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Effects of Prior Precedent On Zoning Decisions

BY ANTHONY S. GUARDINO

Zoning & Land Use

The law is quite clear in New York that local zoning boards have substantial discretion when making zoning and planning decisions, and the judicial function is a limited one. Generally speaking, courts may set aside a zoning board determination only where the record reveals illegality, arbitrariness, or abuse of discretion. Phrased another way, a decision by responsible officials in an affected community will be sustained in court if it has a rational basis and is supported by substantial evidence in the record.[1]

Local zoning officials often rely on their past decisions when considering a new application or request for relief, much as courts do. On occasion, however, zoning boards fail to adhere to their own precedent. A decision about two decades ago by the Court of Appeals, in a case that arose on Long Island, established limits on zoning boards in those situations.

Knight v. Amelkin[2] involved property in the downtown part of the Town of Huntington that was being used as a furniture store when the town amended its zoning ordinance to require off-street parking. However, the furniture store, as a valid nonconforming use, did not have to comply with the new ordinance and therefore did not have to provide off-street parking. The owners of the store decided to sell their building to a developer who intended to convert the store into more than a dozen retail shops. The sales contract required that the furniture store owners obtain all necessary variances and approvals, but the town rejected their application for a building permit. The town's zoning board of appeals denied their appeal, finding that they had not demonstrated by "dollars and cents proof" that they would be precluded from realizing a reasonable return on their property absent a variance.

The owners commenced an Article 78 proceeding in Suffolk Supreme Court, which granted their petition and annulled the zoning board of appeals' ruling. After the Appellate Division, Second Department, reversed that decision, the dispute reached the Court of Appeals.

The Court noted that, in *In re Charles A. Field Delivery Service, Inc.*, it had previously ruled that a decision of an administrative agency that neither adhered to its own prior precedent nor indicated its reason for reaching a different result on essentially the same facts was arbitrary and capricious.[3] It then observed that inasmuch as a zoning board of appeals performed a quasi-judicial function when considering applications for variances and special exceptions and lacked legislative power, zoning boards "must comply with the rule of the *Field* case."

The Court then found that the furniture store owners had demonstrated the existence of several earlier determinations by the Huntington zoning board "with sufficient factual similarity so as to warrant an explanation" from the zoning board. In particular, the Court stated, the board had to explain why it no longer interpreted one particular section of the zoning ordinance to be applicable in a case involving intensified use of property as it apparently did in two earlier decisions cited by the furniture store owners. The Court added that the board also had to explain why a determination granting a variance to another owner of a different downtown furniture store was different from the application of the owners of this furniture store.

It should be emphasized that the Court declared that the zoning board was not prohibited from denying the application of the owners of this furniture store for a variance from or special exception to the zoning ordinance's off-street parking requirements. Rather, the Court stated that it was holding that because the owners showed earlier determinations of the zoning board reaching contrary results on essentially the same facts, an explanation, or, in the alternative, a conforming determination, was required.

Anthony S. Guardino *is a partner with Farrell Fritz in Uniondale. He can be reached at aguardino@farrellfritz.com.*

Determinations Annulled

The "prior precedent" rule enunciated in *Knight* was the basis for a decision a few months ago by the Second Department in a case also arising on Long Island. *Matter of Aliperti v. Trotta*[4] stemmed from a decision by the Town of Brookhaven zoning board of appeals in 2001 to grant a property owner's application for an area variance that allowed the owner's property to be divided into two 60 x 100 parcels (Parcel A and Parcel B), and the construction of a one-family dwelling with a 910-square-foot second story on Parcel B. After construction of an identical residence on Parcel A was 85 percent complete, the property owner applied for a building permit. At that time, she was informed that an area variance was required inasmuch as the enlarged second story violated a provision of the town code that provided that a 600-square-foot second story was the maximum size permitted on a residential structure constructed on a parcel less than 70 feet wide. The property owner then applied for an area variance, but the zoning board denied the application.

The property owner filed an Article 78 proceeding, and Suffolk Supreme Court granted the petition, annulled the determination, and ordered the town's zoning board of appeals to issue the area variance. The board appealed, and the Second Department affirmed. The appellate court found that the zoning board had "articulated no rational basis for reaching a different result on essentially the same facts." Accordingly, it concluded, the Supreme Court had properly annulled its determination and remitted the matter to the zoning board to issue the variance.

This same principle was applied by the Second Department in another Brookhaven case—but this time it struck down a decision by the zoning board to grant an application.

Matter of Civic Assoc. of the Setaukets v. Trotta[5] was a proceeding to review a determination of the Brookhaven zoning board of appeals that granted an application made by a property owner in 2002 for an area variance allowing her property to be reconfigured. However, a local civic association that had opposed the application pointed out that the application was essentially the same as an application that was made in 2001 and denied by the zoning board. Suffolk Supreme Court annulled the determination, and the property owner appealed.

The Appellate Division affirmed, stating only that contrary to the property owner's contention, "there was no rational basis for reaching a different result on essentially the same facts."

Justifiable Deviation

In *Matter of Spandorf v. Board of Appeals of Village of East Hills*,[6] the Second Department noted that the fact that one property owner is denied a variance while others similarly situated are granted such variances does not, in and of itself, mean that the challenged ruling must be overturned.

On the other hand, the court noted that a determination that reaches a different result on essentially the same facts is arbitrary and capricious if the board fails to provide a reason for doing so. In that case, the court found that the record did not demonstrate that the board's prior determinations were sufficiently similar to the petitioner's application so as to require an explanation for the different results.

It went on to state, however, that even if the petitioners had successfully established sufficient similarity between their application and other prior determinations, the board's explanation "that the petitioners had previously been granted a rear-yard, set-back variance, and that the granting of successive variances had begun to change the character of the neighborhood" would have been sufficient to justify its decision.[7]

Conclusion

The policy reasons for consistent results, given essentially similar facts, are largely the same whether the proceeding is judicial or administrative: to provide guidance for those governed by the determination made; to deal impartially with parties; and to promote stability in the law, allow for efficient use of the adjudicatory process, and maintain the appearance of justice.[8]

Therefore, to rely on the "prior precedent" rule, property owners have to establish the existence of an earlier determination by a zoning board with sufficient factual similarity to their applications so as to warrant an explanation from the board. Thus, for example, where other variances granted by a zoning board are for properties in different neighborhoods with different exigent circumstances, the "prior precedent" rule will not apply.[9]

Moreover, zoning boards and other administrative agencies are free to correct prior erroneous interpretations of the law by modifying or overruling past decisions, so long as they articulate their reasons for doing so.

1. See, e.g., *Matter of Cowan v. Kern*, 41 N.Y.2d 591 (1977).
2. 58 N.Y.2d 975 (1986).
3. 6 N.Y.2d 516 (1985).
4. 35 A.D.3d 854 (2d Dept. 2006).
5. 8 A.D.3d 482 (2d Dept. 2004).
6. 167 A.D.2d 546 (2d Dept. 1990).
7. Id. at. 547; see also, *Matter of Pesek v. Board of Appeals of the Town of East Hampton*, 156 A.D2d 690 (2d Dept. 1989) (holding that the board's explanation—that it had come to realize "that the proliferation of nonconforming lots was disruptive of the goals of sound planning and land use, injurious to the health, safety, and general welfare of the community, and against public policy"—was sufficient to distinguish the instant application from a similar one made several years earlier).
8. See, *In re Charles A. Field Delivery Service, Inc.*, supra.
9. See, e.g., *Pesek*, supra.