Case Law Review

Onondaga County Planning Symposium

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Joe Frateschi, Esq.
&
Amelia McLean-Robertson, Esq.

Matter of Hammer v. Town of Bedford N.Y., 242 A.D.3d 747 (2d Dep’t 2025)

Facts:

- Property owner sought to convert a recreational room above a garage on her property to a residential apartment;
- Property owner applies for a building permit;
- Code enforcement officer for the Town denies the building permit on the grounds that there cannot be two (2) primary residential structures on one (1) property;
- Property owner applies for a use variance;

Matter of Hammer v. Town of Bedford N.Y., 242 A.D.3d 747 (2d Dep't 2025) (Cont'd)

- Rule: To obtain a use variance, the applicant must show:
  - (1) it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; AND
  - (4) that the alleged hardship has not been self-created
- The ZBA held a public hearing, and, after analyzing the factors, denied the use variance

Issue: Whether the ZBA's determination was arbitrary and capricious?

Holding

- The ZBA's determination was rationally based:
  - The Property owner could not establish that the alleged hardship was not self-created

McLean, LLC v. City of Yonkers, 237, A.D.3d 1189 (2 Dep't 2025)

Facts:

- Property was located in a "restricted business, residences excluded" zone.
- A Gas Station is a permitted use, however a Gas Station/Convenience Store requires a Special Permit.
- Planning Board held a public hearing and granted the Special Permit application with conditions.
- City Counsel held a second public hearing and denied the application due to public opposition.
- Applicant appealed.

Holding

“Unlike a variance, a special [use] permit does not entail a use of the property forbidden by the zoning ordinance but, instead, constitutes the recognition of a use which the ordinance permits under stated conditions.”

This distinction is significant because the “inclusion of the permitted use in the ordinance 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.”

The Special Permit must be granted if applicant shows that the use would conform with the imposed conditions of the permit, unless there are reasonable grounds for denying the Special Permit that are supported by substantial evidence – cannot deny due to community objection.

Matter of Williams v. Town of Lake Luzerne Zoning Board of Appeals (2d Dep’t 2025)

Facts:

- Property owner demolishes a residential structure on a vacant lot owned and adjoining the lot on which the property owner has a home;
- Property owner builds three-bay metal garage without securing a building permit on the adjoining lot;
- Property owner finds out she needed a variance and applies;
- Property owner is told that the Town does not allow for accessory structures on their own standalone lot;
- To correct this, she applies for (and receives) a lot consolidation making the two (2) lots one (1) lot;

Matter of Williams v. Town of Lake Luzerne Zoning Board of Appeals (2d Dep't 2025) (Cont'd)

- Property owner is also informed that the height of the garage was 17 feet and the height of the principal residence was 13 feet.
- Pursuant to the Town Code:
  - The maximum height for an accessory structure is 18'; AND
  - An accessory structure cannot exceed the height of the principal building, which, can be up to 38' tall)
- Property Owner applies for an area variance (a 4' height variance);

Matter of Williams v. Town of Lake Luzerne Zoning Board of Appeals (2d Dep't 2025) (Cont'd)

- The following evidence was presented at the public hearing:
  - Neighboring property owner came in and spoke and stated that the structure that was replaced by the garage was an eyesore and was taller than the garage;
  - Property owner stated the home could not be stabilized to achieve the necessary storage goas, which, necessitated this particular garage;
  - 5 neighbors submitted letters in support of the area variance;
  - 1 neighbor voiced that he was against the area variance
- ZBA makes SEQRA determination and determines there is no adverse environmental or physical impacts.
- ZBA votes on the area variance and denies for the following reasons:
  - Garage was out of character with and would be detrimental to the community (the ZBA found that there were no accessory structures this tall in the vicinity);
  - Property owner failed to address whether there were feasible alternatives;
  - The garage could cause adverse physical and environmental impacts;
  - The requested variance was substantial;
  - The requested variance was self-created

Issue: Whether the ZBA's determination was arbitrary and capricious?

Holding (Pt. 1)

Rule: To obtain an area variance, the benefit to the applicant must outweigh the detriment to the community based upon the following factors:

- Factor 1: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of an area variance;
- Factor 2: Whether the benefit sought by the applicant can be achieved by some other feasible means;
- Factor 3: Whether the requested variance is substantial;
- Factor 4: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- Factor 5: Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not preclude the granting of the area variance

Holding (Pt. 2)

- The ZBA's determination WAS arbitrary and capricious for the following reasons:
  - As to Factor #1: The garage was replacing a taller, legal structure that was an "eyesore" – no evidence of detriment to neighboring property owners;
  - As to Factor #2: Given the stabilization issues, and, the Property Owner's storage needs, the property owner established that this particular garage was needed;
  - As to Factor #3: While this was a 29% variance from what was required, any substantiality was mitigated by the fact that there were no discernable adverse impacts;
  - As to Factor #4: The ZBA could not conclude that the variance would result in adverse environmental or adverse impact where it made a negative SEQRA finding; and
  - As to Factor #5: This was self-created, however, this factor is not determinative

Matter remitted back to the ZBA to grant the area variance.

Bigelow v. Town of Willsboro Planning Board 243 A.D.3d 979 (3d Dep't 2025)

- Owners of neighboring property commenced an Article 78 proceeding seeking to annul Planning Board's approval of a site plan for a self-storage facility on property that bisected two zoning districts – Highway Commercial and Residential Medium Density.

- Applicant obtained site plan approval from Planning Board but afterwards, the Code Enforcement Officer told Applicant they needed a Special Use Permit because the Residential zone only allowed storage with a Special Use Permit.

- Applicant applied for the Special Use Permit, Planning Board approved and readopted the previously issued site plan approval.

- Owners sued and the Supreme Court annulled the Planning Board's grant of the Permit and found that the only way to permissibly operate the storage facility was to amend the zoning map.

Bigelow v. Town of Willsboro Planning Board 243 A.D.3d 979 (3d Dep't 2025) continued

- While first proceeding remained before the Supreme Court, Applicant submitted a New Application to the Planning Board so that the storage buildings were solely in the Highway Commercial district.

- Planning Board approved the New Application as an "alternative" in the event the first plan did not withstand judicial scrutiny.

- The Town Code allowed site plan applications of this type to be approved administratively, and the Planning Board could waive site plan review, however nothing in the record demonstrated that this was the intent of the Planning Board.

- Planning Board did not treat the New Application as new, and did not conduct SEQRA on the New Application. During their meeting the Planning Board discussed the previous application and the litigation.

Holding

The Court found that the Planning Board did not conduct SEQRA on the New Application, and the application was remitted to the Planning Board.

The Supreme Court's judgement dismissing the causes of action asserting the SEQRA violations was reversed, and the aspect of the petition seeking to annul the Planning Board's grant of site plan approval was granted.

PF Development Group, LLC v. Town of Brunswick, 242 A.D.3d 98 (3d Dep't 2025)

Facts:

- Property developer proposes a commercial site plan in a portion of the site that is a business zone;
- Town Planning Board conditionally approves the site plan in 2016;
- In 2017 the Town Board adopts a local law allowing multi-family dwellings in residential zones with a special permit issued by Planning Board;
- A portion of the property developer's site is in the residential district and the developer applies for a special permit to construct multi-family dwellings on the residential portion of the site;

PF Development Group, LLC v. Town of Brunswick, 242 A.D.3d 98 (3d Dep’t 2025) (Cont’d)

- Planning Board raises concerns during the review process as to whether the Town has hit a “saturation point” for apartments;
- During the review process, the conduct of the Planning Board Chairman was called into question due to his owning property adjacent to the site, and, the Planning Board Chairman then recuses himself from further discussions;
- There were allegations made that the Planning Board Chairman held meetings with Town Board members expressing his dislike of the Project, and, that he coached members of the community to speak out against the Project;
- Planning Board issues a Positive Declaration for purposes of SEQRA;
- In 2021, the Town Board enacts a moratorium on approvals related to multifamily projects;
- In 2022, the Town Board amends its local law dealing with multifamily projects within the Town in such a way that it would make it impossible for the property developer to obtain a special permit for this particular project;
- Property developer files a lawsuit challenging the new local law on the following grounds:
  - Local law was illegal as it was reverse spot zoning;
  - Local law was illegal as it was enacted in retaliation for Property Developer’s acting against the Planning Board Chairperson’s personal interests

Issue: Whether the local law was illegal?

Holding (Pt. 1)

- Rule: To show reverse spot zoning, the property owner must show:
  - The zoning is site specific; and
  - That the zoning is inconsistent with the well-considered land-use plan for the area

Holding (Part 2)

- This did not constitute illegal spot zoning because:
  - The Local Law was not specific to this site (i.e., the new law applied to all multifamily projects within the Town); and
  - The Local Law was enacted in conformance with the Town's previously enacted comprehensive plan

Holding (Part 3)

- Generally, the passage of the Local Law is a Town Board function over which the Planning Board has no control HOWEVER . . .
  - The Planning Board is expressly given the power under the Town Code to provide recommendations to the Town Board on local laws THEREFORE . . .
    - Given the allegations, it is possible that alleged the conduct of the Planning Board Chairman could have rendered the Town Board's local law illegal
      - Matter remanded back down for further proceedings to determine whether the local law was improperly enacted.

80 Woodland Ave. v Village of Catskill, 240 A.D.3d (3d Dep't 2025)

Petitioner purchased a former academy property that consisted of three buildings which was located in a single-family residential zone.

Petitioner applied for a building permit to convert the buildings into apartments.

Petitioner was denied the permit and appealed to the ZBA for a use variance.

ZBA analyzed whether (1) the property cannot realize a reasonable return as it is currently zoned, (2) the hardship results from characteristics unique to the property, (3) the proposed use would not alter the essential character of the neighborhood; and (4) the hardship has not been self-created.

80 Woodland Ave. v Village of Catskill, 240 A.D.3d (3d Dep’t 2025) Continued

The proof before the ZBA was that the immediate surrounding neighborhood consisted of single-family homes, the property was not zoned for a large apartment complex, and that the proposed apartment complex would generate traffic.

Petitioner contended that the traffic would not alter the character of the neighborhood because the traffic generated would be equivalent to when the academy school was operating on the property.

However, Petitioner did not provide any expert proof regarding the potential traffic to the ZBA. The ZBA also did not have expert proof.

“Expert opinion regarding traffic patterns, when presented, may not be disregarded in favor of generalized community opposition”

80 Woodland Ave. v Village of Catskill, 240 A.D.3d (3d Dep't 2025) Continued

However, the academy school had closed over 20 years ago, so even traffic at the level experienced when the school was operating would be a significant increase over what the neighborhood had experienced over the past two decades.

Further, the ZBA considered that school traffic would have occurred during certain times of the day, and this would be different than an apartment complex.

In considering the fourth prong, "hardship will be considered self-imposed when the applicant for the variance acquired the property subject to the restriction and was aware of the restriction at the time of purchase." (*Matter of Greco v. Denison*, 195 A.D.2d 660, 661).

A hardship might not be self-created where a landowner knew about the zoning restrictions but ended up needing a variance because "the original purpose of the [buildings] became obsolete" over the period of ownership or the owner only learned of that obsolescence after acquiring the property." (*Matter of Kontogiannis v. Fritts*, 131 A.D.2d 944, 946)

Holding

The court upheld the ZBA's decision finding that due to the fact the properties had been vacant over 20 years, the Petitioner was fully aware of the limited potential uses of the building.

The Court stated that "courts are not responsible for 'guarantee[ing] the investments of careless land buyers'".

The ZBA had a rational basis to conclude that the hardship was self-created. Petitioner failed to establish two of the factors needed to establish unnecessary hardship and a failure to meet one factor is sufficient for the ZBA to refuse the request.

Little Harbor Partners, LLC v. Village of Port Jefferson Zoning Board of Appeals, 2026 WL 291231 (2d Dep't 2026)

- Property owner desires to create a two lot subdivision;
- If subdivided, both lots would be 10,000 square feet, and, by Village Code, all lots within the Village must be over 20,000 square feet;
- Property owner applied for area variances as to each lot;
- At the public hearing the following is presented:
  - If the variance was granted, single family homes would be built on each lot;
  - The requested variance was for 10,000 square foot lots where 20,000 square foot lots were required; and
  - The ZBA expressed concerns over the precedence that would be set by granting these area variances.
- The ZBA denies the area variances

Issue: Whether the ZBA's determination was arbitrary and capricious?

Holding (Part 1)

Rule: To obtain an area variance, the benefit to the applicant must outweigh the detriment to the community based upon the following factors:

- Factor 1: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of an area variance;
- Factor 2: Whether the benefit sought by the applicant can be achieved by some other feasible means;
- Factor 3: Whether the requested variance is substantial;
- Factor 4: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- Factor 5: Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not preclude the granting of the area variance

Holding (Part 2)

- The ZBA had a rational basis to deny the area variances:
  - A 50% variance was substantial;
  - The requested variance was self-created; and
  - The ZBA's concerns about the negative precedence that could be set if the area variances were granted were legitimate and the granting of the area variances could result in future, substandard buildable lots, and, an influx of housing on substandard lots – both of which would be . . .
    - Detrimental impacts upon the community AND
    - Adverse physical or environmental impacts

Socha v. Town of Starkey, 239 A.D.3d (4th Dep't 2025)

Petitioners applied for a use variance to construct a shed that exceeded the square footage limit set by the Town Code.

Petitioners variance application listed the incorrect tax ID and did not include the location or address of the property where the shed was to be built.

Notice was sent to property owners within 1,000 feet of the mailing address provided by the petitioners.

Following a hearing, the ZBA granted the application and the new shed was built.

Socha v. Town of Starkey, 239 A.D.3d (4th Dep't 2025) Continued

ZBA became aware that the notice was defective after the shed was built and determined that the administrative hearing was defective.

On instruction from the ZBA, Petitioner submitted a new variance application with the correct Tax ID number, and notices were sent to property owners within 1,000 of the property where the shed had been built.

During the hearing neighbors indicated that the larger structure affected the turn around area on the access road and created drainage issues.

The ZBA denied the previously approved variance application and ordered that the shed be removed.

Holding

The Court found that the errors and inconsistencies throughout the first variance application wholly defeated the purpose of notice in an administrative proceeding, resulting in a failure to inform interested parties by published notice, as required by statute.

The failure to properly notice nearby property owners rendered the first variance approval and the building permit void ab initio because the ZBA "was without power to grant a variance where" no public notice was given.

Because the ZBA failed to comply with relevant statutes and regulations their actions were "illegal and void".

Holding continued

Also, Petitioners could not claim they had vested property rights (meaning that the Petitioner could claim they had relied on the ZBA's determination and has accrued expenses in constructing the shed and, therefore, had vested rights) because the variance and building permit were not legally issued.

The record also showed that the ZBA's subsequent denial was properly based on new facts of which it was not aware at the previous hearing because of the insufficient notice.

Matter of Goldstein v. Village of Mamaroneck Board of Ethics, 242 A.D.3d 1199 (2d Dep't 2025)

- Village Code provides as follows:
  - A member of a Village Board shall promptly recuse himself/herself from acting on a matter before the Village when acting on the matter may "give the appearance of a conflict of interest or impropriety."
- Project comes before the Planning Board. Village Planning Board Member participates in discussions and votes against the Project;
- An ethics complaint is filed against the Planning Board Member;
- A hearing is had before the Village Board of Ethics, and, it was found that the Planning Board Member:
  - Resided in close proximity to the Projects; and
  - Would be directly, negatively impacted by the construction impacts of the Project
- The Village Board of Ethics makes a finding that the Planning Board Member's failure to recuse herself violated the Village's Ethics Code
- The Village Planning Board member challenges the decision on the grounds that the Village's Ethics Code is Unconstitutionally Vague.
- Issue: Whether the Village's Board of Ethics determination should be upheld?

Holding

- Yes . . .
  - “Appearance of impropriety” is a term of art and has a long history of being interpreted by the Courts
  - The decision of the Board of Ethics was reasonable given prior judicial interpretations of “appearance of impropriety” in the past;
  - The Court also found that it was egregious that the Planning Board Member made no attempt to even provide notice that an appearance of impropriety may be present.

Court upholds the determination of the Village’s Board of Ethics.

Johnson v. Zoning Board of Village of Brockport 240 A.D.3d 1243 (4th Dep’t 2025)

Petitioners filed an Article 78 seeking to annul the ZBA’s determination granting an area variance to respondent, Earthborn Materials, LLC (“Earthborn”), for certain operations of its landscape and construction material processing business.

Earthborn’s property was in the Limited Industrial (“LI”) district. The Town Code stated that the purpose of this district “is to establish a district for research- and development-oriented uses, office buildings and other compatible light industrial, manufacturing and assembly uses which are in architectural harming with one another in a campus-style setting which is attractively landscaped and fitting to a village environment.”

Johnson v. Zoning Board of Village of Brockport 240 A.D.3d 1243 (4th Dep't 2025) continued

The Code also stated that "no materials, supplies or equipment shall be permitted to be permanently stored outside any building."

Earthborn applied for an area variance to permit processing and storage of materials outside of an enclosed building and to maintain a number of piles of materials on the worksite.

ZBA granted the variance, however did not refer to the County for review under GML 239-m because the Town and the County had an agreement, and this type of variance was agreed to be exempt from referral under the agreement.

Petitioners filed an Article 78 more than 30 days after the decision. Earthborn moved to dismiss as being time-barred.

Holding

The court reviewed the agreement between the Village and the County and determined that the type of variance sought by Earthborn was not exempt from county referral under GML 239-m.

The court found that the ZBA's approval was jurisdictionally defective and therefore the statute of limitations of 30-days did not accrue.

Also, the court found that the defect rendered the ZBA's approval of the variance null and void.

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HARRIS BEACH MURTHA
ATTORNEYS AT LAW