

SHORT FORM ORDER

INDEX No. 621601/2021

CAL. No. _____

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY**

P R E S E N T:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION SUBMIT DATE: 01/04/22
MOT. SEQ. # 001- MD; CASEDISP

-----X

99 SANFORD PLACE LLC,

Petitioner,

- against -

ZONING BOARD OF APPEALS OF THE
INCORPORATED VILLAGE OF
SOUTHAMPTON.

Respondent.

-----X

Upon the following papers e-filed (documents #1 through #25) it is,

ORDERED that petitioner’s application for a judgment annulling and setting aside the decision of the Zoning Board of Appeals of the Incorporated Village of Southampton is denied and the petition is dismissed; and it is further

ORDERED that, if applicable, the movant is directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

ORDERED that upon Entry of this Order, the movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Petitioners commenced this Article 78 proceeding to review the determination made by the Zoning Board of Appeals of the Incorporated Village of Southampton, which denied an application for a special exception under Zoning Code §116-22 to subdivide the subject property in a OD zone into two residential lots. The petition alleges that petitioners are the owners of real

99 SANFORD V ZONING BOARD OF APPEALS
INDEX NO. 621601/2021
MOT. SEQ. # 001
Page 2 of 3

property located at 99 Sanford Place, Southampton New York. In support of the petition, petitioner submits a deed dated March 4, 2019, aerial photograph, subdivision sketch plan dated March 29, 2019 and various letters of support (Petitioner's Exhibit A, B, C, I and J).

Local zoning boards have broad discretion in considering applications for variances, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary [and capricious], or an abuse of discretion (*Matter of Todd Kramer v. Zoning Board of Appeals of Town of Southampton*, 131 AD3d 1170, 16 NYS3d 832 [2d Dept 2015]; *Matter of Nicolai v. McLaughlin*, 163 AD3d 572, 81 NYS3d 89 [2d Dept 2018]). The burden is on the petitioner to prove the allegations in their petition (see *Matter of Stanton v Town of Islip Dept. of Planning & Dev.*, 37 AD3d 473, 829 NYS2d 596 [2d Dept 2007]). Here, petitioner submits a deed dated March 4, 2019, aerial photograph, subdivision sketch plan dated March 29, 2019 and various letters of support (Petitioner's Exhibit A, B, C, I and J). These submissions are sufficient to meet petitioner's burden in this case.

Additionally, "[a] 'special exception gives permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right' (*Matter of Retail Prop. Trust v. board of zoning Appeals of Town of Hempstead*, 98 N.Y.2d 190, 195, 746 N.Y.S.2d 662, 774 N.E.2d 727). The burden on an owner in seeking a special exception permit is, therefore, 'considerably less' than the burden on an owner seeking a use variance (*Matter of Ouderkirk v. Board of Appeals of Town of Bethlehem*, 58 A.D.2d 667, 667, 395 N.Y.S.2d 527; see *Matter of North Shore Steak House v. Board of Appeals of the Inc. Vil. of Thomaston*, 30 N.Y.2d 238, 243, 331 N.Y.S.2d 645, 282 N.E.2d 606). An applicant for a special exception permit need only show that it has complied with every legislatively imposed condition on the permitted use (citations omitted)" (*Nathan v Board of Appeals of Town of Hempstead*, 125 AD3d 866, 866, 5 NYS3d 127, 128 [2d Dept 2015]). Moreover, "[i]n *Matter of Sasso v Osgood* (86 NY2d 374 [1995]), however, the Court of Appeals made clear that determinations of municipal land use agencies are not subject to the 'substantial evidence' standard set forth in CPLR 7803(4) (citations omitted). However, a determination of a Zoning Board is administrative or quasi-legislative in character and rationality is the appropriate standard of review." (*Matter of Edward Halperin v City of New Rochelle*, 24 AD3d 768, 772, 809 NYS2d 98, 105 [2d Dept 2005]).

Respondents, however, have submitted sufficient evidence to demonstrate the rationality of the zoning board's denial of the application for a special exception under Zoning Code §116-22 to subdivide the subject property. "In reviewing the criteria, the Board found that the petitioner had not met with these requirements. Under section 116-22 of the Village Code, the petitioner failed to show that this property if developed as requested, '... will be in harmony with and promote the general purposes and intent of this chapter as stated in § 116-1 of this chapter' as required pursuant to section 116-22. Further, petitioner failed to demonstrate that the proposed project '... is particularly suitable for the location in the community' as per subparagraph (D). Nor did the petitioner establish that the following criteria under section 116-1 had been met:

99 SANFORD V ZONING BOARD OF APPEALS
INDEX NO. 621601/2021
MOT. SEQ. # 001
Page 3 of 3

B. To protect the established character and the social and economic well-being of both private and public property [and] C. To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate” (Respondent’s Memorandum of Law pg. 5).

Moreover, in *Matter of Hawryluk v. Zoning Board of Appeals of the Town of Huntington*, 173 A.D.2d 826, 571 NYS2d 53 (2d Dept 1991) the court found no merit to petitioner’s argument that the zoning board improperly failed to follow its prior determination in an unrelated matter, in which, petitioner contends, similar variances were requested and denied. Although a zoning board is bound to follow its own precedents (*see, Knight v. Amelkin*, 150 AD2d 528), the court found that the unrelated matter is sufficiently distinguishable from the present case. Accordingly, petitioners’ application for a judgment annulling the determination and resolution of the Zoning Board of Appeals of the Incorporated Village of Southampton is denied, and the petition is dismissed.

Anything not specifically granted herein is hereby denied.

The foregoing constitutes the decision and **Order** of the Court.



LINDA KEVINS, JSC

Dated: 9/20/22

 X FINAL DISPOSITION NON-FINAL DISPOSITION