

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Case Law Update

April 8, 2024

DOMINIQUE G. ALBANO, ESQ.

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



GENERAL ZONING LAW PRINCIPLES

Statutory language and legislative intent are gleaned from:

- ❑ The plain language of the local law which is the clearest indication of interpretation.
- ❑ The context of conditions in existence when the local law was passed.
- ❑ Examination of the legislative history if the language is ambiguous.

Matter of Affiliated Brookhaven Civic Orgs., Inc. v Planning Bd of the Town of Brookhaven, 209 A.D.3d 854 (2nd Dep't, 2022)

Legitimate Governmental Purpose

- Where a zoning amendment is part of a “comprehensive plan, it will be upheld if it is established that it was adopted for a legitimate governmental purpose and there is a reasonable relation between the end sought to be achieved and the means used to achieve that end.”
- In reviewing zoning amendments, courts will also consider whether the proposed use is compatible with surrounding uses, whether other suitable parcels are available, and recommendations from the professional planning staff.

61 Crown St., LLC v City of Kingston Common Council, 206 A.D.3d 1316 (3rd Dep’t, 2022)

Comprehensive Plan



- ▶ Zoning laws must generally be enacted in accordance with a comprehensive land use plan.

- ▶ 1160 Mamaroneck Avenue Corp. v. City of White Plains, 211 A.D.3d 723 (2d Dep't 2023).

Standing in Zoning Actions

Petitioners must suffer direct harm, injury different from the public at large to have standing

Veteri v. Zoning Board of Appeals of the Town of Kent,
163 N.Y.S. 3d 231 (2nd Dep't, 2022)

Matter of Committee for Environmentally Sound Dec v Amsterdam Ave. Redevelopment Assoc. LLC, 194 A.D. 3d 1 (1st Dep't, 2021)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Site Plan Review Cases

Amended Site Plans

Revisions to site plans made subsequent to a public hearing that are insubstantial do not require an additional public hearing after site plans were revised, if the revisions do not expand or change basic layout or dimensions of a project, and the first public hearing was held after an extensive review process, then a second hearing is not required.

Favre v. Planning Board of Town of Highlands, 185 A.D.3d 681 (2d Dep't 2020)

Conditions to Site Plans

A reviewing board may, where appropriate, impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impact to an area that might result from the grant of a special permit. However, if a reviewing board imposes conditions that are unreasonable or improper, those conditions may be annulled.

Pepe Porsche of Larchmont v. Plan. Bd. of Town of Mamaroneck, 216 A.D.3d 1163
(2d Dep't. 2023)

Planning Board Authority

A Planning Board will not be found to have exceeded its authority where its approval of a site plan is rational and based simply upon an unambiguous reading of the zoning code

Cady v. Town of Germantown Plan. Bd., 184 A.D.3d 983 (3d Dep't 2020)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Special Use Permit Review

Special Use Permits in General

When a zoning law lists a permitted use by a special use permit “it is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.”

MATTER OF BARNES RD. AREA NEIGHBORHOOD ASSN V PLANNING BD OF THE TOWN OF SAND LAKE, 206 A.D.3D 1507 (3D DEPT, 2022)

Special Use Permit Standards

Where the local legislative body has found the special use to be appropriate for the zoning district, a special use permit generally will be granted if the applicant satisfies all of the conditions in the zoning ordinance.

Failure to meet any one standard for granting a Special Use Permit constitutes grounds for denial.

MULLER V. ZONING BD. OF APPEALS TOWN OF LEWISBORO, 192 A.D.3D 805 (2D DEP'T. 2021)

MATTER OF 1640 STATE RTE 104, LLC V. TOWN OF ONTARIO PLANNING BD, 207 A.D.3D 1101 (4TH DEP'T, 2022)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Area Variance Review

5 Balancing Factors for an Area Variance

1. Will the proposal produce an undesirable change in the neighborhood?
2. Can the benefit sought be achieved by a feasible method other than an area variance?
3. Is the variance substantial?
4. Will the proposal adversely impact the physical or environmental conditions in the neighborhood if granted?
5. Was the alleged difficulty self-created?

Balancing Factors

It is the responsibility of the Zoning Board of Appeals to determine whether the benefit to owner was outweighed by detriment to neighborhood health, safety, and welfare

Sticks and Stones Holdings LLC v. Zoning Board of Appeals Town of Milton, (2d Dep't, 2022)

Balancing Factors

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 were rational.

Dutt v. Bowers, 207 A.D.3d 540, 542 (2d Dep't 2022)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Use Variance Review

All four elements must be present for the applicant to receive a use variance

- 1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (3) The requested use variance will not alter the essential character of the neighborhood;
- (4) The alleged hardship is not self-created.

GENERAL CITY LAW § 81-B; TOWN LAW § 267-B; VILLAGE LAW § 7-712-B.

(1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

The Applicant must show “by dollars and cents proof” that they cannot yield a reasonable rate of return absent the requested use variance.

WCC TANK TECHNOLOGY, INC. V. ZONING BOARD OF APPEALS OF TOWN OF NEWBURGH

190 A.D.3D 860 (2ND DEP'T, 2021)

(2) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;

A hardship allegedly cause by zoning regulations and restrictions is considered self-created, for zoning purposes, where the property is acquired subject to the restrictions from which relief is sought.

Source Renewables, LLC v. Town of Cortlandville Zoning Board of Appeals, 213 A.D.3d 1178 (3d Dep't 2023)

Nonconforming Uses

- ▶ Although, prior nonconforming uses in existence when a zoning ordinance is adopted are, generally, constitutionally protected, the law generally views nonconforming uses as detrimental to a zoning scheme, and the overriding public policy of zoning is aimed at their reasonable restriction and eventual elimination.

- ▶ Town of Southampton v. New York State Department of Environmental Conservation, 194 A.D.3d 1310 (2d Dep't 2021)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



SEQRA

Classification of Action

The first step in those procedures is to engage in an initial review and classification of the proposed action as Type I, Type II, or Unlisted

No Agency involved in an action under SEQRA may approve the action until it has complied with the provisions of SEQR

Andes v. Plan. Bd. of Town of Riverhead, 217 A.D.3d 669 (2nd Dep't. 2023)

Classification of Action


A misclassification does not always lead to the annulment of the negative declaration if the lead agency conducts the equivalent of a type I review notwithstanding the misclassification

Matter of Williamsville Residents Opposed to Blocher Redevelopment, LLC v. Village of Williamsville Planning & Architectural Review Bd., 208 A.D.3d 1609 (4th Dep't 2022)

SEQR Standing

To have standing to challenge an agency action under SEQRA, the injury in question must be a direct one distinguishable from generalized environmental concerns and, while the close physical proximity as a neighbor to a proposed project may give rise to an inference of direct harm, standing will not be recognized unless the neighbor can show that the close proximity exposes him or her to a harm different from the harm experienced by the public generally

Boise v. City of Plattsburgh, 219 A.D.3d 1050 (3d Dep't 2023)



SEQRA requisite hard look took into consideration the following basis for its determination regarding:

- ▶ impacts to avian populations;
- ▶ visual impact of proposed project on nearby historic district;
- ▶ impact on community character;
- ▶ compatibility w/ the goals of the transit district;
- ▶ the proposed mitigation measures; and
- ▶ alternatives to the proposed developments

Matter of Hart v. Town of Guilderland, 196 A.D.3d 900 (3d Dep't 2021)

Hard Look continued

A determination under the SEQRA will not be disturbed on appeal so long as the lead agency identified the pertinent areas of environmental concern, took a hard look at them and advanced a reasoned elaboration of the grounds for its determination

Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dep't, 2022)

Segmentation



Segmentation of actions under SEQRA involves the division of environmental review of an action such that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance, is allowed when agency conducting environmental review clearly sets forth reasons supporting segmentation and demonstrates that such review is clearly no less protective of the environment.

Segmentation

Under SEQRA, individual projects should be considered together when they are integrated components of a larger plan, dependent upon one another and sharing a common purpose.

Evans v. City of Saratoga Springs, 202 A.D.3d 1318 (3d Dep't 2022)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Planned Unit Developments

Planned Unit Developments

Where a planning board reviews a PUD and recommends that it be approved, a town/village board is lawfully permitted to exercise its discretion under town/village ordinance to waive, modify, or supplement standards of underlying zone

Bistany v. City of Buffalo, 210 A.D.3d 1535, 178 N.Y.S.3d 669 (4th Dep't 2022).

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Municipal Officers

Conflict of Interest

A violation of the General Municipal Law is not necessary for there to be an improper conflict of interest on the part of a municipal official; rather, the relevant question is whether an official had any direct or indirect interest, pecuniary or otherwise, in a project such that their vote could reasonably be interpreted as potentially benefiting themselves.

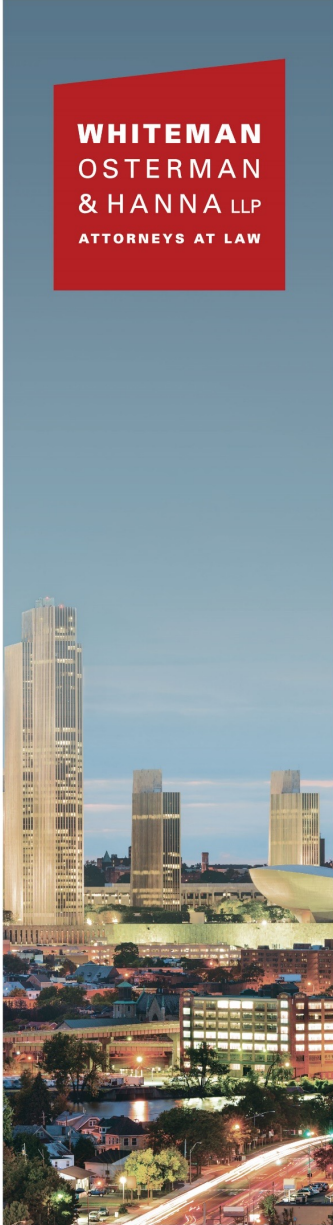
- ▶ Titan Concrete, Inc. v. Town of Kent, 202 A.D.3d 972 (2nd Dep't, 2022)

Open Meetings Law

- ▶ The purpose of the Open Meetings Law is to prevent municipal governments from debating and deciding in private what they are required to debate and decide in public.
- ▶ A violation of the Open Meetings Law renders an ensuing determination not void but, rather, voidable upon good cause shown.

Southern Realty and Development, LLC v. Town of Hurley, 218 A.D.3d 9001 (3d Dep't 2023)

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



Thank you!

If you have any questions or would like a copy of this PowerPoint, please feel free to contact me at dalbano@woh.com.