68 N.Y.2d 975, 503 N.E.2d 106, 510 N.Y.S.2d 550

Robert T. Knight et al., Appellants,
v.
Stanley P. Amelkin et al., Constituting the Zoning Board of Appeals of the Town of Huntington, Respondents.

Court of Appeals of New York
478
Decided November 20, 1986

CITE TITLE AS: Knight v Amelkin

SUMMARY

Appeal, by permission of the Court of Appeals, from an ***976** order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered January 21, 1986, which (1) reversed, on the law, a judgment of the Supreme Court at Special Term (Victor J. Orgera, J.), entered in Suffolk County in a proceeding pursuant to CPLR article 78, granting the petition to the extent of annulling a determination of the Zoning Board of Appeals of the Town of Huntington insofar as it denied petitioners the right to convert the present use of their property as a furniture store to other uses permitted within the C-6 General Business District, and sustaining that portion of the determination which denied petitioners' application to expand their premises by an additional 450 square feet, (2) confirmed the determination, and (3) dismissed the petition in its entirety.

Petitioners commenced the present proceeding after respondent Zoning Board of Appeals affirmed the denial of a building permit by the Building Department, and refused to grant petitioners either a variance or special exception. Petitioners were the owners of a furniture store which was located on a 24,000 square foot lot in downtown Huntington; the building occupied almost the entire lot. In 1966, the town amended its zoning ordinance to require off-street parking in an amount to be determined by the size and type of business conducted on each downtown lot. Inasmuch as petitioners' store was in existence prior to the enactment of the parking regulations, it was considered a valid nonconforming use and no effort was made to require petitioners to supply off-street parking. In 1983, after suffering a decline in their furniture business, petitioners contracted to sell their building to a developer who wished to convert the store into 14 to 16 small retail stores, all of which would be conforming uses in the downtown zoning district. Pursuant to their contract, petitioners were required to obtain all necessary variances and approvals. Petitioners' application for a building permit to alter the building to contain the proposed retail stores was denied on the ground that the contemplated use of the building constituted an intensified use within the meaning of the zoning ordinance and that, thus, all plans must conform to all current zoning regulations, including those relating to off-street parking. Petitioners' appeal to the Zoning Board was denied on the basis that petitioners had not established that they would be precluded from realizing a reasonable return on their property absent a variance because they had not offered the requisite " dollars and cents proof." ***977**

Knight v Amelkin, 116 AD2d 629, reversed.

HEADNOTES

Municipal Corporations

Zoning
Failure of Zoning Board of Appeals to Indicate Reasons for Reaching Different Result

(1) In a proceeding to review a determination of a zoning board of appeals which denied petitioners' application for a variance or special exception, the matter must be remitted to the board; inasmuch as a zoning board of appeals performs a quasi-judicial function when considering applications for variances and special exceptions and completely lacks legislative power, it must comply with the rule that a decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious. Accordingly, where petitioners have succeeded in showing the existence of several earlier determinations by the board with sufficient factual similarity to the present case, the matter should be remanded to the board for an explanation of its action. It should be noted that the board is not prohibited from denying petitioners' application; however, because petitioners have shown earlier determinations of the board reaching contrary results on essentially the same facts, an explanation or, in the alternative, a conforming determination is required.

APPEARANCES OF COUNSEL

Gordon C. Sammis and *Thomas R. Newman* for appellants.
Michael F. Mullen for respondents.

OPINION OF THE COURT

The order of the Appellate Division should be reversed and the matter remitted to the Zoning Board of Appeals of the Town of Huntington for further consideration.

We have recently held that "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious" *(Matter of Field Delivery Serv. [Roberts],* 66 NY2d 516, 517). Inasmuch as a zoning board of appeals performs a quasi-judicial function when considering applications for variances and special exceptions *(see, Matter of Cowan v Kern,* 41 NY2d 591, 598-599, *rearg denied* 42 NY2d 910; *Holy Spirit Assn. v Rosenfeld,* 91 AD2d 190, *lv denied* 63 NY2d 603), and completely lacks legislative power (2 Anderson, New York Zoning Law and Practice § 23.59, at 251; 6 Rohan, Zoning and Land Use Controls § 43.01 [2] [b], at 43-8--43-9), a zoning board of appeals must comply with the rule of the *Field* case. Here, petitioners have succeeded in showing the existence of several ***978** earlier determinations by the Zoning Board with sufficient factual similarity so as to warrant an explanation from the Board. In particular, the Board should explain why it no longer interprets section 198-44 (C) of the zoning ordinance to be applicable in a case involving intensified use of property, as it apparently did in its July 1982 and November 1981 decisions cited by petitioners. It should also explain why its 1978 determination granting a variance to another owner of a downtown furniture store is different from the application of petitioners. Of course, the Board is not prohibited by our decision today from denying petitioners' application for a variance from or special exception to the zoning ordinance's off-street parking requirements. We only hold that because petitioners have shown earlier determinations of the Board reaching contrary results on essentially the same facts, an explanation or, in the alternative, a conforming determination, is required.

Chief Judge Wachtler and Judges Meyer, Simons, Kaye, Alexander, Titone and Hancock, Jr., concur.

On review of submissions pursuant to section 500.4 of the Rules of the Court of Appeals (22 NYCRR 500.4), order reversed, with costs, and matter remitted to Supreme Court, Suffolk County, with directions to remand to the Zoning Board of Appeals of the Town of Huntington for further consideration in accordance with the memorandum herein.

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