

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.

TOPICS

judicial review of agency action

standard of review

municipal law

ordinances

appellate procedure

PRACTICE AREAS

administrative law

municipal law

real estate

construction law

appellate procedure

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)

OPINION

PER CURIAM.

Matter of Delgrosso v Cole (2026 NY Slip Op 00505) Matter of Delgrosso v Cole 2026 NY Slip Op 00505 Decided on February 4, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 4, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

BARRY E. WARHIT LILLIAN WAN PHILLIP HOM, JJ. 2022-08607 (Index No. 50553/21) [*1]In the Matter of Fred Delgrosso, et al., appellants, v Stephen Cole, etc., et al., respondents. Silverberg Zalantis LLC, Tarrytown, NY (Katherine Zalantis and Christie Tomm Addona of counsel), for appellants. Drake Loeb, PLLC, New Windsor, NY (Adam L. Rodd and Stephen J. Gaba of counsel), for respondents.

DECISION & ORDER In a hybrid proceeding pursuant to CPLR article 78 to review two determinations of the respondent/defendant Stephen Cole, in his official capacity as Town of Red Hook Building Inspector, both dated October 19, 2020, which denied the petitioners/plaintiffs' two applications for building permits, and action, inter alia, for declaratory relief, the petitioners/plaintiffs appeal from a judgment of the Supreme Court, Dutchess County (Edward T. McLoughlin, J.), dated September 1, 2022.

The judgment, insofar as appealed from, denied that branch of the petition/complaint which was to annul the determination of the respondent/defendant Stephen Cole, in his official capacity as Town of Red Hook Building Inspector, dated October 19, 2020, denying the petitioners/plaintiffs' "Building Permit Application 2," and dismissed that portion of the proceeding/action.

ORDERED that the judgment is affirmed insofar as appealed from, with costs. The petitioners/plaintiffs (hereinafter the petitioners) are the owners of a home that is located approximately four feet from a two-lane rural road.

The petitioners submitted to the respondent/defendant Town of Red Hook a "Building Permit Application 2" (hereinafter the application), seeking permission to erect a four-foot-tall chainlink fence along a white line painted by the Town between the area in front of the petitioners' home and the "traveled way" of the road.

After consulting with a professional engineer, the respondent/defendant Stephen Cole, in his official capacity as Town of Red Hook Building Inspector (hereinafter the Building Inspector), denied the application in a determination dated October 19, 2020.

The petitioners then commenced this hybrid proceeding pursuant to CPLR article 78 and action against the Building Inspector and the Town, inter alia, to annul the Building Inspector's determination denying the application.

In a judgment dated September 1, 2022, the Supreme Court, among other things, denied that branch of the petition/complaint which was to annul the Building Inspector's determination and dismissed that portion of the proceeding/action.

The petitioners appeal. In reviewing the Building Inspector's determination, this Court must consider only whether the determination was made in violation of lawful procedure, was affected by an error of [*2]law, or was arbitrary and capricious or an abuse of discretion (see id. § 7803[3]; Matter of Akeson v Incorporated Vil. of Asharoken, 227 AD3d 706, 707; Matter of Carnelian Farms, LLC v Village of Muttontown Bldg.

Dept., 151 AD3d 847, 847-848). "In applying the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis" (Matter of Akeson v Incorporated Vil. of Asharoken, 227 AD3d at 707 [internal quotation marks omitted]; see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231).

Here, the Building Inspector's determination had a rational basis and was not arbitrary and capricious. The administrative record indicates that the Building Inspector denied the application on the ground, among others, that the proposed fence would be located within the Town's right of way in violation of section 117-9 of the Code of the Town of Red Hook and Highway Law § 319.

The Building Inspector's determination stated that this "user road" extended "beyond the traveled way" and included "areas beyond the white line necessary for maintenance and plowing." Contrary to the petitioners' contention, the Town's permissible uses of the road, such as for maintenance and plowing, are not limited to the "traveled way" delineated by the white line (see Federman v Town of Lorraine, 213 AD3d 1220, 1222; Hoffman v Town of Shandaken, 147 AD3d 1275, 1276; Matter of Soldatenko v Village of Scarsdale Zoning Bd. of Appeals, 138 AD3d 1003).

The petitioners' remaining contentions are without merit. Accordingly, the Supreme Court properly denied that branch of the petition/complaint which was to annul the Building Inspector's determination denying the application and dismissed that portion of the proceeding/action. BARROS, J.P., WARHIT, WAN and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-the-state-of-new-york-appellate-division-second-judicial-department-supreme-court-o/2026/matter-of-delgrosso-v-cole-zedpdh20>