

SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 56 SUFFOLK COUNTY

PRESENT:

Hon. Carmen Victoria St. George
Justice of the Supreme Court

ORIGINAL

x

In the Matter of the Application of
JAEGER REALTY HOLDINGS, LLC,

Index No.:

17-005847

Petitioner,

Motion Seq:
001

-against-

Decision/Order

ZONING BOARD OF APPEALS OF THE
INCORPORATED VILLAGE OF PORT JEFFERSON,

Respondents.

x

The following papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	XX
Answering Papers.....	
Reply.....	

Petitioner, Jaeger Realty Holdings, LLC, moves this Court for an Order pursuant to Article 78 of the CPLR directing that the decision rendered by Respondent, the Zoning Board of Appeals of the Incorporated Village of Port Jefferson, dated October 11, 2017, be set aside as unlawful and arbitrary and capricious and that Respondent further be mandated to issue a Certificate of Existing Use for Petitioner’s property. Respondent opposes the application.

Petitioner is owner of a parcel of real property located at 200 East Broadway in the Incorporated Village of Port Jefferson, Suffolk County, New York, also identified on the Suffolk County Tax Map as District 206, Section 8, Block 4. Lot 5.003. The property is an improved lot with a house and two accessory buildings, a shed and a two-story barn. The buildings on the property were constructed sometime during the mid to late nineteenth century when the property was owned by the Hawkins Family, one of the original families in the area. The construction predates both the applicable zoning laws and the incorporation of the village. On or about October 21, 2016, Petitioner applied to Respondent ZBA for a certificate of existing use regarding two apartments in the upstairs of the barn. The property rests in what is currently the R-B3 zoning district, which permits one and two-family residences. The property history shows the approval of an extension of a nonconforming use in 1956 by the Town of Brookhaven Zoning Board of Appeals. This was prior to the incorporation of the Village of Port Jefferson. That action by the town was based on its satisfaction that an office, used by both Francis A. Hawkins and his son,

Herman P. Hawkins, both land surveyors, existed on the property prior to the zoning laws adopted by the Town of Brookhaven in 1937. In 1965, an additional extension and certificate of occupancy was issued by the Incorporated Village of Port Jefferson for storage on the property. In 1974, another certificate of occupancy was granted by the Village for yet another extension of office use. In 1980, Petitioner's agent, Mr. William Jaeger (who is currently the agent of Petitioner, however was acting on his own at the time) entered into a lease agreement with the United States Coast guard to lease a one bedroom apartment on the upper floor at the parcel. Finally, a memorandum dated September 30, 1980 acknowledged that the Village Planning Board approved a further subdivision of the parcel stating, "You will note that neither parcel is a corner lot and therefore both are legal under the R-B3 zoning." The memorandum makes no reference to either certificates of occupancy or certificates of existing use. In 2016, Petitioner made application for the certificate of existing use for the two apartments on the upper floor of the barn, an accessory building, which is the subject of the instant application. The application was denied and Petitioner appealed the denial to Respondent Zoning Board of Appeals. Public hearings were held during which testimony and evidence were received. Ultimately, Respondent denied the appeal and the instant action was undertaken by Petitioner in this Court.

At the public hearings, Petitioner's agent, Mr. Jaeger testified that he occupied one of two apartments on the upper floor of the barn building during the late 1970's after having acquired the parcel in 1977. In 1980 he entered into the agreement with the Coast Guard which occupied the second apartment. Mr. Jaeger further testified that for the period of the next thirty-five years the apartments had been continually rented to a number of people. The public hearings took place on December 1, 2016 and May 25, 2017 and evidence were received by the Board. Among the evidence received at the hearings was the affidavit Marianne Witdorhich, in which she indicated that her family name was Hawkins and that her grandfather, Herman Hawkins, had told her, in sum and substance, that a man who had been a hired hand had lived above the barn during the 1930's. His tenancy consisted of the rooms above the barn which were equipped with a pump for water and an outhouse for sanitary facilities. She had no personal knowledge of these conditions, only what her grandfather had relayed to her.

On October 11, 2017 Respondent Board rendered its decision upholding the denial by the building department and denying Petitioner's application for the certificate of existing use. In its denial, Respondent cited that the residential portion of the barn was a non-conforming use of the accessory building and that Petitioner had not established a pre-existing non-conforming use which existed continually since before the adoption of the zoning codes in 1963.

In a proceeding pursuant to CPLR Art. 78, it is the role of the Court to review whether a determination by a municipal body or agency was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious. Furthermore, it is well settled law that in a proceeding seeking judicial review of administrative action, the Court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it was arbitrary or capricious; *Flacke v Onondaga Landfill Sys, Inc.* 69 NY2d 355 (1987). In applying the arbitrary and capricious

standard, a Court inquires whether the determination under review had a rational basis. Under this standard, a determination should not be disturbed unless the record shows that the agency's action was arbitrary, unreasonable, irrational or indicative of bad faith; *Halperin v City of New Rochelle*, 24 AD3d 768 (2nd Dept 2005) citing *Matter of Pell v Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cty.*, 34 NY2d 222 (1974).

In the instant matter, Respondent based its decision on the finding that the use of an accessory building as a residence, while non-conforming, was not pre-existing. The record was void of any status for the residences in question for the period of time between the 1930's and 1979 when Petitioner's agent resided in one apartment. The record does not establish a pre-existing use of the accessory building, i.e. the barn, in 1963 when the Village incorporated and adopted the zoning code. Respondent's action, then is supported by a rational basis for the decision and must be upheld, *Tavano v Zoning Board of Appeals of Town of Patterson*, 149 AD3d 755 (2nd Dept 2017).

Accordingly, Petitioner's application is denied (Sequence 001).

The foregoing constitutes the decision and Order of the Court.

Dated: May 6, 2020
Riverhead, NY

HON. CARMEN VICTORIA ST. GEORGE

CARMEN VICTORIA ST. GEORGE,
J.S.C.

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FINAL DISPOSITION [X] NON-FINAL DISPOSITION []