
ZONING & PLANNING - NEW YORK

Route 17K Real Estate, LLC v. Zoning Board of Appeals of Town of Newburgh

Supreme Court, Appellate Division, Second Department, New York - January 30, 2019 - N.Y.S.3d - 2019 WL 362126 - 2019 N.Y. Slip Op. 00605

Petitioners brought an article 78 proceeding to annul a determination of town zoning board of appeals granting hotel developer's application for area variances, and issuing a negative declaration, treating the matter as an unlisted action under the State Environmental Quality Review Act (SEQRA).

The Supreme Court, Orange County, denied petition and dismissed proceeding. Petitioners appealed.

The Supreme Court, Appellate Division, held that:

- Part of application dealing with location of hotel's principal frontage constituted a request for an area variance, not a use variance;
- Zoning board's decision to grant area variances was rational, and not illegal, arbitrary, capricious, or an abuse of discretion; and
- Zoning board's decision to issue a negative declaration did not constitute a violation of SEQRA.

Part of hotel developer's variance application pertaining to town code requiring hotel to have its principal frontage on a state or county highway constituted a request for an area variance, not a use variance, where "area variance" was defined under governing statute as authorization for use of land in a manner which is not allowed by dimensional or physical requirements of applicable zoning regulations, and principal frontage requirement was a physical requirement rather than a use restriction.

Town zoning board's decision to grant area variances to developer planning to build a hotel on property was rational, and not illegal, arbitrary, capricious, or an abuse of discretion, where board properly considered all statutory factors in making its determination.

Town zoning board's decision to issue a negative declaration, treating hotel developer's application for area variances as an unlisted action, did not constitute a violation of the State Environmental Quality Review Act (SEQRA), where the board filed required short environmental assessment form and, in its decision, identified relevant areas of environmental concern, examined them closely, and made a reasoned elaboration of basis for its determination.

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