld.

Source Renewables, LLC v Town of Cortlandville Zoning Board of Appeals, 3d Dept, February 23, 2023

Facts:

- Use Variance application submitted for a solar farm and access on 63-acres.
- Project proposed on two parcels bisected by municipal boundary.
- ZBA denied the use variance for solar despite the applicant establishing a financial hardship and inability to make a reasonable return.
- The ZBA found that the applicant failed to prove that the hardship results from unique conditions found only on the site, as the neighboring residential properties have similar environmental conditions.
- ZBA's negative interpretation of third standard was based on one member's opinion that the solar panels would be visible from certain angles.
- ZBA's negative interpretation of self-created standard was based on purchased with knowledge and the land could be used for agriculture.
- Applicant claims that the denial was arbitrary and capricious and constitutes a "regulatory taking".

Source Renewables, LLC v Town of Cortlandville Zoning Board of Appeals, 3d Dept, February 23, 2023

Holding:

- Evidence before the ZBA differentiated neighboring properties within a mile by the Applicant property's lack of access to public utilities which would drive up development costs.
- The economic viability report submitted to ZBA compared cost of land for neighboring homes fully infrastructured at $20,000 and the subject property provided installation of the same utilities at $100,000.
- Aesthetics cannot be based on an opinion. In this instance, the neighboring municipal solar farm would be equally visible.
- The request was not self-created since the Applicant was under a purchase contract contingent on local approvals; the current owner purchased well before the zoning restrictions; and reliance on the potential for agricultural use is irrational given the current owner could not earn a reasonable income from leasing to farming tenants.

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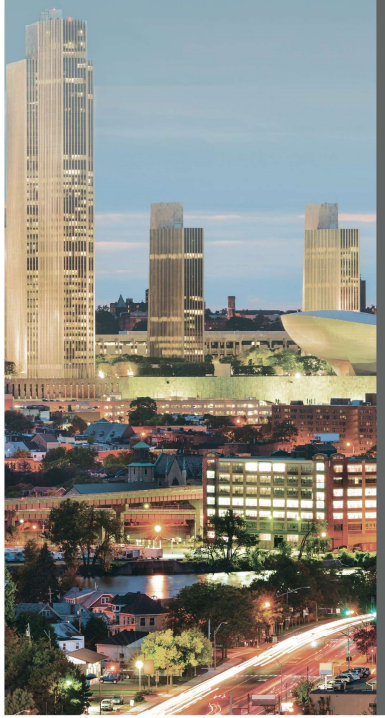

SEQRA

Matter of Coalition for Cobbs Hill v. City of Rochester, 194 A.D.3d 1428 (4th Dep't 2021)

- **Facts:**
  - Project to redevelop Cobbs Hill Village, which would entail demolishing current complex and building several buildings to house over 100 apartment units for affordable senior housing
  - Zoning Manager – Lead Agency for SEQRA review designated project as Type I Action, submitted project to County Planning Department, issued negative declaration
  - City of Rochester Planning commission requested further information, applicants submitted revised application addressing CPC's concerns
  - CPC conditionally approved project
  - Lead agency issued amended negative declaration based on SEQRA violations
  - Petitioners (tenants and residents of adjacent neighborhoods) filed an Article 78 proceeding seeking to annul: (1) Lead Agency's negative declaration based on SEQRA violations; (2) CPC's conditional approval of the project as inconsistent with the special permit approval standard; and (3) CPC's determination on the grounds that revised application should have been rereferred to County Planning Department under Gen. Municipal Law § 239-m

Matter of Coalition for Cobbs Hill v. City of Rochester, 194 A.D.3d 1428 (4th Dep't 2021)

- **Holding:**
  - The Zoning Manager complied with SEQRA in issuing negative declaration – considered potential impacts of Project on traffic, lead contamination, and the mitigation measures included in application
    - Did not improperly issue a conditioned negative declaration – mitigating measures were adopted after issuance of negative declaration and were not conditions to declaration
  - CPC considered and addressed in findings each of the five factors set forth in the zoning code after hearings and reviewing comments/recommendations
  - Revised Project not required to be resubmitted to county Planning Department because changes were not substantial: "Although the number of apartment units to be constructed and the height of those buildings have increased since the original referral, those changes to the Project, when viewed in its totality, were relatively minor."

Matter of Peachin v. City of Oneonta, 194 A.D.3d 1172 (3d Dep't 2021)

- **Facts:**
  - Proposal to City of Oneonta Planning Commission to construct a 73,500 square foot, four-story, mixed-use building which would include 64 affordable-housing apartment units and an educational facility on a 2.12-acre municipal parking lot
  - City Planning Commission served as lead agency
  - Project designated as Type I action under SEQRA
  - Planning Commission issued a negative declaration and approved the project, waiving the zoning code requirement that 90 off-street parking spaces be added to accommodate the use
  - Petitioners, adjacent business owners, filed an Article 78 proceeding to annul the negative SEQRA declaration and resolution granting site plan approval, asserting that the Commission failed to take a hard look at the parking impacts of the project
  - Supreme Court held that petitioners lacked standing to challenge the negative declaration

Matter of Peachin v. City of Oneonta, 194 A.D.3d 1172 (3d Dep't 2021) CONT'D

- **Holding:**
  - Appellate Court agreed with Supreme Court and held that the petitioners lacked standing to challenge negative declaration because their harms were too speculative or economic in nature
  - Appellate Court held that, the issue of standing aside, the Planning Commission took the requisite hard look at the parking impacts

Matter of Williamsville Residents Opposed to Blocher Redevelopment, LLC v. Village of Williamsville Planning & Architectural Review Bd., 208 A.D.3d 1609 (4th Dep't 2022)

Facts:

- Application for architectural and site plan approval to repurpose an existing 57-unit, 24,780 SF apartment complex to an 87-unit mixed-income apartment complex

- Throughout application review process, Planning Board characterized project as an Unlisted Action for SEQRA

- Short EAF submitted

- Petitioners challenge SEQRA negative declaration and issuance of approvals due to procedural errors in SEQRA

Matter of Williamsville Residents Opposed to Blocher Redevelopment, LLC v. Village of Williamsville Planning & Architectural Review Bd., 208 A.D.3d 1609 (4th Dep't 2022) CONT'D

Holding:

- Negative declaration upheld
  - The Appellate Court held that although strict compliance with procedural mechanisms are important, the Planning Board treated the review as a Type I
  - Planning Board strictly complied with the SEQRA process for a Type I Action despite misclassification
    - ✓ Conducted a coordinated review
    - ✓ Thoroughly addressed environmental factors
    - ✓ Took a "hard look" as evidenced in the 31-page negative declaration

Matter of Hart v. Town of Guilderland, 196 A.D.3d 900 (3d Dep't 2021)

- **Facts:**
  - Rapp Road Development, LLC applied for and was granted subdivision and site plan approval for a development project involving two sites: a 222-apartment residential development and a warehouse and refueling station
  - Planning Board, lead agency, undertook cumulative review of the project and issued a SEQRA positive declaration
  - Petitioners challenge Planning Board's approval of project

Matter of Hart v. Town of Guilderland, 196 A.D.3d 900 (3d Dep't 2021) CONT'D

- **Holding:**
  - Appellate Court held that Planning Board complied with SEQRA as it took the requisite hard look and made a reasoned elaboration of the basis for its determination regarding:
    - impacts to avian populations;
    - visual impact of proposed project on nearby historic district;
    - impact on community character;
    - compatibility w/ the goals of the transit district;
    - the proposed mitigation measures; and
    - alternatives to the proposed developments

Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dep't, 2022)

- **Facts:**

New Petitioners filed an appeal to annul Planning Board's SEQR findings statement and site plan approval (earlier action was dismissed and a prior appeal was pending from another petitioner). The Petitioners based the appeal on the cumulative environmental impacts regarding:

  - Threatened or endangered species;
  - Potential pesticide use;
  - Effects of development on wetlands;
  - Climate change; and
  - Air Quality

Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dep't, 2022)

- **Holding:**

- Appellate Court held that a new petitioner was not precluded from filing a second appeal, given new issues not addressed in the prior matter. However, the standard for review remains "to assure that the agency has satisfied SEQR, procedurally and substantively." In this instance, the Planning Board relied on studies submitted by the Applicant. The court will not:
  - "evaluate the data" (or pass judgment on studies submitted);
  - "weigh the desirability of any particular action (second guess the lead agency);
  - "choose among alternatives"; or
  - "substitute our judgment for that of the agency."

Matter of Van Dyk v. Town of Greenfield Planning Bd., 190 A.D.3d 1048 (3d Dept 2021)

- **Facts**:
  - Stewart's Shops sought site plan approval of project involving the construction of a manufacturing and distribution center
  - Planning Board issued negative SEQRA declaration and site plan approval
  - Petitioner's challenge issuance of negative declaration on grounds that Planning Board failed to consider environmental concerns, specifically the stormwater and wetland impacts raised in the application
- **Holding**:
  - Appellate Court held that Planning Board took a hard look at the stormwater impacts and "made a reasoned determination that the capacity of the existing system was adequate to handle the increase in stormwater runoff"
  - The determination in the full EAF that the modified project "would have no impact on surface waters is supported by the evidence and validates the Planning Board's negative declaration."

Save Monroe Ave., Inc. vs. NYSDOT Monroe County Supreme Ct, 9-27-22

Opponents of a Whole Foods Store proposed in the Town of Brighton seek to overturn NYSDOT approval and permits

NYSDOT was an involved agency only but issued its own SEQRA Statement of Findings (SOF) and permits for the project

Petitioner claims that the NYSDOT decision was improperly based on Town Board decision as SEQRA lead agency) without an independent evaluation and that NYSDOT did not require maximum mitigation measures

Save Monroe Ave., Inc. vs. NYSDOT

- The Court held in favor of NYSDOT
  - Finding that certain of the claims were moot because the highway work permits were issued, the work completed, and the permits expired;
  - Finding that NYSDOT's compliance with SEQRA was independent and sufficient and that Petitioner's claims that NYSDOT did a 180 on the project was not an accurate characterization of the NYSDOT decision-making which was thorough and took place over four years of review and six traffic studies; and
  - The Court reaffirmed its obligation to defer to NYSDOT's decision which had a rational basis in the record and reflected a SEQRA hard look.

Town of Southampton v. New York State Department of Environmental Conservation, N.Y. Slip Op. 00689 (2nd Dep't 2023)

- **Facts:**
  - Applicant owned a gravel mine on a 50-acre parcel of property, the Town rezoned the area to a residential district that prohibited mining.
- **Issue:**
  - Whether ECL 23-2703(3) bars the DEC from processing all applications for permits to mine in covered counties, including applications for renewal and modification permits, when "local zoning laws or ordinances prohibit mining uses within the area proposed to be mined."
- **Holding:**
  - DEC may process renewal and modification applications when such applications seek to mine land that falls within the scope of an undisputed prior nonconforming use.
  - The Applications at issue implicate some prior nonconforming uses that are undisputed and others that are disputed but not yet resolved
  - Because prior nonconforming use was not taken into account by either DEC or the or lower courts.

Sierra Club v. Town of Torrey, 75 Misc.3d 523 (2022)

Facts:

Plaintiffs (including environmental groups) brought Article 78 action against Town and power-plant operator, seeking to invalidate, under SEQRA, town's grant of permits to plant operator for construction of cryptocurrency-mining facility, and plaintiffs moved for preliminary injunction against construction.

Issue:

- Whether ECL 23-2703(3) bars the DEC from processing all applications for permits to mine in covered counties, including applications for renewal and modification permits, when "local zoning laws or ordinances prohibit mining uses within the area proposed to be mined."

Holding:

- Plaintiffs' concerns about discharge of heated water from power plant into lake were irrelevant and could not support plaintiffs' standing;
- Plaintiffs' expert about discharge of heated water from power plant into lake was irrelevant and would be excluded; Plaintiff's allegations regarding noise from facility did not establish an injury different from that suffered by the general public and thus were insufficient for standing.
- Town's planning board complied with requirements of SEQRA by taking hard look at project's environmental impacts.
- Plaintiffs' motion for preliminary injunction was moot; and

Forman v. Town of Northumberland Planning Board, 76 Misc.3d 1220(A) (2nd Dep't 2022)

Facts:

- Dispute between Petitioner's boarding Irish wolfhounds and Cornell's horse farm. Prior to Petitioner purchasing their property, Cornell purchased a horse farm consistent with its prior use as a horse farm for the past 40 years.
- Cornell pursued a special use permit and site plan approval for the construction of a barn 400 feet from their home, which included an indoor riding arena as part of a multipurpose barn.
- After various revisions and the acceptance of comments, the Planning Board approved Cornell's site plan and special use permit application.
- Applicant complained that it would have a detrimental effect on their property through light pollution and an obstructed view.
- Petitioners argued that the Project was improperly classified as a Type II action.
- Petitioner claimed SEQR segmentation based on the applicant statement that a home may be constructed on the parcel in the future.

Holding:

- 6 NYCRR § 617.5(c)(4) identifies "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" as being actions not subject to SEQRA review.
- Town's determination was rational and supported by substantial evidence. The Town classification was not arbitrary or capricious and the approvals were well within its discretion.

Comments or Questions?

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