

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

Matter of Delgrosso v. Cole

2026 NY Slip Op 00505 (N.Y. Ct. App. 2026) · No. 2022-08607 · Decided February 4, 2026

SUMMARY

The Appellate Division, Second Department, affirmed the denial of a petition challenging a building inspector's refusal to permit construction of a chain-link fence near a rural road. The court held that the determination had a rational basis because the proposed fence would be located within the Town of Red Hook's right of way and violated applicable town code and Highway Law provisions. The court rejected the petitioners' argument that the town's permissible road uses were limited to the traveled way marked by a white line.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Lillian Wan, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 4, 2026
DOCKET	2022-08607
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment in a hybrid CPLR article 78 proceeding and action for declaratory relief challenging the denial of a building permit application.
STANDARD OF REVIEW	Under CPLR 7803(3), the court reviews whether the administrative determination violated lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. Under the arbitrary-and-capricious standard, the court asks whether the determination had a rational basis.
PRECEDENTIAL VALUE	Published opinion of the Appellate Division, Second Department
PARTIES	Fred Delgrosso, et al. v. Stephen Cole, in his official capacity as Town of Red Hook Building Inspector, et al.

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QUESTIONS PRESENTED

1. Whether the Building Inspector's denial of the fence permit application was arbitrary and capricious, an abuse of discretion, affected by an error of law, or made in violation of lawful procedure.
2. Whether the Town's right-of-way and permissible road uses extended beyond the road's traveled way as delineated by the painted white line.

HOLDINGS

1. The Building Inspector's determination had a rational basis and was not arbitrary and capricious or an abuse of discretion; the Supreme Court properly denied annulment of the determination and dismissed that portion of the proceeding and action.
2. The Town's permissible uses of the road, including maintenance and plowing, were not limited to the traveled way delineated by the white line.

KEY QUOTATIONS

“In applying the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis” ([*2])

FACTUAL BACKGROUND

The petitioners owned a home located approximately four feet from a two-lane rural road. They sought permission to erect a four-foot-tall chain-link fence along a white line painted by the Town between the area in front of the home and the road's traveled way. After consulting a professional engineer, the Town Building Inspector denied the application, determining that the proposed fence would be within the Town's right-of-way, which extended beyond the traveled way and included areas needed for maintenance and plowing.

PROCEDURAL HISTORY

The petitioners applied to the Town of Red Hook for permission to erect a four-foot chain-link fence along a white line near a rural road. The Town Building Inspector denied the application, concluding, among other things, that the proposed fence would be within the Town's right-of-way. The Supreme Court, Dutchess County, denied the branch of the petition and complaint seeking to annul that determination and dismissed that portion of the proceeding and action. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Akeson v. Incorporated Vil. of Asharoken, 227 A.D.3d 706, 707 (2d Dep't 2024)
- Matter of Carnelian Farms, LLC v. Village of Muttontown Bldg. Dept., 151 A.D.3d 847, 847-848 (2d Dep't 2017)
- Matter of Pell v. Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974)
- Federman v. Town of Lorraine, 213 A.D.3d 1220, 1222 (4th Dep't 2023)
- Hoffman v. Town of Shandaken, 147 A.D.3d 1275, 1276 (3d Dep't 2017)
- Matter of Soldatenko v. Village of Scarsdale Zoning Bd. of Appeals, 138 A.D.3d 1003 (2d Dep't 2016)

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