

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,
Acting Supreme Court Justice

TRIAL/IAS, PART 37
NASSAU COUNTY

PRO HOME BUILDERS, INC. and THE
ROMAN CATHOLIC CHURCH OF ST. RAPHAEL
AT EAST MEADOW,

Petitioner(s),

MOTION DATE: 12/5/07
INDEX NO.: 10850/07

For an Order Pursuant to Article 78 of
the Civil Practice Law and Rules

SEQ. NO 1

-against-

JEFFREY H. GREENFIELD, Chairman,
MICHAEL A. BELLISSIMO, First Vice
Chairman, NEAL LEWIS, Second Vice
Chairman, PHILIP COMO, CLARA GILLEN-
EROMOSELE, AMY HAGEDORN, MARY A. McCAFFERY,
MONA G. RANKIN and LEONARD H. SHAPIRO, as
Members of the Nassau County Planning
Commission,

Respondent (s)

The petitioner's application, pursuant to CPLR Article 78, to reverse and annul the respondent's 2/21/07 determination which, in effect, declared that the petitioner is obligated to file a subdivision map is determined as hereinafter provided.

The petitioner The Roman Catholic Church of St Raphael at East Meadow is the owner of an irregularly shaped parcel of property (Section 50, Block 220, Lot 223) consisting of approximately 1.15 acres in East Meadow. The petitioner Pro Home Builders, Inc. Is the contract vendee of the premises and seeks to subdivide the parcel into eight separate building lots that comply with Article VII of the Town of Hempstead's Building Zone Ordinances i.e., each lot would have, inter alia, no less than 6,000 square feet and a lot width of no less than 55 square feet at the front setback line and on the street line. More specifically, the petitioners propose to implement only "minor changes" or "deviations" from prior lot lines on the "Map of Hempstead Lawns, Section 10" which was filed on April 29, 1922 as Map No. 512 in the office of the Nassau County Clerk (see petitioners' 6/21/07 petition, paras.7,20 and 21). Significantly, while the new lot lines would reportedly be "for the purposes of making each of the eight(8) lots compliant

with the zoning requirements for the Residence 'B' District in which the premises is situated" (para.20), no variances are allegedly required since development of the lots is purportedly " 'as of right' under Town of Hempstead ordinances, rules and regulations" (para.24).

The petitioners assert, in sum, that they need not file a subdivision map for the proposed lots pursuant to Real Property Law §334-a because they qualify for one of that statute's three exceptions i.e., subdivision 1(b).

That provision applies:

"Where a subdivision map has been filed prior to January twelfth, nineteen hundred and forty-five, and alterations made thereon do not involve any change, or extensions of previously laid out streets and where the only alterations are changes in lot boundaries which are made solely for the purposes of adhering to applicable zoning regulations."

(Emphasis added)

On 2/21/07, however, the respondent determined that the property "is not eligible for the old filed map exception 1(b) of the Real Property Law, Section 334a" because "[t]he subject property currently complies with applicable zoning regulations" (see petitioners' exhibit F). Otherwise stated, it appears that the respondent concluded that, although the proposed "deviations" and "minor changes" to the lot lines on the 1922 map are allegedly necessary in order to comply with Article VII of the Town of Hempstead's Building Zone Ordinance, since, admittedly no variances are required, the premises currently complies with the applicable zoning regulations and therefore the petitioners do not qualify for the exemption.

The petitioners subsequently filed this special proceeding, pursuant to CPLR article 78, on 6/21/07 seeking to reverse and annul the respondent's 2/21/07 determination as arbitrary and capricious. In the alternative, since they allegedly qualify for the exception, the petitioners seek to compel the respondent's performance of the purportedly ministerial act of issuing the exemption. Issue was joined with the respondent's 10/5/07 service of its verified answer and objections in point of law (see CPLR §7804).

The law is well settled that the appropriate standard of review to examine the respondent's decision is whether the record contains sufficient evidence to support the rationality of its determination (see Matter of Sasso v Osgood, 86 NY2d 374,384; Matter of Friends of Smith Farm v Town Board for the Town of

Clarkstown, AD3d [2d Dept., 11/20/07]). Upon examining, the record before it, this Court finds that it is clear that the petitioners' contention, since no variance, special use permit or other relief is necessary in order for them to comply with or adhere to the applicable zoning regulations, the respondent's 2/21/07 determination that they are required to file a subdivision map is not supported by substantial evidence in the record is arbitrary or capricious.

Accordingly, the petitioners' application, pursuant to CPLR Article 78, to reverse and annul the respondent's 2/21/07 determination or, in the alternative, compel the performance of a purported ministerial act is granted. The foregoing constitutes the order and judgment of the Court (see CPLR §7806).

Dated: 2-28-08



 A.J.S.C.

ENTERED

MAR 04 2008
 NEW SALEM COUNTY
 COUNTY CLERKS OFFICE