SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Prepared by the Court

554 QUEEN ANNE ROAD INC., Plaintiff, v. TEANECK BOARD OF ADJUSTMENT, Defendant.	CIVIL ACTION ORDER FOR JUDGMENT DOCKET NO.: L-12194-10

FILED
AUG 26 2013
ALEXANDER H. CARVER III
J.S.C.

THIS MATTER having come on for trial in the presence of GIBSON, DUNN & CRUTCHER LLP (Jim Walden, Esq., and Akiva Shapiro, Esq., appearing), and SCHENCK, PRICE, SMITH & KING, LLP (Kurt Senesky, Esq., appearing), on behalf of Plaintiff 554 Queen Anne Road, Inc.; WEBER, GALLAGHER, SIMPSON, STAPLETON, FIRES & NEWBY LLP (Andrew L. Indeck, Esq., and Anthony P. Seijas, Esq., appearing), on behalf of Defendant Teaneck Board of Adjustment.; F. MICHAEL DAILY JR., LLC (F. Michael Daily, Esq. appearing), on behalf of The Rutherford Institute.; and the Court having considered, the evidence, and the argument of counsel, and for the reasons set forth in the Opinion of even date,

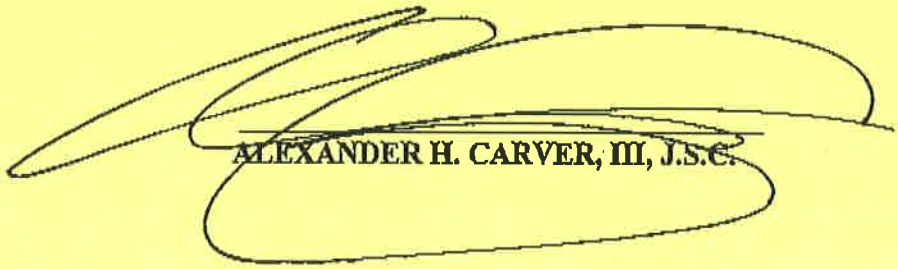
IT IS on this 26th day of August, 2013,

ORDERED and ADJUDGED, that the action of the Defendant, Teaneck Board of Adjustment, approving with conditions the application of the Plaintiff, 554 Queen Anne Road, Inc., as memorialized in the Defendants Resolution adopted November 3, 2010, be and it is hereby affirmed; and it is further

ORDERED, that Judgment be and it is hereby entered in favor of the Defendant; Teaneck Board of Adjustment, and against the Plaintiff, 554 Queen Anne Road, Inc.; and it is further

ORDERED, that Plaintiff's Complaint be and it is hereby dismissed with prejudice; and it is further

ORDERED, that a copy of this Order shall be served on all counsel within seven (7) days from the date hereof.



ALEXANDER H. CARVER, III, J.S.C.

NOT TO BE PUBLISHED
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Prepared by the Court

554 QUEEN ANNE ROAD INC.,

Plaintiff,

v.

TEANECK BOARD OF ADJUSTMENT,

Defendant.

CIVIL ACTION

FILED
OPINION
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ALEXANDER H. CARVER, III
J.S.C.

DOCKET NO.: L– 12194-10

GIBSON, DUNN, & CRUTCHER LLP (Jim Walden, Esq., and Akiva Shapiro, Esq., appearing), on behalf of Plaintiff 554 Queen Anne Road Inc.

SCHENCK, PRICE, SMITH & KING, LLP (Kurt Senesky, Esq., appearing), on behalf of Plaintiff 554 Queen Anne Road, Inc.

WEBER, GALLAGHER, SIMPSON, STAPLETON, FIRE, & NEWBY LLP (Andrew L. Indeck, Esq., and Anthony P. Seijas, Esq., appearing), on behalf of Defendant Teaneck Board of Adjustment.

F. MICHAEL DAILY JR., LLC (F Michael Daily, Esq., appearing), on behalf of The Rutherford Institute.

I. PROCEDURAL HISTORY

Plaintiff 554 Queen Anne Road, Inc. ("Plaintiff"), filed a five-count Action in Lieu of Prerogative Writs against the Defendant, Teaneck Board of Adjustment ("Defendant" or "Board") challenging the conditions imposed by Defendant in conjunction with the approval of the use of Plaintiff's property as a house of worship as arbitrary, capricious and unreasonable, as violative of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and violative of the First and Fourteenth Amendments of the U.S. Constitution. Plaintiff alleges that the Defendant failed to properly balance the positive and negative criteria as required by N.J.S.A. 40:55D-70(d) and thus failed the four-part test laid out in Sica v. Bd. of Adjustment of Twp. Of Wall, 127 N.J. 152, 164-66 (1992).

Plaintiff moved for Summary Judgment twice and Defendant cross-moved for Summary Judgment. The Court denied all Summary Judgment Motions.

Trial was held in this matter on October 19, 2012.

II. FINDINGS OF FACT

Plaintiff is a corporate entity with a corporate charter doing business as EtzChaim of Teaneck. In 2007 Plaintiff acquired the house located at 554 Queen Anne Road, Teaneck, New Jersey (hereinafter, the "Property"). The Property is located within Teaneck's R-S Zone – Residential Single Family Detached District. Rabbi Daniel Feldman ("Rabbi Feldman") moved into the property in November 2007 after being approved by Plaintiff's president, Robert Erlich ("Erlich"). Rabbi Feldman began conducting prayer group services in the house and Plaintiff constructed a 1250-square-foot-family-room addition to accommodate the services. On July 14, 2008, a Certificate of Occupancy was issued for the addition conditioned upon Plaintiff's return

to the Board to seek additional approvals should the prayer group grow to a size at which it would be considered a house of worship as opposed to a prayer group.

The City of Teaneck permits houses of worship within the R-S Zone as a conditional use provided that certain criteria are met. Plaintiff filed an application with Defendant seeking conditional use approval and variances to use the Property as a house of worship after growing beyond the size of a prayer group.

The Board determined that Plaintiff's proposed use failed to meet six of the requirements of Section 33-25 of the Teaneck Development Regulations, namely: (1) the lot area of the Property is 14,300 square feet where 21,780 square feet is required; (2) the front yard set-back is 25.26 feet where 33 is required; (3) 6 parking spaces were proposed where 21 are required; (4) the side-yard landscaping had no buffer where 15 feet is required; (5) the exterior design did not conform to the area's general character; and (6) the proposed use would have parking in both side yards, which is not permitted.

The Board held four public hearings on Plaintiff's Application between December 16, 2009, and June 16, 2010. On August 10, 2010, after the hearings at which Erlich provided significant testimony, the Board granted Plaintiff's application subject to twenty-five conditions, eight of which were consented to by the Plaintiff. Plaintiff requested that the Board reconsider and clarify its Resolution. The Board published its final Resolution on November 3, 2010, correcting the spelling of Rabbi Feldman's name, but otherwise leaving the conditions intact. On December 17, 2010, Plaintiff filed its Action in Lieu of Prerogative Writs objecting to the following conditions as unreasonably burdensome:

(i) There will be no outdoor celebratory activities;
(ii) Kiddish, or collation after services, is limited to an hour;

(iii) No signs may be erected or displayed on the Property without returning to the Board for approval;
(iv) Services are limited to the Sabbath and holidays;
(v) No weekday or evening activities;
(vi) Classes and study groups are limited to one per month;
(vii) No tents or other structures shall be erected on the premises except for a succah during the festival of tabernacle;
(viii) There will be no community events held on the Property for any reason;
(ix) No catering shall be permitted only warming of food;
(x) Additional services holiday additional programs once per week;
(xi) One half of the garage shall be used for the warming kitchen and the other half for storage;
(xii) There will be a solid 6 foot high fence with no openings between 554 Queen Anne Road and all adjacent properties placed in the rear and side yards and conforming to zoning regulations;
(xiii) In the event of a change in the congregation, its practices, or transfer of ownership of the Property, the successor shall return to the board for review of the use at that time; and
(xiv) Continuing review by the Zoning Official and Construction Office to assure compliance with the terms of the Resolution.

III. CONCLUSIONS OF LAW

1. *The Board did not abuse its discretion in issuing conditions on the subject application and the conditions were not arbitrary, capricious, or unreasonable.*

The first count of Plaintiff's Complaint challenges the conditions imposed by Defendant for the approval of a house of worship as arbitrary, capricious, and unreasonable. This was the only issue raised at trial.

Courts follow an abuse of discretion standard when reviewing a decision by a board of adjustment and thus, in order to reverse a board's decision, a Court must find that the Board's decision was arbitrary, capricious, or unreasonable. N.Y. SMSA Ltd. P'ship v. Bd. of Adjustment of Bernards, 324 N.J. Super. 149, 164 (App. Div. 1999). Questions of law are subject to *de novo* review. See TWC Realty P'Ship v. Zoning Bd. of Adjustment of Edison, 315 N.J. Super. 205, 211 (Law. Div. 1998). The burden is on the party challenging the decision to show that conditions are arbitrary, capricious, and unreasonable. Smart SMR of New York v.

Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309 (1988). As such, a Court will only overturn municipal action that is arbitrary, capricious, or unreasonable. In re Application of Holy Name Hosp., 301 N.J. Super. 282, 295 (App. Div. 1997) Plaintiff must overcome the presumption of validity accorded to the Resolution. 515 Assocs. v. City of Newark, 132 N.J. 180, 185 (1993). This presumption can only be overcome by proof that precludes the possibility that there could be a set of facts known to the Board that would rationally support its Resolution. Hutton Park Gardens v. West Orange Tp. Council, 68 N.J. 543, 564-565 (1975).

The use of the Property as a residential synagogue is a conditional use. The use is permitted by the zoning ordinance only upon a showing that such use would comply with conditions and standards specified in the zoning ordinance. See Omnipoint Communications, Inc. v. Bd. of Adjustment of the Town of Bedminster, 337 N.J. Super. 398, 412-413 (App. Div. 2001). The Property failed to meet the set conditions required and thus, required a conditional use variance from Defendant. See Coventry Square, Inc. v. Westwood Zoning Board of Adjustment, 138 N.J. 285, 294 (1994).

A board of adjustment reviewing an application for a conditional use variance for an inherently beneficial use must balance the positive and negative criteria articulated in N.J.S.A. 40:55d-70. Sica v. Bd. of Adjustment of Wall, 127 N.J. 1, 163-165 (1992). In balancing the positive and negative criteria, the Court must follow the four-part test stated in Sica: (1) the Board should identify the public interest at stake; (2) the Board should identify the detrimental effect emanating from a grant of the variance; (3) the Board should identify reasonable conditions that may be imposed on the proposed use to reduce any detrimental effect; and (4) the Board should determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. Id. at 166.

The first prong of the Sica test is satisfied here because a house of worship promotes the general welfare and is recognized as an inherently beneficial use. See, House of Fire Christian Church v. Zoning Bd. of Adjustment of the City of Clifton, 379 N.J. Super. 526, 535 (App. Div. 2005). This recognition satisfies the positive criteria set forth in the MLUL and elaborated upon in Sica, therefore requiring the Board to address the remaining prongs of the test.

The second prong of the Sica test is satisfied here because the Board was within its rights to impose conditions on the grant of variances to mitigate any adverse impact. See, Kali Bari Temple v. Bd. of Adjustment of the Township of Readington, 271 N.J. Super. 241, 251 (App. Div. 1994) (holding that a board could impose conditions on granting of variance to church to address activity, noise, traffic, parking and other legitimate zoning concerns). See also, Omnipoint Communication, Inc., supra at 421 (holding that a board's analysis must discuss whether any detrimental effect could be reduced by the imposition of reasonable conditions on the use). The Board is granted wide latitude in the exercise of its discretion to grant or deny variances given its special knowledge of local conditions. Id. at 167. Because the Board determined that there was cause for concern pertaining to the use and impact on the neighborhood and zoning plan, the Board was within its rights to impose conditions that would address those concerns, including maintaining privacy for the neighbors and deflecting noise.

The third prong of the Sica test is satisfied here because the conditions imposed by the Board have a reasonable relationship to the consequences of the variances granted. See Alperin v. Township of Middletown, 91 N.J. Super. 190, 196 (Ch. Div. 1966). Plaintiff sought to establish a house of worship in a single family residential zone. Any permission for non-residential use in a residential zone causes impairment of the residential character of that zone. Yahnel v. Bd. of Adjustment of Jamesburg, 79 N.J. Super. 509, 519 (App. Div. 1963).

Each of the conditions imposed by the Board bears a rational and reasonable relationship to the foreseen consequences of granting the requested variances. For example, the Board imposed a condition which provides that the Plaintiff may not have any outdoor celebratory activities, and that no tents or other structures may be erected on the premises with the exception of Sukkah, the festival of the tabernacle. The Board's concern for noise prompted the imposition of this condition, and the witnesses for the Plaintiff testified that the only celebratory activity that was held outdoors was during Sukkah. This condition clearly balances the Plaintiff's desire to use the property in the manner requested in conjunction with addressing the Board's concern for noise.

Plaintiff alleges that the Board recognized that the impact of the requested variances would be minimal on the neighborhood. While the Board conceded that the bulk zoning and parking variances would have little impact due to the majority of the congregation walking to services and events, other factors remain. Plaintiff has about 70 regular congregants in attendance and about 100 congregants in attendance on high holidays. The Property can accommodate approximately 160 congregants. The mere fact that congregants could potentially walk to and from the house of worship does not exclude the possibility of vehicular traffic. Houses of worship can produce as much litter, noise, traffic and congestion as a theater or sporting event. Cox & Koenig, New Jersey Zoning and Land Use Administration, 35-4.3, p. 866 (Gann, 2011). The Board found the conditions to have a reasonable relationship to the various potential consequences, and based upon the Court's review of all conditions imposed, it is evident that the actions of the Board in imposing the conditions were not arbitrary, capricious or unreasonable.

The fourth prong of the Sica test is satisfied here because Defendant recognized the proposed synagogue as an inherently beneficial use and balanced the benefits against the detrimental effects of the variance. The Board's concern for the neighbors' privacy, noise, extent of use and impact on the neighborhood was balanced with the Plaintiff's request to use the Property as a house of worship. The Board granted the necessary variances for Plaintiff's house of worship with conditions, to many of which the Plaintiff consented, in order to mitigate the negative effects of granting the application.

Plaintiff alleges that no reasonable fact-finder could conclude that the purported negative criteria could tip the balance of the scale towards finding the variances requested by Plaintiff would pose a substantial detriment to the public good. The conditions that the Board imposed on Plaintiff are reasonable as they relate to causes of concern over R-S zone and the possibility of creating increased levels of noise, litter, traffic, and congestion. The Resolution stated that no outdoor celebratory activities were allowed on the Property. The Resolution further ordered the erection of a six-foot fence, and prohibited tents or other structures on the premises except for a succah during the Festival of Tabernacle. These conditions strike a balance between the inherently beneficial use of a synagogue with the detrimental effects caused by permitting a house of worship in an R-S zone. The Resolution also stated that Plaintiff could not hold community events nor rent the Property to other groups for such events. Holding such events would increase all the detrimental effects due to the sheer number of events Plaintiff could potentially hold. By mitigating such factors through imposing the relevant conditions, Defendant sought to maintain the identity of the zone and cooperate with the existing neighbors.

In light of the foregoing, this Court finds that the conditions are not arbitrary, capricious, or unreasonable. The Court further finds that Plaintiff agreed to conditions (iv), (v), (vi), (vii),

(ix), (xi), (xii) and (xiii) as set forth in the Resolutions and through testimony during the Board hearings.

2. *The conditions imposed by the Board do not violate RULIPA, the First Amendment, or the Fourteenth Amendment.*

In light of aforementioned findings in this Opinion, the Court need not address the issues Plaintiff raises in connection to RULIPA, the First Amendment, or the Fourteenth Amendment.

3. *The conditions (i), (ii), (iii), and (viii) are not vague or ambiguous.*

In the event that the lack of specificity of the aforementioned conditions leads to conflicting interpretations or other problems, Plaintiff may return to the Board for clarification. The Board shall seek to enforce the listed conditions through the use of a zoning officer or may reopen the application to review the language of the above conditions.

IV. CONCLUSION

For the foregoing reasons, this Court hereby affirms the actions of the Teaneck Board of Adjustment. Judgment is hereby entered for Defendant and Plaintiff's Complaint is hereby dismissed with prejudice.

ALEXANDER H. CARVER, III, J.S.C.

SUPERIOR COURT OF NEW JERSEY

BERGEN VICINAGE
Bergen County Justice Center
Suite 322
Hackensack, New Jersey 07601-7699
(201) 527-2390
Fax (201) 371-1147

Alexander H. Carver, III, J.S.C.

FAX COVER SHEET

Date: August 26, 2013

To:		
	James Walden, Esq.	(212) 351-4000
	Kurt Senesky, Esq.	(973) 540-7300
	Anthony P. Sejias, Esq.	(973) 242-1945
	F. Michael Daily, Esq.	(856) 833-1083

From: Alyssa Tomeo
Secretary to the Hon. Alexander H. Carver, III, J.S.C.

Re: 554 Queen Anne Road, Inc. v. Teaneck Board of Adjustment
Docket No. L-12194-10

Number of Pages including Cover Sheet: 13

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Thank you.