

SUPREME COURT OF THE STATE OF NEW YORK
IAS/ TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:

HON. JOSEPH C. PASTORESSA
JUSTICE OF THE SUPREME COURT

Mot Seq: #001-MD; CDISPSJ

In the Matter of the Application of
STRANDKORB, LLC,

Petitioner(s),

ATTYS FOR PETITIONER(S):
ESSEKS HEFTER ANGEL DI TALIA & PASCA
108 EAST MAIN STREET
PO BOX 279
RIVERHEAD, NY 11901

For a Judgment under Article 78 of the Civil
Practice Law and Rules

-against-

ATTYS FOR RESPONDENT(S):
MICHAEL SENDLENSKI, TOWN ATTORNEY
159 PANTIGO ROAD
EAST HAMPTON, NY 11937

ZONING BOARD OF APPEALS OF THE TOWN
OF EAST HAMPTON,

Respondent(s),

X

The petitioner is the owner of a parcel of real property located within a development known as "Montauk-On-Sea" in the Town of East Hampton. The property is in a "B" Residence district and is improved with a single family home. The petitioner proposed to construct a new two story residence with a garage, pool, patio decking, walkways and a new septic system. The petitioner was required to obtain a natural resources special permit because the property contains dunes and beach vegetation. The petitioner filed an application for a permit with the respondent Zoning Board of Appeals of the Town of East Hampton (hereinafter the Board). Following a hearing, the Board denied the application. The petitioner then commenced this proceeding, pursuant to CPLR Article 78, seeking to annul the Board's determination.

The determination of a local zoning board is entitled to great deference and will be set aside only if it is illegal, arbitrary and capricious or irrational (*see Matter of Martinos v Board of Zoning Appeals of Town of Brookhaven*, 138 AD3d 859; *Matter of East End Holdings v Village of Southampton*, 135 AD3d 860; *Matter of Waterways Dev. Corp v Town of Brookhaven*, 126 AD3d 708). A determination is rational "if it has some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition" (*Matter of Caspian v Zoning Board of Appeals*, 68 AD3d 62 *quoting Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 772; *see Matter of JSB Enterprises v Wright*, 81 AD3d 955).

Here, the petitioner contends that the determination was arbitrary and capricious and the Board exceeded its authority because the project complied with the dimensions of the Zoning Code and minimized any environmental impacts. However, the Town Code specifically provides that the

“building, structure, use or activity for which a natural resources special permit is sought must be found to be compatible with the purposes set forth in §255-1-11 and §255-4-10 of this chapter” (East Hampton Town Code §255-5-51[C]). Section 255-1-11 sets forth the specific objectives of the Zoning Code, including orderly growth and the protection of neighborhoods. In addition, the Board is specifically authorized to consider the preservation of natural resources (Town Code §255-5-51[D]).

In this case, the Board found that the proposed application would not maintain the character of the neighborhood or contribute to the orderly growth of the area. A review of the record reveals that the Board did not object to the size of the house but rather with the accessory structures which included a garage, pool, deck and walkways. There was evidence in the record that the building coverage would almost be doubled and the total lot coverage would increase from 22% to 35%. The Board found that this was not consistent with the surrounding properties which consist of mostly soft scape while the petitioner’s proposal was mainly hard scape. The record indicates that one of the Board members visited the property and took photographs of the area. The Board concluded that the accessory structures would negatively impact the natural features on the lot and that alternative designs to limit the hard surfaces would lessen detrimental impacts to the land. Under these circumstances, the Board’s determination had a rational basis and was not arbitrary and capricious (*see Matter of 278 LLC v Zoning Board of Appeals of the Town of East Hampton*, 159 AD3d 891). Where evidence supporting the denial exists, a court may not substitute its judgment for that of the zoning board, even if a contrary determination is supported by the record (*see Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead*, 98 NY2d 190, 196; *Matter of 278 LLC v Zoning Board of Appeals of the Town of East Hampton*, *supra*; *Matter of Smyles v Board of Trustees of Inc. Village of Mineola*, 120 AD3d 822).

Accordingly, the petition is denied and the proceeding is dismissed.

Settle judgment.

DATED: February 11, 2019



HON. JOSEPH C. PASTORESSA, J.S.C.