

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

-----X
CATSKILL HERITAGE ALLIANCE, INC.,

Plaintiff,

DECISION/ORDER

-against-

Index No. 16-0385
R.J.I. No. 55-16-0244
Richard Mott, J.S.C.

CROSSROADS VENTURES, LLC, and TOWN OF
SHANDAKEN PLANNING BOARD,

Defendants.

-----X
Motion Return Date: April 14, 2016. Final submission received April 15, 2016.

APPEARANCES:

Plaintiff: Claudia K. Braymer, Esq.
Caffry & Flower
100 Bay Street
Glens Falls, NY 12801

Defendants: John J. Henry, Esq.
Whiteman Osterman & Hanna, LLP
One Commerce Plaza
Albany, NY 12260
For Crossroads Ventures, LLC

Richard J. Olson, Esq.
McCabe & Mack, LLP
63 Washington Street
PO Box 509
Poughkeepsie, NY 12601
For Town of Shandaken Planning Board

Mott, J.

Respondents move to dismiss this Article 78 petition seeking to void the
Respondent Town of Shandaken Planning Board's (hereinafter, "Board") resolution

approving Respondent Crossroads Ventures, LLC's (hereinafter, "Crossroads") application for a special use permit and site plan review. The Town of Shandaken (hereinafter, "Town") adopts Crossroads' submissions. Petitioner opposes.

Background

In 2000, the Town of Shandaken's Zoning Board of Appeals (hereinafter, "ZBA") issued a resolution (hereinafter, "ZBA Resolution"), interpreting that a "vacation resort" is a permitted use in areas zoned R1-5, R-3 and R-5, corresponding to the 321 acre Crossroads property known as Wildacres. The ZBA Resolution indicated that each special permit for a vacation resort need not address the individual structures separately, so long as they are within the zoning law definition of a vacation resort or structures accessory thereto. See, Shandaken Town Law §§ 116-4(B); 116-40(O) (4). No plans were submitted for the ZBA's consideration.

In 2013, Crossroads applied to the Board for a special permit and site plan review for a 724 acre hotel development, 405 acres of which are in the Town of Shandaken. The applications included a detailed site plan for two hotels. In 2015, the Town's Building Inspector and Zoning Enforcement Officer (hereinafter, "Zoning Officer") determined that the Crossroads development was compliant with density restrictions. On January 14, 2016, the Town issued its SEQRA findings, noting that the "project is a use allowed by the Town of Shandaken Zoning Code," and the applications were approved thereafter.

Petitioner objected, claiming that although the hotel development is permitted, some of the proposed buildings are prohibited as they are not *accessory* or *integral* to the hotel development. It maintains that the proposed multi-family dwellings, conference centers and independent spas are prohibited and require zoning variances.

Parties' Contentions

Respondents claim that the petition lacks merit as the Board has no authority to interpret zoning laws and further because Petitioner failed to exhaust administrative remedies by timely challenging the ZBA Resolution or Zoning Officer's determinations (hereinafter, "Zoning Officer").

Petitioner contends that the Board violated procedure in issuing the approvals before verifying compliance with zoning laws, that the ZBA Resolution is inapplicable because it never considered the 2013 project plan and that it has been denied a timely opportunity to challenge the plan's compliance with zoning laws.

Discussion

Motion to Dismiss

On a motion to dismiss a complaint pursuant to CPLR §3211 (a) (7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference (*see Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 318 [1995]; *see also Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The role of the court is to "determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d at 87-88). Therefore, a complaint is legally sufficient if the court determines that a plaintiff would be entitled to relief on any reasonable view of the facts stated (*see Campaign for Fiscal Equity v State of New York*, 86 NY2d at 318). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005])." *Dee v. Rakower*, 112 A.D.3d 204, 208, (2d Dept. 2013).

Challenges to local government actions involving violations of lawful procedure, errors of law or the arbitrary and capricious exercise of discretion are subject to review pursuant to CPLR Article 78. *E. Moriches Prop. Owners' Ass'n, Inc. v Planning Bd. of Town of Brookhaven*, 66 AD3d 895, 897 [2d Dept. 2009]. A planning board may not approve an application that fails to comply with the town zoning laws. *Woodland Community Ass'n v Planning Bd. of Town of Shandaken*, 52 AD3d 991, 993 [3d Dept. 2008] (petitioners called the Planning Board's attention to its obligation to request an interpretation); *24 Franklin Ave. R.E. Corp. v Heaship*, 139 AD3d 742 [2d Dept. 2016] (building permits not in accordance with previously approved site plan required further consideration). Further, because it is undisputed that the Board is not authorized to interpret zoning laws, see, e.g., *Jaffe v Burns*, 64 AD2d 692, 692 [2d Dept. 1978] (only a zoning board of appeals can grant a variance); *Figgie Intern., Inc. v Town of Huntington*, 203 AD2d 416, 417-18 [2d Dept. 1994], the pivotal issue becomes whether the development was approved by the zoning authorities, thus demonstrating compliance with the zoning ordinance. *24 Franklin Ave. R.E. Corp. v Heaship*, 139 AD3d 742 [2d Dept. 2016] (building permits for construction not depicted on the site map submitted to the Planning Board were not encompassed in the subdivision approval).

Interpreting the facts in Petitioner's favor, it has stated a cognizable claim that the Board improperly issued a special permit in violation of zoning laws before clarifying with the zoning authorities whether the alleged multifamily dwellings, independent spas and conference centers proposed are *accessory* to the special use. *Woodland Community Ass'n v Planning Bd. of Town of Shandaken*, 52 AD3d 991 (where application presented preliminary

question of whether proposed use was sufficiently similar to uses permitted by the zoning code, only the ZBA is authorized to interpret).

Here, the ZBA Resolution itself acknowledges it is nothing more than an advisory opinion that an attached definition of a vacation resort is a permitted special use in the cited zones. The issue of the 2013 plan's compliance with said special use or the need for variances was never addressed by the ZBA and could not be addressed by the Board. Consequently, Petitioner's claims that the Board exceeded its authority or acted in error is reviewable in this Article 78 proceeding. *Greencove Assoc., LLC v Town Bd. of Town of N. Hempstead*, 87 AD3d 1066 [2d Dept. 2011].

Accordingly, the motions are denied and the Respondents may file answers pursuant to CPLR §7804(f). The parties' remaining contentions have been considered and determined to be without merit or have been rendered moot by this determination.

This constitutes the Decision and Order of this Court. The Court is forwarding the original Decision and Order directly to Petitioner, who is required to comply with the provisions of CPLR §2220 with regard to filing and entry thereof. A photocopy of the Decision and Order is being forwarded to all other parties who appeared in the action. All original motion papers are being delivered by the Court to the Supreme Court Clerk for transmission to the County Clerk.

Dated: Hudson, New York
June 21, 2016

ENTER



RICHARD MOTT, J.S.C.

Papers Considered:

1. Notice of Motion and Affidavit of John J. Henry, Esq., with Exhibits A-J and Memorandum of Law of John J. Henry, Esq., Daniel A. Ruzow, Esq., Claiborne E. Walthall, Esq., dated March 23, 2016; Affidavit of Warren P. Tutt, dated March 17, 2016 with Exhibits A-D;
2. Notice of Motion and Affidavit of Richard J. Olson, Esq. dated March 23, 2016;
3. Opposition Affidavit and Memorandum of Law of Claudia K. Braymer, Esq., with Exhibits A-F, dated April 6, 2016;
4. Reply Memorandum of Law of John J. Henry, Esq., Daniel A. Ruzow, Esq., Claiborne E. Walthall, Esq., dated April 13, 2016;
5. Reply Affidavit of Richard J. Olson, Esq., dated April 13, 2016;
6. Sur-Reply Letter of Claudia K. Braymer, Esq., dated April 14, 2016;
7. Sur-Sur-Reply Letter of John J. Henry, Esq., dated April 15, 2016.