

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Matter of Nemeth v. K-Tooling

2026 NY Slip Op 01254 · No. CV-24-0610 · Decided March 5, 2026

SUMMARY

The Appellate Division, Third Department, reviewed a CPLR article 78 proceeding challenging a Village of Hancock Zoning Board of Appeals use variance permitting manufacturing operations in an addition to a nonconforming property. The court held that the ZBA rationally determined that the hardship was not self-created and that the applicants had demonstrated unnecessary hardship through competent financial evidence. The court reversed Supreme Court's judgment and dismissed the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Garry, P.J.; McShan, J.; Powers, J.; Mackey, J.
JURISDICTION	New York Supreme Court, Appellate Division, Third Department
DECIDED	March 5, 2026
DOCKET	CV-24-0610
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a judgment of Supreme Court, Delaware County, in a CPLR article 78 proceeding challenging the Village of Hancock Zoning Board of Appeals' approval of a use variance.
STANDARD OF REVIEW	Review of a local zoning board's determination is limited to whether the action was illegal, arbitrary, or an abuse of discretion. The determination will be upheld if it has a rational basis and is supported by substantial evidence.
PRECEDENTIAL VALUE	Published and precedential New York Appellate Division decision
PARTIES	K-Tooling, Kuehn Manufacturing Co., Rosa Kuehn v. Joseph Nemeth, Donna Nemeth, Valerie Garcia, other petitioners

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QUESTIONS PRESENTED

1. Whether the ZBA adequately analyzed whether the alleged hardship was self-created.
2. Whether the applicants established unnecessary hardship under Village Law § 7-712-b (2) (b), including inability to realize a reasonable return for each permitted use.
3. Whether the ZBA's determination granting the use variance was illegal, arbitrary, or an abuse of discretion.

HOLDINGS

1. The ZBA adequately considered the prior litigation, the invalidity of the 2001 building permit as a matter of zoning law, and the applicants' good-faith reliance on that permit and continued manufacturing use; its conclusion that the hardship was not self-created was rational.
2. The applicants met their burden to demonstrate, through dollars-and-cents evidence, that the property could not realize a reasonable return either as the existing nonconforming manufacturing use without the addition or under any permitted residential use.
3. The ZBA's determination satisfied the statutory requirements and had a rational basis; there was no basis to disturb the grant of the use variance.

KEY QUOTATIONS

*"Ultimately, local zoning boards have "broad discretion" in considering variance applications, and our review "is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion"" (*2)*

*"the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located" (*3)*

*"In sum, we discern no basis upon which to disturb the ZBA's grant of the requested use variance." (*4)*

FACTUAL BACKGROUND

Rosa Kuehn owned property in the Village of Hancock containing a brick building and a rear manufacturing building, and Kuehn Manufacturing Co. and K-Tooling had operated manufacturing businesses on the property for decades. The property was placed in an R1 residential district in 1983, making the manufacturing use nonconforming, and K-Tooling obtained a 2001 building permit for an approximately 800-square-foot manufacturing addition to the brick building. After prior litigation established that the addition violated the zoning law and enjoined its nonresidential use, the Kuehns sought a use variance. The ZBA found unnecessary hardship and granted the variance, relying in part on the applicants' good-faith reliance on the building permit

and financial evidence showing that permitted uses or manufacturing without the addition would not yield a reasonable return.

PROCEDURAL HISTORY

Petitioners challenged the ZBA's 2016 approval of a use variance permitting manufacturing operations in an addition to a nonconforming manufacturing property. Supreme Court concluded that the ZBA's analysis of whether the hardship was self-created was insufficient to permit intelligent review and remitted the matter to the ZBA for further analysis. The Appellate Division reversed and dismissed the petition, holding that the ZBA's determination adequately addressed the statutory factors and was rational.

DISPOSITION

reversed

CASES CITED

- Matter of Center Sq. Assn., Inc. v. City of Albany Bd. of Zoning Appeals, 19 AD3d 968, 970 (3d Dept 2005)
- Matter of Clark v. Board of Zoning Appeals of Town of Hempstead, 301 NY 86, 89 (1950)
- Matter of Ifrah v. Utschig, 98 NY2d 304, 308 (2002)
- Matter of 80 Woodland Ave, LLC v. Village of Catskill, 240 AD3d 1102, 1103 (3d Dept 2025)
- Nemeth v. K-Tooling, 100 AD3d 1271, 1275 (3d Dept 2012)
- Matter of La Dirot Assoc. v. Smith, 169 AD2d 896, 898 (3d Dept 1991)
- Matter of Schaeffer v. Zoning Bd. of Appeals of Town of Esopus, 142 AD2d 848, 849 (3d Dept 1988)
- Matter of Jones v. Zoning Bd. of Appeals of Town of Oneonta, 90 AD3d 1280, 1283-1284 (3d Dept 2011)
- Matter of Village Bd. of Vil. of Fayetteville v. Jarrold, 53 NY2d 254, 257 (1981)
- Matter of Nemeth v. Village of Hancock Zoning Bd. of Appeals, 127 AD3d 1360, 1362-1363 (3d Dept 2015)
- Matter of Source Renewables, LLC v. Town of Cortlandville Zoning Bd. of Appeals, 213 AD3d 1178, 1181 (3d Dept 2023)
- Matter of Sullivan v. City of Albany Bd. of Zoning Appeals, 20 AD3d 665, 666 (3d Dept 2005), lv denied 6 NY3d 701 (2005)
- Matter of Supkis v. Town of Sand Lake Zoning Bd. of Appeals, 227 AD2d 779, 781 (3d Dept 1996)
- Matter of Save the Pine Bush v. Zoning Bd. of Appeals of Town of Guilderland, 220 AD2d 90, 96 (3d Dept 1996), lv denied 88 NY2d 815 (1996)
- Matter of Douglaston Civic Assn. v. Klein, 51 NY2d 963, 965 (1980)
- Matter of Jayne Estates v. Raynor, 22 NY2d 417, 425 (1968)
- Matter of Family of Woodstock v. Auerbach, 225 AD2d 854, 856 (3d Dept 1996)
- 205 AD3d 1093 (3d Dept 2022)
- 40 NY3d 405 (2023)
- 163 AD3d 1143 (3d Dept 2018)
- Matter of Nemeth v. Village of Hancock Zoning Bd. of Appeals, 127 AD3d 1360 (3d Dept 2015)

- Nemeth v. K-Tooling, 100 AD3d 1271 (3d Dept 2012)
- Nemeth v. Village of Hancock, 2011 WL 56063, 2011 U.S. Dist. LEXIS 1563 (N.D.N.Y. Jan. 7, 2011) (No. 3:10-CV-1161)

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