

SUPREME COURT OF THE STATE OF NEW YORK
NASSAU COUNTY

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In the Matter of the Application of
RICHARD D. LOSCO JR., also known as
RICHARD LOSCO, and BRITTANY LOSCO

XXX
Sequence 001
DECISION AND ORDER

Petitioners

INDEX NO. 618778/2024
Hon. GARY M. CARLTON

For a Judgment Pursuant to Article Index No.:
78 of the Civil Practice Law and Rules,
-against-

BOARD OF APPEALS OF THE
TOWN OF HEMPSTEAD

Respondent

-----X
The following papers read on this motion:
001

Notice of Motion and supporting Exhibits.....X
Respondent's Opposition and supporting Exhibits.....X
Petitioner's Reply AffirmationX

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Upon the foregoing the proceeding upon petition commenced by the
petitioners, [hereinafter the Petitioner], for a judgment reversing the decision of
the Respondent, BOARD OF APPEALS OF THE TOWN OF HEMPSTEAD
which denied Petitioners application for two (2) variances with respect to a
pre-existing detached two (2) car garage. The first relates to the garage's height,
which is taller than permitted and a second to maintain the garage forward of the
dwelling.

Petitioner argues that based on a review of the entire record, this Court should conclude that the Board abused its discretion in that the Board's Decision effectively denies them from having the protection and security of a reasonably designed garage on the Losco Property.

Respondent opposes and argues that its decision determined that the benefit to Petitioner was outweighed by the effect that granting of the variances would have on the character of the surrounding neighborhood.

Further that sixteen (16) of the twenty-five (25) premises referenced in the Petition are not located within the same hamlet as the subject parcel and were not presented to the Board at the August 21, 2024 hearing.

None of the nine (9) parcels referenced in the petition are located in the hamlet of Levittown or located within the 200' radius of the subject parcel.

LAW

"In a proceeding pursuant to CPLR Article 78 to review a determination of a zoning board of appeals, the board's interpretation of its zoning ordinance is entitled to great deference, and judicial review is generally limited to ascertaining whether the action taken by the board is illegal, arbitrary and capricious, or an abuse of discretion." Brancato v. Zoning Bd. of Appeals of City of Yonkers, N.Y., 30 A.D.3d 515, 515 (2d Dept 2006).

A determination of a zoning board should be sustained upon judicial review if it has a rational basis and is supported by substantial evidence. A determination is rational if it has some objective factual basis, and courts consider 'substantial evidence' only to determine whether the record contains sufficient evidence to support the rationality of the determination being questioned, Matter of Harn Food, LLC v. DeChance, 159 A.D.3d 819 (2d Dept 2018).

When a determination is contested, the court's role is limited to ascertaining whether that determination has a rational basis, that is, whether it is not affected by an error of law or not arbitrary and capricious Matter of Klein v. Dep't of Assessment, 149 A.D.3d 935, 935 (2d Dept. 2017).

Here since Petitioner submitted no evidence of comparable properties in the vicinity of the subject property, the hearing officers made a rational decision, see Matter of Lauer v. Board of Assessors, 51 A.D.3d 926, 927 (2d Dept. 2017)

Petitioner on oral argument referenced two cases, Matter of 666 OCR TT, LLC v. Board of Zoning Appeals, 200 A.D.3d 682 (2d Dept. 2021) and Matter of Hampton Village, LLC v. Zoning Board of Appeals, 2025 WL 1572475 (2d Dept. 2025), both of which restate that judicial review is limited to ascertaining whether the determination was illegal, arbitrary and capricious or an abuse of discretion.

In its decision Respondent found that during Petitioner's structure was oversized, not in the right location, had the appearance of a commercial garage,

was the only one in the neighborhood, was out of character with the neighborhood and would create a bad precedent. Further, the Board found that the hardship was self-created and Board members raised future concerns that the structure would be used for housing. As a result, the Board found that the benefit to the applicant was outweighed by the detriment to the health, welfare and safety of the community.

Respondent based on its review on the photographs in the record and the personal observation of a member and concluded that the garage was a “monster” and “looks more like a house.”

Further at the hearing Petitioner failed to offer and/or present to the Respondent any evidence that it had previously granted variances permitting the erection of nonconforming garages.

Based upon the foregoing, it is hereby

ORDERED, that the within petition is dismissed (Sequence #001).

Dated: June 18, 2025



GARY M. CARLTON
SUPREME COURT JUSTICE

ENTERED

Jun 19 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE