

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Leitner v. Town of Oyster Bay Planning & Development
Department

2016 NY Slip Op 07028 (App. Div. 2016) · No. 2014-02890 · Decided October 26, 2016

SUMMARY

The Appellate Division, Second Department affirmed dismissal of a CPLR article 78 proceeding challenging a zoning variance and building permit in the Town of Oyster Bay. The court held that the challenge to the variance was untimely under Town Law § 267-c and CPLR 217, and that the administrative appeal from the building permit was untimely under Town Law § 267-a(5)(b).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	L. Priscilla Hall, J.P.; Jeffrey A. Cohen, J.; Robert J. Miller, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	October 26, 2016
DOCKET	2014-02890
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed from an order and judgment of the Supreme Court, Nassau County, dismissing their CPLR article 78 proceeding as time-barred.
STANDARD OF REVIEW	Review of the timeliness of a CPLR article 78 proceeding and the application of statutory filing periods.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Brett Leitner, et al. v. Town of Oyster Bay Planning and Development Department, et al., Zoning Board of Appeals of Town of Oyster Bay, Karen Malamud

TOPICS

zoning

judicial review of agency action

statute of limitations

municipal law

appellate procedure

PRACTICE AREAS

zoning

municipal law

administrative law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the petitioners' CPLR article 78 challenge to the Zoning Board of Appeals' July 18, 2012 use-variance determination was timely.
2. Whether the petitioners' administrative appeal challenging the August 7, 2012 building permit was timely.

HOLDINGS

1. A CPLR article 78 challenge to the Zoning Board of Appeals' determination had to be commenced within 30 days after the determination was filed with the Town Clerk; because the determination was filed on July 18, 2012 and the proceeding was not commenced until June 13, 2013, the challenge was time-barred.
2. The administrative appeal challenging the building permit was untimely because Town Law § 267-a(5) (b) required the appeal to be taken within 60 days after filing of the administrative official's determination, and petitioners filed their appeal more than 60 days after the permit was issued.

KEY QUOTATIONS

*“Any such challenge had to be instituted within 30 days after the ZBA's determination was filed in the office of the Town Clerk” ([*1])*

*“The petitioners' administrative appeal challenging the issuance of the building permit also was untimely.” ([*1])*

FACTUAL BACKGROUND

The Zoning Board of Appeals granted a variance allowing a neighboring single-family home to be used as a parent-child residence, subject to plans dated May 14, 2012. The variance did not authorize an enclosed outside staircase. On August 7, 2012, the Planning Department issued a building permit based on revised plans that called for an exterior second-floor landing with stairs, and construction began around September 12, 2012. Petitioners challenged the permit administratively on December 20, 2012 and commenced the article 78 proceeding on June 13, 2013.

PROCEDURAL HISTORY

The Zoning Board of Appeals granted Karen Malamud a use variance on July 18, 2012, and the Town Planning Department issued a building permit on August 7, 2012. Petitioners filed an administrative appeal from the permit on December 20, 2012, and commenced a CPLR article 78 proceeding on June 13, 2013, seeking, among other relief, annulment of the variance and vacatur of the permit. The Supreme Court granted respondents' separate motions to dismiss the petition as untimely, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Cutalo v. Zoning Bd. of Appeals of Town of Huntington, 55 AD3d 830, 831
- Matter of Vega v. Scheyer, 18 AD3d 664
- Matter of Peehl v. Village of Cold Spring, 129 AD3d 844
- Matter of Clarke v. Town of Sand Lake Zoning Bd. of Appeals, 52 AD3d 997, 999
- Matter of Highway Displays v. Zoning Bd. of Appeals of Town of Wappinger, 32 AD2d 668

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