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CASE LAW UPDATE - MAY 2018

By Steven M. Silverbergⁱ

ZONING AND LAND USE

-Site Plan/Subdivision

Alper Restaurant Inc. v. Town of Copake Planning Board, 2017 WL 1347786, 149 A.D.3d 1336, 51 N.Y.S.3d 704 (3d Dep't Apr. 13, 2017)

Petitioner could not avoid the fact that Article 78 proceeding challenging neighbor's site plan and subdivision approvals was untimely by arguing the Planning Board was equitably estopped from raising statute of limitations defense based upon alleged misrepresentations made by the Planning Board.

Matter of Bartz v. Village of Leroy, __AD3d__ (4th Dept. 2018)

When do rights to a subdivision vest to protect against changes in zoning.

-Special Use/Exception Permits

Blanchfield v. Town of Hoosick, 149 A.D.3d 1380, 53 N.Y.S.3d 226 (3d Dep't Apr. 20, 2017)

Court vacated Planning Board's denial of special permit where there was nothing in the record to refute the scientific evidence presented by the Petitioner, the Planning Board did not explain why the proposed noise mitigation measures were inadequate and it appeared the Planning Board had succumbed to generalized community opposition.

-Permits/Certificate of Occupancy

Crowell v. Zoning Board of Appeals of Town of Queensbury, 151 A.D.3d 1247, 56 N.Y.S.3d 618 (Jun. 8, 2017)

Petitioner's Article 78 proceeding was barred by statute of limitations where they initiated proceeding after issuance of building permit instead of after the ZBA's determination to grant area variances. The proceeding was also barred by doctrine of laches where construction was substantially completed.

Holihan v. Town of Orangetown, 152 A.D.3d 747, 59 N.Y.S.3d 419 (2d Dep't Jul. 26, 2017)

Plaintiff's challenge to certificate of occupancy that restricted use of second dwelling was barred by the statute of limitations where Plaintiff did not challenge the certificate of occupancy after it was issued, but only after he wanted to use the dwelling for a different purpose many years later.

Carnelian v. Village of Muttontown Building Department, 151 A.D.3d 845, 56 N.Y.S.3d 554 (2d Dep't Jun. 14, 2017)

Petitioner's Article 78 proceeding against Building Inspector for requiring Petitioner to obtain additional permits was dismissed for failure to exhaust administrative remedies where Petitioner did not challenge the Building Inspector's determination to the ZBA.

Willows Condominium Ass'n v. Town of Greenburgh, 153 A.D.3d 535, 60 N.Y.S.3d 233 (2d Dep't Aug. 2, 2017)

Petitioner could not bring mandamus action to compel Building Inspector to make a formal determination on a violation claim because it was a discretionary act of how to perform his duties. And where the ZBA's jurisdiction is appellate only and the Building Inspector was not required to make a determination, there was nothing to compel the ZBA to review.

Perry v. Brennan, 153 A.D.3d 522, 60 N.Y.S.3d 214 (2d Dep't Aug. 2, 2017)

Even though Town Board was not authorized to determine ownership disputes, it was not arbitrary and capricious to issue dredging permit to ostensible owner.

-Area Variances

Cohen v. Town of Ramapo Building, Planning & Zoning Department, 150 A.D.3d 993, 54 N.Y.S.3d 650 (2d Dep't May 17, 2017)

The Court upheld the ZBA's grant of the area variance finding that even though there was not supporting evidence for each of the factors the ZBA's balancing test was rational. Court noted that the applicant was a religious institution that was not exempt from zoning but entitled to greater flexibility to accommodate use.

Bonefish Grill, LLC v. Zoning Board of Appeals of Village of Rockville Centre, 153 A.D.3d 1394, 61 N.Y.S.3d 623 (2d Dep’t Sept. 27, 2017)

The Court upheld parking area variance grant subject to conditions that were intended to alleviate adverse impacts on neighboring properties from variance where ZBA relied upon testimony from local store owners who had personal knowledge. Court noted the Lower Court judge was not required to recuse himself where there was no evidence of bias or prejudice.

-Use Variances

Rodriguez v. Weiss, 49 N.Y.S.3d 902 (2d Dep’t Apr. 12, 2017).

The Court held it was improper for the lower court to affirm the ZBA’s denial of a use variance where the ZBA improperly denied the application without reaching the merits and the lower court “was powerless to affirm the administrative action by substituting what it considers to be a more adequate proper basis.”

-Interpretations

Bray v. Town of Yorktown Zoning Board of Appeals, 151 A.D.3d 720, 56 N.Y.S.3d 246 (2d Dep’t Jun. 7, 2017)

ZBA’s determination as to whether parking vehicles in the front yard was permitted as a residential use was a fact-based determination that was entitled to substantial deference. Petitioner could not challenge approval based upon defective notice where he did not raise the defect before the ZBA.

-Standing

Shapiro v. Torres, 153 A.D.3d 835, 60 N.Y.S.3d 366 (2d Dep’t Aug. 23, 2017)

Lack of standing to challenge construction of comfort stations on abutting public boardwalk

-Ripeness

Life Covenant Church, Inc. v. Town of Colonie, 2017 WL 4081907 (N.D.N.Y. Sept. 13, 2017)

Failure to pursue a local zoning process to completion renders a challenge to that process unripe for review in federal court.

Spot Zoning

Matter of The Hgts. of Lansing, LLC v Village of Lansing, ___AD3d ___ (Third Dept 2018)

Rezoning a single parcel was not spot zoning.

SEQRA

Green Earth Farms Rockland, LLC v. Town of Haverstraw Planning Bd., 153 A.D.3d 823, 60 N.Y.S.3d 381 (2d Dep't Aug. 23, 2017)

Failure to mention a component of revised site plan in findings was a failure to take a hard look at environmental issues.

Youngewirth v. Town of Ramapo Town Board, 2017 WL 5162956 (2d Dep't Nov. 8, 2017)

Review under (SEQRA) was inadequate, thus requiring the court to overturn the comprehensive plan amendment and the zoning that would have implemented that comprehensive plan change.

Shapiro v. Planning Board of the Town of Ramapo, 2017 WL 5167659 (2d Dep't Nov. 8, 2017)

Failure to obtain definitive wetland delineation basis for rejecting SEQRA determination.

Incorporated Village of Munsey Park v. Manhasset-Lakeville Water District, 150 A.D.3d 969, 57 N.Y.S.3d 154 (2d Dep't May 17, 2017)

Water District (Defendant) properly determined its replacement water tank was not subject to local zoning and the project was a Type II Action that did not require any environmental review.

WIRELESS TELECOMMUNICATIONS

Decarr v. Zoning Bd. of Appeals for Town of Verona, 154 A.D.3d 1311, 62 N.Y.S.3d 244 (4th Dep't Oct. 6, 2017)

Discusses the varied criteria applied to variances and special permits for wireless facilities.

Sullivan v. Planning Board of the Town of Mamakating, 151 A.D.3d 1518, 58 N.Y.S.3d 692 (3d Dep't Jun. 29, 2017)

Challenge to an approval for AT&T to construct a wireless telecommunication tower was dismissed after the owner of the property was not named in the action and the statute of limitations had run.

RELIGIOUS USES

Christian Assembly Rios De Agua Viva v. City of Burbank, 237 F. Supp. 3d 781 (N.D. Ill. Feb. 21, 2017)

Jury should determine damages for unequal treatment of religious use.

Chabad Lubavitch of Litchfield County, Inc., v. Borough of Litchfield, 2017 WL 5015624 (D. Conn. Nov. 2, 2017)

RLUIPA violated by historic review board.

Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, 280 F.Supp.3d 426 (SDNY 2017)

Local law restricting religious uses violated RLUIPA and provisions of the U.S. Constitution.

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