STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

JOHN CARR,

Petitioner,

v.

VILLAGE OF LAKE GEORGE VILLAGE BOARD, VILLAGE OF LAKE GEORGE ZONING BOARD OF APPEALS, VILLAGE OF LAKE GEORGE PLANNING BOARD and JAMES D. QUIRK,

Respondents.

[CORRECTED] DECISION, ORDER AND JUDGMENT

Index No: EF2018-65918
RJI No: 56-1-2018-0510

(Proceeding No. 1)

JOHN CARR,

Petitioner,

v.

VILLAGE OF LAKE GEORGE PLANNING BOARD and JAMES D. QUIRK,

Respondents.

Index No. EF2019-66430
RJI No. 56-1-2019-0075

(Proceeding No. 2)

Braymer Law, PLLC, Glens Falls (*Claudia K. Braymer* of counsel), for petitioner.

Meyer, Fuller & Stockwell, PLLC, Lake George (*Matthew F. Fuller* of counsel), for respondents Village of Lake George Village Board, Village of Lake George Zoning Board of Appeals and Village of Lake George Planning Board.

Bartlett, Pontiff, Stewart & Rhodes, P.C., Glens Falls (*John D. Wright* of counsel), for respondent James D. Quirk.

ROBERT J. MULLER, J.S.C.

Respondent James D. Quirk owns property at 21 Sewell Street in the Village of Lake

George, Warren County, which property is located within a Commercial Mixed-Use zoning district. Petitioner owns adjacent parcels at 10 Sewell Street and 33 Canada Street, respectively. In February 2018, Quirk applied to respondent Village of Lake George Zoning Board of Appeals (hereinafter the ZBA) for several variances related to the planned construction of a 12,000 square-foot boat storage facility on his property. Specifically, he requested a variance from the Village's rear setback requirement, as well as variances from the Village's mandatory Architectural Standards and Guidelines (hereinafter Architectural Guidelines) with respect to, *inter alia*, roof pitch and building materials. The ZBA issued a determination granting the requested variances in April 2018.

In May 2018, petitioner commenced a proceeding pursuant to CPLR article 78 to vacate the determination. This proceeding was ultimately resolved by Stipulation and Order entered on June 18, 2018, with the parties agreeing to vacate the determination without prejudice to the filing of future applications for the requisite variances.

On July 16, 2018, respondent Village of Lake George Village Board (hereinafter the Village Board) adopted Local Law No. 8 of 2018 (hereinafter Local Law No. 8), which provides, in pertinent part:

> "The mandatory provisions of [the Architectural Guidelines] may be waived by the Planning Board through Site Plan Review, where it can be proven that there will not be an adverse impact on the 'architectural character' of the neighborhood. Criteria for assessing such waivers shall be the same criteria used for area variance reviews" [R1 at 187].[1]

In August 2018, Quirk again applied to the ZBA for a 9-foot area variance from the

[1] References to "R1" correspond with the Record in proceeding No. 1 and references to "R2" correspond with the Record in proceeding No. 2.

Village's rear setback requirement of 15 feet. He also applied to respondent Village of Lake George Planning Board (hereinafter the Planning Board) for site plan approval relative to the boat storage facility, which application included a request under Local Law No. 8 for waivers from the Architectural Guidelines. Specifically, Quirk requested (1) a waiver of the requirement that "[s]tories [sic] shall not exceed 14 feet in height from finished floor to finished ceiling" [R1 at 50], with corresponding approval of a 40-foot tall building with only one storey; (2) a waiver of the requirement that metal siding "shall not be used on any portion of the building" [R1 at 52], with corresponding approval of metal siding for the entire building; (3) a waiver of the requirement that "[f]or gable roofs, the pitch shall be between 6:12 and 14:12" [R1 at 53], with corresponding approval of a nearly flat roof; and (4) waiver of the requirement that eaves shall be "at least 18 inches in width" [R1 at 52], with corresponding approval of eaves 7.25 inches in width.

The ZBA granted Quirk's application for an area variance at its meeting on September 5, 2018. Thereafter, at its meeting on November 7, 2018, the ZBA recognized that the September 5 decision was rendered prior to receipt of the Warren County Planning Board's report on the application, as required under § 220-82 of the Village of Lake George Zoning Ordinance (hereinafter the Zoning Ordinance), and was therefore a nullity. The ZBA – having at that point received the report from the Warren County Planning Board, which indicated that "the application would have 'no County impact'" [R1 at 224] – then proceeded to issue a new decision granting the variance.

On October 2, 2018, petitioner commenced a CPLR article 78 proceeding (hereinafter proceeding No. 1) for a judgment (1) annulling, vacating and setting aside Local Law No. 8; (2)

enjoining the Planning Board from granting any waivers pursuant to Local Law No. 8; (3) annulling, vacating and setting aside the area variance; and (4) awarding him costs, disbursements and counsel fees in connection with the proceeding.

At its meeting on January 16, 2019, the Planning Board granted the requested waivers under Local Law No. 8 and approved the site plan. Petitioner then commenced another CPLR article 78 proceeding (hereinafter proceeding No. 2) on February 15, 2019 seeking a judgment (1) annulling, vacating and setting aside the waivers; (2) annulling, vacating and setting aside the site plan approval; and (3) awarding him costs, disbursements and counsel fees in connection with the proceeding. Issue has now been joined with respect to both proceedings, which are addressed *ad seriatim* hereinbelow.

Proceeding No. 1

Petitioner alleges six causes of action in proceeding No. 1: (1) Local Law No. 8 violates Village Law § 7-712-b; (2) the Village Board failed to conduct the requisite review under the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]; 6 NYCRR part 617) prior to enacting Local Law No. 8; (3) the ZBA failed to conduct the requisite review under SEQRA prior to issuing the area variance; (4) the ZBA did not weigh the required statutory criteria prior to issuing the area variance; (5) the statutory criteria do not support issuance of the area variance; and (6) Quirk failed to pay the requisite fee for a variance application.

With respect to the first cause of action, petitioner contends that Local Law No. 8 must be vacated because it violates Village Law § 7-712-b. In that regard, Village Law § 7-712-b (3) (a) provides, *inter alia*, that the ZBA "shall have the power . . . to grant area variances, "with Village Law § 7-712-b (3) (b) then setting forth specific factors to be considered in making a

determination. Village Law § 7-712-b (3) (c) further provides that the ZBA "shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

In *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock* (100 NY2d 395 [2003]), the Court of Appeals found that the enactment of Village Law § 7-712-b "evince[d] an intent by the Legislature to occupy the field [of area variances] and bring a measure of statewide consistency to the variance application and review process" (*id.* at 401-402). The Court of Appeals has described the preemption doctrine as follows:

> 'Where the State has demonstrated its intent to preempt an entire field and preclude any further local regulation, local law regulating the same subject matter is considered inconsistent and will not be given effect. This finding of preemption is justified by the belief that [s]uch laws, were they permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns. The Legislature's intent to so preempt a particular area can be inferred from a declaration of policy or from a comprehensive or detailed scheme in a given area. [T]hat the State and local laws touch upon the same area is insufficient to support a determination that the State has preempted the entire field of regulation in a given area" (*Incorporated Vil. of Nyack v Daytop Vil.*, 78 NY2d 500, 505 [1991] [citations and internal quotation marks omitted]).

According to the Court of Appeals, by codifying and enacting a comprehensive standard for area variances, "the Legislature intended to occupy the field and thus preempt local supersession authority" (*Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 NY2d at 402).

Here, the Architectural Guidelines – contained within § 220-42 of the Zoning Code – set forth various dimensional and physical requirements including, *inter alia*, requirements related to "[b]uilding orientation, setbacks and relationship to the street level" [R1 at 49], "[b]uilding

proportion [and] size" [R1 at 50], "[b]uilding materials and colors" [R1 at 51] and "[r]oof design" [R1 at 52]. According to petitioner, because Local Law No. 8 authorizes the Planning Board to waive these dimensional and physical requirements – effectively granting area variances – it conflicts with Village Law § 7-712-b (3), which provides that the ZBA "shall have the power . . . to grant area variances." Given the Legislature's intent to preclude any conflicting local laws with respect to area variances (*see Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 NY2d at 401-402), petitioner contends that Local Law No. 8 must be vacated and set aside.

In opposition, respondents contend that Local Law No. 8 is expressly permitted under Village Law §§ 7-725-a (3) and (5). With that said, Village Law § 7-725-a (3) provides as follows:

> "Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, applications may be made to the [ZBA] for an area variance pursuant to [Village Law § 7-712-b], without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations."

Village Law § 7-725-a (5) then provides:

> "The village board of trustees may . . . empower the [planning] board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan."

In *Matter of Lockport Smart Growth, Inc. v Town of Lockport* (63 AD3d 1549 [2009], *lv denied* 14 NY3d 704 [2010]), the Appellate Division, Fourth Department dealt with the relationship between Town Law provisions comparable to Village Law §§ 7-725-a (3) and (5).

There, the Court determined that the applicant properly sought waivers from dimensional requirements pursuant to Town Law § 274-a (5) – identical to Village Law § 7-725-a (5) – and was not required to instead seek variances pursuant to Town Law § 274-a (3) – identical to Village Law § 7-725-a (3) (*see id.* at 1550-1551). The Court relied upon *Matter of Real Holding Corp. v Lehigh* (2 NY3d 297 [2004]), which analyzed Town Law §§ 274-b (3) and (5) – similar provisions pertaining to the issuance of special use permits – wherein the Court of Appeals stated as follows:

> "[S]ubdivision (5) [does not] in any way conflict with subdivision (3), or diminish a ZBA's independent jurisdiction under subdivision (3). Subdivision (5) vests a town board with discretion to empower an 'authorized board' to waive any requirement of a special use permit. The waiver authority in subdivision (5) is broader than a ZBA's authority in subdivision (3), which is restricted to granting area variances. The 'authorized board' referred to in subdivision (5) is 'the planning board or such other administrative body that [the town board] shall designate' (*see* Town Law § 274–b [2]). In effect, subdivision (5) allows a town board to establish one-stop special use permitting if it so chooses. [W]here a town board exercises its discretion under subdivision (5), an applicant may have two avenues to address an inability to comply with a given . . . requirement in connection with a special use permit, but this overlap does not create discord in the Town Law or render either [subdivision (3) or subdivision (5)] superfluous" (*Matter of Real Holding Corp. v Lehigh*, 2 NY3d at 302).

Under the circumstances, the Court finds that Local Law No. 8 is permissible under Village Law § 7-725-a (5). Adopting the reasoning outlined in *Matter of Real Holding Corp. v Lehigh* (*supra*) and *Matter of Lockport Smart Growth, Inc. v Town of Lockport* (*supra*), Local Law No. 8 does not violate Village Law § 7-712-b – which pertains to the ZBA's independent jurisdiction under Village Law § 7-725-a (3). It is a proper exercise of the Village Board's discretion to provide applicants with two avenues in which to address their failure to comply with the dimensional and physical requirements in the Architectural Guidelines.

It must also be noted that a careful review of *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock* (*supra*) suggests that, by enacting Village Law § 7-712-b, the Legislature intended to preempt the entire field of area variances only insofar as the evaluation criteria are concerned – not the agency conducting the evaluation. Indeed, this reading of the case is harmonious with the provisions of Village Law § 7-725-a (3) and (5).[2]

To the extent Quirk contends that petitioner is without standing to challenge Local Law No. 8, the Court finds such contention to be without merit. It is by now well established that "[w]here a party owns property that falls within an area affected by the regulation in question, it is presumed to have been adversely affected by the change in the zoning law and have standing to contest it" (*Matter of Rossi v Town Bd. of Town of Ballston*, 49 AD3d 1138, 1142 [2008]; *see Matter of Sun-Brite Car Wash v Board of Zoning & Appeals of Town of N. Hempstead*, 69 NY2d 406, 414 [1987]; *Matter of Schulz v Lake George Park Commn.*, 180 AD2d 852, 855 [1992]). Here, it is undisputed that petitioner owns property in the Village of Lake George which is affected by Local Law No. 8.

Quirk's contention that petitioner's challenge to Local Law No. 8 is not ripe for review is likewise without merit. "[A]n administrative action is final and ripe for review . . . when 'a pragmatic evaluation reveals that the decision-maker has arrived at a definitive position on the

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[2] The Court reviewed *Matter of Harris v Town Bd. of Town of Riverhead* (21 Misc 3d 1112[A], 2008 NY Slip Op 52054[U] [Sup Ct, Suffolk County 2008]) (hereinafter *Matter of Harris*), as requested by counsel for petitioner during oral argument. While recognizing that the case could be read to support petitioner's contention that Local Law No. 8 violates Village Law § 7-712-b, the Court remains unconvinced. At the outset, in *Matter of Harris* the Court vacated a local law which authorized the Town Board – as opposed to the Planning Board – to grant variances from zoning regulations. Further, the case was reversed on appeal based upon a finding that petitioners were without standing (73 AD3d 922 [2010], *lv denied* 15 NY3d 709 [2010]).

issue that inflicts an actual, concrete injury,' and . . . an administrative action is not ripe for review 'if the claimed harm may be prevented or significantly ameliorated by further administrative action'" (*Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency*, 161 AD3d 169, 173 [2018], quoting *Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d 188, 190 [2012] [internal quotation marks and citations omitted]). In adopting Local Law No. 8, the Village Board reached a definitive position relative to enforcement of the Architectural Guidelines which inflicted an actual, concrete injury upon petitioner and similarly situated landowners in the Village of Lake George. Additionally, there is no further administrative action available to ameliorate the claimed harm.

Turning now to the second cause of action, petitioner alleges that Local Law No. 8 must be vacated because the Village Board failed to comply with SEQRA. The Court finds that this cause of action is without merit. The record reflects that the Village Board appropriately classified the enactment of Local Law No. 8 as an unlisted action and completed a short environmental assessment form (EAF) determining that the Law "will not result in any significant adverse environmental impacts" [R1 at 172] (*see* 6 NYCRR 617.6 [a] [1], [3]).

With respect to the third cause of action, petitioner alleges that the ZBA failed to conduct the requisite review under SEQRA prior to issuing the area variance. The Court finds that this cause of action is also without merit. The ZBA properly classified Quirk's application for an individual setback variance as "a Type 2 SEQRA action" and, as such, took no further steps [R1 at 218] (*see* 6 NYCRR 617.5 [c] [16]; 617.6 [a] [1] [I]).

Turning now to the fourth and fifth causes of action, petitioner alleges that the ZBA did not weigh the required statutory criteria prior to issuing the area variance and, further, that such

criteria do not support issuance of the variance. Under Village Law § 7-712-b (3) (b), the ZBA must weigh the following five factors when deciding whether to issue an area variance:

> "(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 the area variance;
>
> "(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
>
> "(3) whether the requested area variance is substantial;
>
> "(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
>
> "(5) whether the alleged difficulty was self-created."

"When rendering its decision, the ZBA [is] 'not required to justify its determination with supporting evidence with respect to each of the five factors, so long as its ultimate determination balancing the relevant considerations [is] rational'" (*Matter of Feinberg-Smith Assoc., Inc. v Town of Vestal Zoning Bd. of Appeals*, 167 AD3d 1350, 1352 [2018], quoting *Matter of Merlotto v Town of Patterson Zoning Bd. of Appeals*, 43 AD3d 926, 929 [2007]; *see Matter of Cohen v Town of Ramapo Bldg., Planning & Zoning Dept.*, 150 AD3d 993, 994 [2017]). Further, "[c]ourts . . . should not engage in their own balancing of the factors, but must yield to the ZBA's discretion and weighing of the evidence, even if the court would have decided the matter differently in the first instance" (*Matter of Cooperstown Eagles, LLC v Village of Cooperstown Zoning Bd. of Appeals*, 161 AD3d 1433, 1438 [2018] [citations and internal quotation marks omitted]; *see Matter of Feinberg-Smith Assoc., Inc. v Town of Vestal Zoning Bd. of Appeals*, 167 AD3d at 1351). A ZBA's determination may be set aside "only where the record reveals that the board acted illegally or arbitrarily, or abused its discretion" (*Matter of Feinberg-Smith Assoc.,*

Inc. v Town of Vestal Zoning Bd. of Appeals, 167 AD3d at 1351; *see Matter of Cooperstown Eagles, LLC v Village of Cooperstown Zoning Bd. of Appeals*, 161 AD3d at 1437).

Here, the ZBA's written determination addressed four of the five statutory factors. With respect to the first factor, the ZBA stated as follows:

> "The variance requested will not adversely affect or change the character of the neighborhood or create detriment to nearby properties because the project is located in a Commercial Mixed-Use Zone and is surrounded by commercial uses. The project is an area expansion of the current boat sales and storage business and will improve the general appearance of the neighborhood by housing at least some of the boats now stored in the open" [R1 at 218-219].

In addressing the second factor, the ZBA stated that "[t]he project's objectives cannot be achieved by some other method available to the applicant because he has already acquired all adjacent properties suitable for boat storage purposes."

As to the fourth factor, the ZBA stated that

> "[t]he proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood because it will visually and physically mitigate the congested appearance of the boats stored on the property and will allow for their occasional repositioning without impinging on the flow of traffic on Sewell Street" [R1 at 219].

Finally, in considering the fifth factor, the ZBA stated that "[t]he alleged hardship is not self-created because the demand for local boat storage facilities has been continuous and requires the applicant to either expand his boat storage capabilities . . . or forego the business opportunity" [R1 at 219].

While the third factor was not addressed in the written determination, the minutes from the ZBA's November 2018 meeting make clear that the factor was nonetheless considered. At that time, petitioner appeared and presented the ZBA with a rendering of the proposed boat

storage facility in an effort to demonstrate the substantiality of the project. He also appeared at the September 2018 meeting and argued that the variance requested was "pretty substantial" and "might only sound like a few feet," but would make a big difference with "a building that's 40 feet high" [R1 at 206].

Under the circumstances, the Court finds petitioner's fourth and fifth causes of action to be unavailing. The ZBA appropriately applied the relevant balancing test and considered all five applicable statutory factors. Accordingly, its decision to grant the application for an area variance was not irrational, arbitrary or an abuse of discretion (*see Matter of Cooperstown Eagles, LLC v Village of Cooperstown Zoning Bd. of Appeals*, 161 AD3d at 1438).

Finally, with respect to the sixth cause of action, petitioner contends that Quirk failed to pay the fee for his variance application – as required under § 220-9 of the Zoning Ordinance – and the variance must therefore be annulled. This cause of action is also unavailing. There is nothing in § 220-9 of the Zoning Ordinance to suggest that failure to pay the application fee will result in a variance being annulled – or even in an application being denied.

Based upon the foregoing, the relief requested in proceeding No. 1 is denied in its entirety.

Proceeding No. 2

Petitioner again alleges six causes of action in proceeding No. 2: (1) Local Law No. 8 violates Village Law § 7-712-b; (2) the Planning Board failed to comply with SEQRA when granting the waivers; (3) the Planning Board failed to comply with SEQRA when granting site plan approval; (4) the Planning Board granted the waivers in violation of Local Law No. 8; (5) the proposed project does not meet site plan review criteria; and (6) the proposed boat storage

facility violates, *inter alia*, § 220-28 (C) of the Zoning Ordinance.

In accordance with the discussion set forth above, the Court finds that the first cause of action is without merit.[3]

With respect to the second cause of action, petitioner alleges that the Planning Board failed to comply with SEQRA when granting the waivers. More specifically, petitioner contends that the Planning Board should have conducted a separate SEQRA review for each individual waiver, as opposed to conducting one review for the entire application. The Court finds that this contention is without merit. Requiring a separate SEQRA review for each individual waiver request is not required by statute or regulation and would be unnecessarily burdensome. Further, the waiver requests – when considered apart from the application for site plan approval as a whole – arguably constitute Type II actions which do not require SEQRA review (*see* 6 NYCRR 617.5 [c] [34]; 617.6 [a] [1] [I]).

In the third cause of action petitioner alleges that the Planning Board improperly segmented its SEQRA review when approving the site application. In this regard, the Planning Board classified Quirk's application for site plan approval as an unlisted action and then completed a full EAF, ultimately issuing a "negative declaration" for the project as a whole [R2 at 115] (*see* 6 NYCRR 617.6 [a] [1], [3]). With that said, however, the Planning Board made clear during its January 2019 meeting that its SEQRA review included not only the boat storage facility described in the application, but also plans Quirk apparently has for a neighboring parcel he owns which currently houses a laundromat. Dan Barusch – the Village's Zoning

[3] In view of this determination, the Court need not consider respondents' contention that this cause of action must be denied based upon petitioner's failure to name a necessary party – namely, the Village Board.

Administrator – advised the Planning Board as follows:

> "[W]e should look at the stuff on the neighboring lot, particularly in the sense of [SEQRA]. . . . Otherwise, we could get claims against us that we're segmenting review. Not really the intent of the segmenting section of [SEQRA], but we can include the expansion of the outdoor boat storage on the laundromat site in our [SEQRA] review. I would not suggest that you have them amend the application by any means because . . . we do not have authority at the local level, on the boat count for outdoor boat storage. We have no regulations in our Code regarding outdoor boat storage. Only that it is a use allowed in certain districts. It's allowed in the [Commercial Mixed-Use district. Quirk] came last year . . . to get an approval of an outdoor boat storage at the laundromat site. This Board approved that proposal and at numerous points in time, the Board discussed do we put a number of boats, ... That was all relegated to the Park Commission. They're the ones that put the restrictions and numbers and things on these marina permits. So, you can go in the Code, you can look for . . . intensity of use changing from 20 boats to 100 boats, you're not going to find anything in there that's based on outdoor boat storage. Like I said, what we can do is include it in our [SEQRA] review. We're going to try to understand the impacts of the entire project, including the outdoor boat storage and an environmental sense, but we, as the Village, are not approving 100 outdoor boats because that is not in our purview" [January 2019 Meeting Minutes, attached as Exhibit "A" to Planning Board's Answer in proceeding No. 2, at 30].

The record also includes an extensive report prepared by The Chazen Companies with respect to the design of the proposed stormwater system for the project, which report makes reference to "[t]he western portion of the site consisting of the existing 2 story [sic] wood frame building (laundromat) and proposed winter boat storage area" [R2 at 371].

6 NYCRR 617.3 (g) provides that "[t]he entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it." 6 NYCRR 617.3 (g) (2) then provides as follows:

> "If it is determined that an EIS is necessary for an action consisting of a set of activities or steps, only one draft and one final EIS need be prepared on the action provided that the statement addresses each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse environmental impacts.

Here, the application – which includes part 1 of the EAF, as completed by Quirk – encompasses *only* the site plan for the proposed boat storage facility. There is no information in the application relative to Quirk's plans for the neighboring parcel. This is especially problematic given the Planning Board's reference to and reliance upon part 1 of the EAF when completing parts 2 and 3 – even though part 1 pertained only to the boat storage facility and the Planning Board intended its review to encompass the neighboring parcel as well. Assuming *arguendo* that the Zoning Administrator is correct and Quirk does not need to submit any further applications to the Planning Board relative to the number of boats he plans to store on the neighboring parcel, additional information in this regard is still necessary – otherwise the Planning Board is dealing entirely in unknowns and cannot conduct a meaningful review.

Like the Planning Board, the Court finds that SEQRA requires a review of the project as a whole (*see* 6 NYCRR 617.3 [g]). The Court further finds that the Planning Board attempted to review the project as a whole – including both the boat storage facility on the subject parcel and the outdoor boat storage on the neighboring parcel – but the application pending before it simply failed to support such a review. It did not contain sufficient information. The application for site plan approval must therefore be remanded to the Planning Board for further SEQRA review not inconsistent with this decision.[4]

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[4] Notably, § 220-47 of t he Zoning Ordinance – which includes a list of items to be submitted in an application for site plan approval – provides, in pertinent part:

> "The Planning Board is not limited to this list and may request any additional information it deems necessary or appropriate. In determining the amount of information it will require, the Planning Board will consider the type of use, its location, and the size and potential impact of the project" [R1 at 55].

The Planning Board thus has discretion to request additional information in support of the

Turning now to the fourth cause of action, petitioner contends that the Planning Board granted the waivers in violation of Local Law No. 8. Specifically, petitioner contends that the waivers violate Local Law No. 8 because they will have an adverse impact on the architectural character of the neighborhood. Petitioner further contends that the waivers fail to satisfy the criteria used for area variance reviews, as set forth in § 220-85 (B) (2) of the Zoning Ordinance (*see also* Village Law § 7-712-b [3] [b]).

As observed above, "it is not the role of the courts to second-guess reasoned administrative determinations that otherwise find support in the record" (*Matter of Edscott Realty Corp. v Town of Lake George Planning Bd.*, 134 AD3d 1288, 1290 [2015]; *see Matter of Schaller v Town of New Paltz Zoning Bd. of Appeals*, 108 AD3d 821, 823 [2013]; *Matter of Frigault v Town of Richfield Planning Bd.*, 107 AD3d 1347, 1350 [2013]; *Matter of Druyan v Village Bd. of Trustees of the Vil. of Cayuga Hgts.*, 96 AD3d 1207, 1208 [2012]). Here, the record sufficiently supports the Planning's Boards decision to grant the waivers. The Court therefore finds that the fourth cause of action is without merit.

With respect to the fifth cause of action, petitioner alleges that the proposed project does not meet site plan review criteria, as set forth in § 220-48 (D) (3) of the Zoning Ordinance. The Court finds that this cause of action is also without merit, as the Planning Board's determination in this regard is sufficiently supported by the record.

Finally, in the sixth cause of action petitioner alleges that the proposed 12,000 square-foot boat storage facility violates § 220-28 (C) (4) of the Zoning Ordinance, which provides that

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application. Under the circumstances, the Planning Board may even wish to wait until the Park Commission determines the maximum number of boats to be stored on the neighboring parcel.

commercial accessory structures must be "75% of the square footage of the primary structure" [R1 at 42]. According to petitioner, the primary structure on Quirk's property is 9,000 square feet and, as such, the proposed boat storage facility cannot exceed 6,750 square feet. While petitioner raised this argument before the Planning Board during the site plan review process, no determinations were made with respect thereto.

In opposition, respondents contend that only the ZBA can make a determination as to whether the proposed boat storage facility violates § 220-28 (C) (4) of the Zoning Ordinance and, because petitioner has not sought any such determination, he has failed to exhaust his administrative remedies.

Indeed, "[p]lanning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals" (*Matter of Swantz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d 1159, 1160 [2006]). There is no evidence in the record to demonstrate that petitioner sought a determination from either the Zoning Administrator or the ZBA relative to the alleged zoning violation. The Planning Board was therefore without authority to deny site plan approval based on this zoning issue and the issue is not properly before the Court (*see Matter of Swantz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d at 1161).

Based upon the foregoing, the relief requested in proceeding No. 2 is granted to the extent that Quirk's application for site plan approval is remanded to the Planning Board for further SEQRA review not inconsistent with this decision. The relief requested in proceeding No. 2 is otherwise denied.

To the extent not addressed herein, the parties' remaining arguments have been

considered and are either without merit or rendered academic.

Therefore, having considered with respect to proceeding No. 1 the Notice of Amended Petition, dated November 20, 2018; Amended Verified Petition, dated November 19, 2018; Respondents' Record, dated November 21, 2018; Verified Answer of Village of Lake George Village Board, Village of Lake George Zoning Board of Appeals and Village of Lake George Planning Board, dated December 4, 2018; Affidavit of Dan Barusch, sworn to December 4, 2018; Affirmation of Matthew F. Fuller, Esq., dated December 4, 2018; Amended Verified Answer of James Quirk, dated December 10, 2018; Affidavit and Memorandum of Law of John D. Wright, Esq., sworn to December 10, 2018; Respondents' Supplemental Record, dated December 13, 2018; Amended Verified Answer of Village of Lake George Village Board, Village of Lake George Zoning Board of Appeals and Village of Lake George Planning Board, dated December 13, 2018; Amended Affidavit of Dan Barusch, sworn to December 13, 2018; Amended Affirmation of Matthew F. Fuller, Esq., dated December 13, 2018; Affidavit of John Carr with exhibits attached thereto, sworn to December 17, 2018; and Memorandum of Law of Claudia K. Braymer, Esq., dated December 17, 2018;

And having considered with respect to proceeding No. 2 the Notice of Petition, dated February 15, 2019; Verified Petition, dated February 14, 2019; Affirmation of Claudia K. Braymer, Esq. with exhibits attached thereto, dated February 15, 2019; Verified Answer of Village of Lake George Planning Board with exhibit attached thereto, dated April 15, 2019; Respondents' Record, dated March 29, 2019; Verified Answer of James D. Quirk, dated April 15, 2019; Affidavit and Memorandum of Law of John D. Wright, Esq., sworn to April 15, 2019; and Verified Reply of John Carr with exhibits attached thereto, dated May 2, 2019;

And oral argument having been heard with respect to both proceedings on May 20, 2019 with Claudia K. Braymer, Esq. appearing on behalf of petitioner, Matthew F. Fuller, Esq. appearing on behalf of respondents Village of Lake George Village Board, Village of Lake George Zoning Board of Appeals and Village of Lake George Planning Board and John D. Wright, Esq. appearing on behalf of respondent James D. Quirk, it is hereby

ORDERED AND ADJUDGED that the relief requested in proceeding No. 1 is denied in its entirety; and it is further

ORDERED AND ADJUDGED that the relief requested in proceeding No. 2 is granted to the extent that respondent James D. Quirk's application for site plan approval is remanded to respondent Village of Lake George Planning Board for further SEQRA review, as set forth hereinabove; and it is further

ORDERED AND ADJUDGED that the relief requested in proceeding No. 2 is otherwise denied.

The original of this Decision, Order and Judgment has been filed by the Court. Counsel for petitioner is hereby directed to promptly obtain a filed copy of the Decision, Order and Judgment for service with notice of entry upon respondents in accordance with CPLR 5513.

Dated: May 29, 2019
Lake George, New York

ROBERT J. MULLER, J.S.C.

ENTER: 06/28/2019