

Doc ID: *023244690002 Type: GOU
Kind: ARTICLE 78
Recorded: 08/25/2011 at 10:14:06 AM
Fee Amt: \$305.00 Page 1 of 2
Transaction: JUDGMENT
Rockland County, NY
Paul Piperato County Clerk

SU-2010-015366

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of
GLEN ORECCHIO,

Petitioner,

For a Judgment Pursuant to Article 78
of the CPLR,

-against-

WILLIAM MOWERSON, Chairman, NANETTE
ALBANESE, TRICIA CASTELLI, JOAN
SALOMON and DANIEL SULLIVAN,
constituting the Zoning Board of
Appeals of the Town of Orangetown, and
THE TOWN OF ORANGETOWN,

Respondents.
-----X

HON. VICTOR J. ALFIERI, JR., A.J.S.C.

The within matter is an Article 78 proceeding to annul, set aside and vacate the decision dated November 3, 2010 of Respondent, Zoning Board of Appeals of the Town of Orangetown (hereinafter "the ZBA"), which modified the decision dated September 14, 2010 by the Orangetown Historical Areas Board of Review (hereinafter "HABOR"). The Court has considered the following papers:

1. Notice of Petition dated December 29, 2010;
2. Verified Petition dated December 29, 2010 and Exhibits A through C attached thereto;
3. Affidavit of Petitioner sworn to on December 29, 2010;
4. Answer and Verification dated June 3, 2011;
5. Affirmation in Opposition dated June 3, 2011;
6. Reply Affirmation dated June 7, 2011;
7. Transcripts dated November 3, 2010 and November 17, 2010; and
8. Record of Petitioner's application which is the subject of this proceeding.

Pursuant to Orangetown Local Law Section 12-4(C) of the Orangetown Code, the ZBA is the administrative body designated to hear appeals from the HABOR. The ZBA's determination will be

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

JUDGMENT

Index No: 15366-2010

FILED BH 9

AUG 25 2011

**ROCKLAND COUNTY
CLERK'S OFFICE**

upheld on judicial review if "it is supported by substantial evidence and has a rational basis." DeMaio v. Zoning Bd. of Appeals, 270 A.D.2d 487 (2d Dept. 2000).¹ Applied here, this Court finds that the ZBA's determination is supported by substantial evidence and has a rational basis. Not only does the ZBA's November 17, 2011 determination identify all of the evidence that it considered, the fact that the ZBA modified specific provisions of the HAVOR's determination, rather than outright affirming or reversing it, indicates that the ZBA carefully reviewed the issues before it.

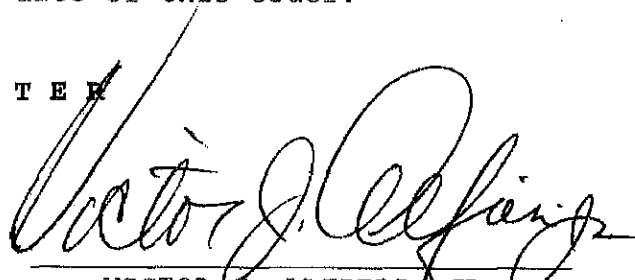
Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

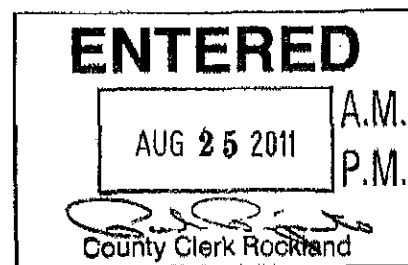
ORDERED that petitioner shall serve a copy of this Decision on respondent within ten days of the date of this Order.

ENTER

Dated: August 18, 2011
New City, New York


VICTOR J. ALFIERI, JR.
Acting Supreme Court Justice

TO: Donald S. Tracy, Esq.
317 South Little Tor Road
New City, New York 10956



¹ As this Court was not provided with a copy of Orangetown Local Law Section 12(C), the Court is unaware whether the ZBA could undertake a de novo review the HAVOR's determination. See, Matter of Board of Architectural Review and Historic Preservation of the Village of Southampton v. Zoning Board of Appeals of the Village of Southampton, 279 A.D.2d 523 (2d Dept. 2001). Regardless of the manner of review, the determination of the ZBA will be upheld of it is supported by substantial evidence and has a rational basis. Id.