

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 12 - SUFFOLK COUNTY

**PRESENT:**

Hon. John H. Rouse  
Acting Supreme Court Justice

MOTION DATE: 02/23/2018  
ADJ. DATE: 05/23/2018  
Mot. Seq. 001-Transferred  
CASEDISP

---

DEBRA ABRAMOVITZ and STUART ABRAMOVITZ,

Petitioners

**DECISION & ORDER**

-against-

For a Judgment Pursuant to Article 78 of the New York Civil  
Practice Laws and Rules

-against-

THE ZONING BOAR OF APPEALS OF THE INCORPORATED  
VILLAGE OF BELLPORT and 8 BAYBERRY HILL, LLC,

Rsepondents

---

**TO:**

EGAN & GOLDEN, LLP  
96 SOUTH OCEAN AVENUE  
PATCHOGUE, NY 11772  
631-447-8100

DAVID J. MORAN, ESQ.  
96 SOUTH OCEAN AVENUE  
PATCHOGUE, NY 11772  
516-314-0692

McGIFF HALVERSON, LLP  
96 SOUTH OCEAN AVENUE  
PATCHOGUE, NY 11772  
631-730-8686

Upon the reading and filing of the following papers in this matter:

- (1) Notice of Petition dated January 18, 2018, Verified Petition by Petitioners with Exhibits A-F attached thereto; and

(2) Affidavit of Service for Petitioner: upon New York Secretary of State, and two Affidavits of Service upon the Zoning Board of Appeals of the Incorporated Village of Bellport; and

(3) Verified Answer with Objections in Point of Law by David J. Moran, Esq.; and

(4) Respondent's Return by David J. Moran, Esq. with Exhibits A-X; and

(5) Answer and Affirmation in Opposition by Robert R. Dooley, Esq. affirmed on April 11, 2018, Affidavit of Vivek Shah sworn to on April 9, 2018, with Exhibits A-K attached thereto; and

(6) Affidavit of Service by Robert R. Dooley, Esq., sworn on April 11, 2018; and

(7) Petitioners' Reply Memorandum of Law in Support of the Article 78 Petition, with affidavit of service annexed thereto.

**ORDERED** that the Article 78 (Seq. #001) proceeding is hereby transferred to the Appellate Division of the Supreme Court, Second Department for determination in accordance with *CPLR 7804 (g)*.

#### **DECISION**

Petitioners, the owners of property that directly adjoins the property owned by Respondent 8 Bayberry Hill, LLC, commenced this proceeding by filing on January 18, 2018. Petitioners filed a Notice of Petition and Petition to annul and set aside the Determination of the Respondent the Zoning Board of Appeals of the Incorporated Village of Bellport filed in the office of the Village Clerk on December 19, 2017. *Petition Exhibit A*. Respondent ZBA's decision that is the subject of this proceeding described the application before it as requesting variances to permit the substantial demolition of an existing three-car garage and reconstruct in its place a squash court / workout room. The new twenty three foot high building would be in the front yard, ten feet from the side yard lot line and five feet from the front yard lot line.

The Petition is divided into four points of error that are the basis for Petitioners claim for relief.

1. Respondent granted a use variance in the guise of an area variance and this was arbitrary and capricious.
2. The area variance requested was significant and was done arbitrarily, capriciously, and without basis in the record.
3. The Respondent's determination changed a front yard to a back yard and as such was a use variance, was arbitrary, capricious and without basis in the record.
4. Respondents, by granting the application, authorized the applicant to enlarge the degree of non-conformity of a prior non-conforming structure.

Respondent, the Zoning Board of Appeals of the Incorporated Village of Bellport, has filed a combined verified answer with objections in point of law. The Court has reviewed the petition and answer with objections and there are no objections raised that could terminate the proceedings before this court. *CPLR 7804 (g)*. Similarly, the Answer and Affirmation in Opposition by Respondent 8 Bayberry Hill, LLC does not raise any dispositive objections. Accordingly, the petition is transferred to the Appellate Division of the Supreme Court, Second Department for determination.

Dated: June 11, 2018



---

JOHN H. ROUSE, Acting J.S.C.

FINAL DISPOSITION