

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

Matter of BKP Harrison, LLC v. Town/Vil. of Harrison

2026 NY Slip Op 02649 (N.Y. Ct. App. 2026) · No. 2022-07063 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department affirmed a judgment that annulled the Town/Village of Harrison Planning Board's denial of an amended site plan application for a restaurant with a drive-through. The court held that the denial was arbitrary and capricious because it relied on speculative traffic concerns, subjective delivery-hour concerns, an improper zoning interpretation, and a study not disclosed to the applicant.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Carl J. Landicino, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 29, 2026
DOCKET	2022-07063
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Town/Village of Harrison and its Planning Board appealed from a Supreme Court, Westchester County, judgment granting a CPLR article 78 petition, annulling the Planning Board's denial of an amended site plan application, and directing the Board to grant the application.
STANDARD OF REVIEW	Judicial review of a local planning board's site plan determination is limited to whether the action was illegal, arbitrary and capricious, or an abuse of discretion; the determination must have a rational basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Town/Village of Harrison, Town/Village of Harrison Planning Board v. BKP Harrison, LLC

TOPICS

zoning

municipal law

judicial review of agency action

administrative law

remedies

PRACTICE AREAS

municipal law

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land use

QUESTIONS PRESENTED

1. Whether the Planning Board's denial of the amended site plan application was arbitrary and capricious or lacked a rational basis in the record.
2. Whether the Planning Board improperly interpreted the local zoning law by determining that the applicant needed a zoning variance for the width of its entrance driveways.
3. Whether the Planning Board improperly relied on a study that was not disclosed to the applicant before the determination.

HOLDINGS

1. Judicial review is limited to determining whether the planning board's action was illegal, arbitrary and capricious, or an abuse of discretion, and the determination must have a rational basis in the record.
2. The Planning Board's denial was arbitrary and capricious because it relied in part on speculative predictions about motorists' conduct and subjective concerns that the applicant would not honor delivery-hour restrictions.
3. The Planning Board improperly relied on its conclusion that the applicant needed a zoning variance for the width of its entrance driveways because planning boards lack authority to interpret local zoning laws; that authority belongs exclusively to local code enforcement officials and zoning boards of appeals.
4. The Planning Board improperly relied on a study that the applicant did not know about until the Board referred to it in the determination.

KEY QUOTATIONS

“A local planning board has broad discretion in deciding applications for site plan approvals, and judicial review is limited to determining whether the board's action was illegal, arbitrary and capricious, or an abuse of discretion” ([*1])

“planning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals” ([*1]-[*2])

FACTUAL BACKGROUND

BKP Harrison, LLC sought approval to replace an existing restaurant with a new restaurant and drive-through. The Planning Board denied the application after meetings and public hearings, relying partly on predictions that motorists would not obey traffic signals, concerns that the applicant would not honor delivery-hour limits, a

conclusion that a zoning variance was required for the entrance-driveway width, and a study disclosed to the applicant only when cited in the denial.

PROCEDURAL HISTORY

BKP Harrison, LLC applied to the Town/Village of Harrison Planning Board for amended site plan approval to replace an existing restaurant with a new restaurant and drive-through. Following meetings and public hearings, the Planning Board denied the application on January 25, 2022. Supreme Court, Westchester County, granted the article 78 petition, annulled the denial, and directed the Planning Board to grant the application; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of 7-Eleven, Inc. v Town of Hempstead, 205 AD3d 909, 910
- Matter of Swantz v Planning Bd. of Vil. of Cobleskill, 34 AD3d 1159, 1160
- Matter of O'Malley v Town of New Windsor Planning Bd., 227 AD3d 808, 810
- Matter of Bali Two, LLC v Pascale, 225 AD3d 691, 692
- Matter of Sunset Sanitation Serv. Corp. v Board of Zoning Appeals of Town of Smithtown, 172 AD2d 755

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