# MEMORANDUM DECISION

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 33

In the Matter of the Application of THE EAST HAMPTON LIBRARY, a non-profit educational corporation and institution of the University of the State of New York,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law and Rules

-against-

ZONING BOARD OF APPEALS OF THE VILLAGE OF EAST HAMPTON,

Respondent

BY: WHELAN, J.S.C.
DATED: May 17, 2011

INDEX No. 31117-10

MOT. SEQ. # 003 - MGSUBJ; CDISP
RETURN DATE: 9/24/10
ADJOURNED: 3/25/11

ESSEKS, HEFTER & ANGEL, LLP
Attys. For Petitioner
PO Box 279
Riverhead, NY 11901

LAMB & BARNOSKY, LLP
Attys. For Respondent
PO Box 9034
Melville, NY 11747

The petitioner commenced this Article 78 proceeding for a judgment reversing and annulling two resolutions adopted by the Zoning Board of Appeals of the Village of East Hampton (hereinafter ZBA) on July 23, 2010 relative to the petitioner's application for a special permit and area variance so as to proceed with an expansion of its library. For the reasons set forth below, the petition is granted.

The petitioner, a non-profit corporation and institution of the University of the State of New York, operates a library within the Village of East Hampton. It was founded in 1897 and it erected its building at the present site in 1910-11. The petitioner became a chartered free library association in 1912. Seven additions to the original building were constructed in six of eight decades of the twentieth century that followed construction of the original building in 1910-11. An acre of land donated by a generous patron was used in the construction of two of the seven expansions. One of these expansions was aimed at the construction of a children's wing which was completed in 1963.

In the late 1990's, the petitioner undertook an evaluation of the ratio of children's books per capita. This evaluation revealed that the petitioner had the second lowest number of children's books per capita out of 15 local libraries. The petitioner thus resolved to increase both the space dedicated to the literacy skills of plaintiff's young patrons and the volume of available books to such population. In 2003, the petitioner first proposed to build a 10,300 sq. ft. children's wing addition to the rear of the existing building. The project also included improvements to other library services, all of which, would be funded by donations from those in the community of East Hampton.

In April of 2003, the petitioner filed two applications with Village officials in connection with its proposal to improve its library building and services. While the first of such applications was presented and ultimately approved by the Village's Design Review Board, the second was filed with the respondent ZBA for issuance of a special permit under the Village Code. By June, 2004, the proposed expansion of 10,300 sq. ft. was reduced by the petitioner by some 34% to 6,802 sq. ft. In September of 2004, the respondent ZBA issued several determinations under the State Environmental Quality Review Act (ECL Article 8 a/k/a the State Environmental Quality Review Act or "SEQRA"), including the Board's classification of the project as a Type I action and the issuance of a Positive Declaration. As a result of such declaration, the project was classified as one having significant impacts upon the environment and one requiring a full environmental review by the respondent ZBA under SEQRA. The petitioner was thus required to provide a draft environmental impact statement which would serve as a predicate to the ZBA's expansive environmental review of the petitioner's project.

Although the petitioner submitted a draft environmental impact statement ("DEIS") in July of 2008 and revised it in May of 2008, it advised the respondent ZBA that due to the petitioner's voluntary reduction in the square footage of the proposed expansion from 10,300 sq. ft. to 6,802 sq. ft. and the petitioner's status as an educational institution, the expansion project was a Type II action under SEQRA and, as such, was exempt from the environmental review process required of Type I projects under SEQRA. The petitioner's requests that the respondent ZBA revisit and reverse its Positive Declaration under SEQRA were, however, rejected.

On July 11, 2008, the respondent ZBA adopted a resolution conditionally declaring that the revised DEIS submitted by the petitioner complete. The conditions imposed mandated that the petitioner submit a survey depicting lot coverage calculations the expansion would consume, and that such calculations include the parking areas as part of the overall lot coverage. The inclusion of parking areas as part of the calculus of the overall lot coverage appears to have been precipitated by recent discussions and memoranda by Town Zoning Officials who therein suggested that, in addition to the special permit requirement, one or more area variances would likely be required in order for the petitioner to proceed with its expansion project.

In July of 2009, the petitioner filed a supplemental application with the respondent ZBA. It therein requested that the ZBA review and interpret the zoning ordinance and conclude that no variances were necessary for approval of the library expansion project. Alternatively, the petitioner applied for any and all variances that the ZBA determined were necessary.

The first public hearing on the petitioner's pending applications for a special permit and zoning ordinance interpretations and/or variances was held on September 11, 2009. The hearing was closed by the respondent ZBA on March 26, 2010. Rather than vote on the proposal, the respondent ZBA undertook preparation of a Final Environmental Impact Statement ("FEIS") which it adopted on June 25, 2010. On July 23, 2010, the respondent ZBA adopted its SEQRA Findings Statement. It also adopted a resolution wherein it determined that two variances were required by the project, both of which were denied, as was the petitioner's application for a special permit.

The petitioner commenced this Article 78 proceeding in August of 2010 for a judgment reversing and annulling the July 23, 2010 resolutions of the respondent ZBA. Following the recusal of the first two Justices assigned to this proceeding, it was assigned to this Court on December 9, 2010. Pursuant to the Order of this court dated February 23, 2011 and stipulation of the parties, respondent, Village Preservation Society, Inc., was deleted as a party to this proceeding and a conference was scheduled for March 3, 2011. The respondent ZBA interposed a motion (#004) to have the undersigned recuse himself from presiding over this proceeding. That motion was denied by order dated March 24, 2011. On March 25, 2011, the petition, which had been renumbered motion sequence No. 003 due to the prior recusals, appeared on the motion calendar of this court and was marked submitted on that day.

In support of its petition, the Library advances several grounds for reversal of the ZBA's determinations of July 23, 2010. Three of these grounds revolve around the unique nature of the Library due to its status as an institution chartered by the University of the State of New York. The petitioner claims that, as a matter of state law, it is an educational institution, an educational corporation and member of the University of the State of New York, and as such, it is entitled to special presumptions, rules and standards with respect to its zoning applications that are enjoyed by other educational institutions. The respondent's wrongful refusal to accord this favored status to the petitioner during its review of the petitioner's zoning applications was erroneous and warrants reversal of the adverse determinations rendered thereon.[1] The petitioner further claims that the ZBA's determination was illegally premised upon exclusionary and discriminatory motives and was

---

[1] Joining the petitioner in these claims is the New York Library Association, the Suffolk Cooperative Library System, the Library Trustees Association of New York State and the Long Island Library Resources Council, who jointly have appeared herein, *amicus curiae*.

arbitrary, capricious and irrational as it is unsupported by the record. For the reasons set forth below, the petition is granted and the matter remitted to the respondent ZBA for issuance of the special permit and variances.

***The Library's Status as an Educational Institution:***

Not disputed by the parties is that religious and educational institutions have long "enjoyed special treatment with respect to residential zoning ordinances and have been permitted to expand into neighborhoods where nonconforming uses would otherwise not have been allowed" (***Cornell Univ. v Bagnardi***, 68 NY2d 583, 510 NYS2d 861 [1986]; *see also* ***Diocese of Rochester v Planning Bd. of Town of Brighton***, 1 NY2d 508, 154 NYS2d 849 [1956]; ***Matter of Concordia Collegiate Inst. v Miller***, 301 NY 189, 93 NE2d 632 [1950]). The deferential treatment accorded to educational institutions is attributable to their inherently beneficial nature (*see* ***Pine Knolls Alliance Church v Zoning Bd. of Appeals of Town of Moreau***, 5 NY3d 407, 804 NYS2d 708 [2005]; ***Trustees of Union Coll. in Town of Schenectady in State of NY v Members of Schenectady City Council***, 91 NY2d 161, 667 NYS2d 978 [1997]). Indeed, it has been established that as a general rule "the total exclusion of [educational] institutions from a residential district serves no end that is reasonably related to the morals, health, welfare and safety of the community * * * [and] is beyond the scope of the localities' zoning authority" (***Cornell Univ. v Bagnardi***, 68 NY2d at 594, *supra*). Even private institutions are entitled to deferential treatment so long as they carry out the educational mission of the State, as they have the same beneficial effect upon the general welfare of the community as public schools (*Id.*, at 68 NY2d 583, 593-594).

That which is in dispute in this Article 78 proceeding is whether the petitioning Library is an educational institution within the contemplation of the above cited case authorities and thus entitled to the deferential treatment with respect to zoning requirements that educational and religious institutions have long enjoyed. The court's analysis of this issue begins with a review of the statutory provisions governing the formation and existence of chartered libraries, such as the petitioner.

The University of the State of New York ("the University") is a corporation created by New York State in 1784 and includes all secondary and higher education institutions in the State and certain other libraries, museums, institutions, schools, organizations and agencies for education (*see* NY Constitution, Art. XI, § 2). Originally created under the name of The Regents of the University of the State of New York, the University was continued under the name of The University of the State of New York and charged with the encouragement and promotion of education through its several institutions and departments (*see* Education Law § 201). The institutions of the University include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other *libraries*, museums, institutions, schools, organizations and agencies for education *as may be admitted to or incorporated by the university* (*see* Education Law § 214). By charter, or other instrument under seal, the Board of Regents may admit and incorporate any university, college, academy, library, museum, or other institution or association for the

promotion of science, literature, art, history or other department of knowledge, or of education in any way, associations of teachers, students, graduates of educational institutions, and other associations provided their approved purposes are, in whole or in part, of educational or cultural value and deemed worthy of recognition and encouragement by the university (*see* Education Law § 216). Once a charter is issued, the institution so chartered is accorded not-for-profit educational corporation status under Education Law § 216-a. Control over libraries admitted to the University is committed to the University's Board of Regents under Education Law § 245, *et seq.*

A precise definition of "school" for zoning purposes has been addressed by few New York courts. Some have held that an institution qualifies as school if it has a curriculum, adequate physical facilities to conduct its educational function and a staff qualified to implement its educational objectives (*see* ***Incorporated Vil. of Brookville v Paulgene Realty Corp.***, 24 Misc2d 790, 200 NYS2d 126 [Sup Ct, Nassau County, 1960]; *aff'd,* 4 AD2d 575, 218 NYS.2d 264 [2d Dept 1961]; *aff'd*, 11 NY2d 672, 225 NYS2d 750 [1962]; *see also* ***Rorie v Woodmere Academy***, 52 NY2d 200, 437 NYS2d 66 [1981]). Other definitions set forth in case authorities include "a place where instruction is imparted to the young"; "any place or means of discipline, improvement, instruction, or training"; "the union of all elements in the organization, to furnish education in some branch of learning—the arts or sciences or literature" (***Schweizer v Board of Zoning Appeals***, 8 Misc2d 878, 879-80, 167 NYS2d 764, 766 [Sup. Ct. Nassau County, 1957]). An educational institution has also been defined as an organization which has an objective with educational value, performs some educational function and is organized exclusively for that purpose (*see* ***Imbergamo v Barclay***, 77 Misc2d 188, 191, 352 NYS2d 337, 341 [Sup. Ct. Suffolk County, 1973]). As long ago as 1907, the Fourth Department had occasion to address the educational nature of libraries in another context and held that libraries, which have been admitted to, or incorporated by the [State] University, are institutions for higher education and within the class of institutions designated broadly as educational (*see* ***In re Francis' Estate***, 121 AD 129, 105 NYS 643 [1907]; *aff'd*, on op below, 189 NY 554, 82 NE 1126 [1907]; *see also* ***Essex v Brooks***, 164 Mass 83, 41 NE 119 [1895], wherein the Supreme Court of Massachusetts found that a free public library was educational and thus entitled to tax exempt status).

It is the position of the respondent ZBA that while the petitioner, a library chartered by the Board of Regents of the University of the State of New York, may well be, for some purposes, defined and treated in the law as an educational institution, it should not be considered as such for zoning purposes nor under SEQRA. Underlying this position are allegations that while religious institutions and schools are constitutionally protected, the deferential zoning treatment afforded to them should not likewise apply to libraries, even one charted by the Board of Regents such as the petitioner. The court finds, however, that such position is untenable as the University of the State of New York is constitutionally founded (*see* NY Constitution, Art. XI) and its educational intents and purposes are secured by the Education Law so as to include all institutions admitted to the University by its Board of Regents (*see* Education Law §§ 101; 201; 214; 216).

The ZBA's alternative claims that schools alone qualify for the deferential treatment accorded educational institutions under zoning ordinances and statutes such as SEQRA are not supported by the case authorities above cited nor those relied upon by the ZBA (*see* ***Imbergamo v Barclay***, 77 Misc2d 188, *supra*; ***Schweizer v Board of Zoning Appeals***, 8 Misc2d 878, *supra*). Moreover, this argument ignores the fact that the petitioner is not only chartered by the Board of Regents as an institution of higher education, but in addition to providing traditional library resources, it offers numerous instructional programs, classes, lectures and lessons, all of which are, unequivocally, educational in nature.

Equally unavailing is the claim that zoning ordinances will have little significance if this court were to extend the deferential zoning treatment accorded to schools and religious institutions to libraries and other institutions such as academies and museums that are admitted to the University of the State of New York. This argument ignores the fact that chartered libraries, such as the petitioner, are, indeed, educational uses and as such, serve the same inherently beneficial effects on the community as do schools. The court is thus left without any rational basis to deny them the deferential treatment under zoning ordinances and like statutes that is enjoyed by schools and other institutions having educational uses that carry out the educational mission of the State.

The respondent's position further ignores the fact that religious and educational institutions are recognized as facilitating the same objectives as zoning ordinances, namely, fostering the public health, safety, morals and general welfare of the community (*see* ***Cornell Univ. v Bagnardi***, 68 NY2d 583, 594; *supra*; ***New York Inst. of Tech. v Le Boutillier***, 33 NY2d 125, 350 NYS2d 623 [1973]). Libraries, such as the petitioner, are thus endowed with the presumptions of beneficial use and purposes that underlie the deferential standards applicable to churches and schools with respect to zoning matters that the courts of this state have long recognized, namely, that religious and educational uses are inherently beneficial to the community. The respondent's claim that an avalanche of adverse affects will occur if this court were to extend deferential zoning treatment to libraries, including, an unparallel diminution in the applicability of zoning ordinances and the inherently beneficial effects that zoning restrictions provide to the community at large, is unfounded.

For these reasons, this court finds that the petitioner, a library chartered by and admitted to the University of the State of New York, is an educational institution and/or educational corporation of the State of New York and as such, is entitled to the same deferential treatment in zoning and like matters that are accorded to schools and religious institutions.

***The July 23, 2010 SEQRA Findings Statement is Annulled:***

The law is well settled that judicial review of a SEQRA determination is limited to determining "whether the challenged determination was affected by an error of law or was arbitrary and capricious, an abuse of discretion, or was the product of a violation of lawful procedure" (***East***

***End Prop. Co. No. 1, LLC v Kessel***, 46 AD3d 817, 851 NYS2d 565 [2d Dept 2007]; ***Matter of Vil. of Tarrytown v Planning Bd. of Vil. of Sleepy Hollow***, 292 AD2d 617, 619, 741 NYS2d 44 [2d Dept 2002]). "An agency determination should be annulled if it is arbitrary, capricious or unsupported by the evidence" (***Matter of Trump on the Ocean, LLC v Cortes–Vasquez***, 76 AD3d 1080, 1083, 908 NYS2d 694 [2d Dept 2010], quoting ***Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast***, 9 NY3d 219, 232, 851 NYS2d 76 [2007]). A determination is arbitrary if it is made without sound basis in reason and without regard to the facts (*see* ***Merrick Auto Serv., Inc. v Grannis***, 86 AD3d 895, 919 NYS2d 173 [2d Dept 2011]).

The petitioner's claims that the respondent ZBA's SEQRA review and findings are erroneous and should be annulled by a judgment of this court are meritorious. The submissions of the petitioner established that its proposed library addition consisting of 6,802 sq. ft. of additional space constitutes a Type II action under SEQRA and its regulations at 6 NYCRR § 617.5. It is therein provided that routine activities of educational institutions, including the expansion of existing facilities by less than 10,000 sq. ft. of gross floor area, constitute Type II actions which are exempt from the environmental review process required of Type I and unlisted actions (*see* 7 NYCRR §§ 617.5[c][8]; 617.2; 617.3; *see also* ***City Council of City of Watervliet v Town Bd. of Town of Colonie***, 3 NY3d 518, 789 NYS2d 88 [2004]). Indeed, the New York State Department of Environmental Conservation, the state agency charged with SEQRA enforcement, issued an opinion letter by its Deputy Commissioner advising unequivocally that the petitioner's planned expansion of its library building in East Hampton, constituted an educational institution within the meaning of the regulation at 6 NYCRR § 617.5(c)(8) and thus was a Type II exempt from SEQRA review (*see* Petition Exhibit 24). Thereafter, the DEC amended its published Handbook on SEQRA so as to emphatically state that, for purposes of 6 NYCRR § 617.5(c)(8), educational institutions include all schools and libraries chartered and/or registered by the New York State Board of Regents. None of the arguments or contentions advanced by the respondent ZBA rebut the petitioner's prima facie demonstration that the subject project was erroneously and improperly classified by the ZBA as a Type I action when, in fact, it was a Type II action for which no environmental review was required. The July 23, 2010 Findings Statement and the prior Positive Declaration issued by the respondent, by which the project was classified as a Type I action, were thus affected by errors of law and arbitrary and capricious as they were made without regard to relevant facts.

Rejected as unmeritorious are the respondent's claims that the petitioner's challenges to the Positive Declaration are time barred; thus precluding judicial review thereof and of the Findings Statement and the respondent's environmental review under applicable statutes of limitations or doctrines of laches or mootness. Underlying such claims are allegations that the four month statute of limitations applicable to SEQRA determinations, including the Positive Declaration issued in September of 2004, has long run and thus precludes judicial review of the petitioner's demands for relief with respect thereto.

It is clear, however, upon a reading of the petition that the petitioner is not challenging the Positive Declaration; it is, instead, challenging the respondent's application of the SEQRA process to its expansion project as erroneous due to the respondent's failure to consider the exemption afforded to petitioner by virtue of its status as an educational institution chartered by the Board of Regents of the University of the State of New York. This court finds that such a challenge is timely under the test applicable to the measurement of finality by which the applicable statute of limitations are applied in the context of challenges to administrative action.

The Court of Appeals has instructed that in determining when the statue of limitations is triggered, it is imperative for the court to consider what actions the petitioner is seeking to have reviewed (*see* ***Young v Board of Trustees of the Vil. of Blasdell***, 89 NY2d 846, 652 NYS2d 729 [1996]). An action is considered to be final when it represents a definitive position on an issue which "'impose[s] an obligation, den[ies] a right or fix[es] some legal relationship,'" resulting in an actual, concrete injury (***Matter of Gordon v Rush***, 100 NY2d 236, 242, 762 NYS2d 18 [2003], quoting ***Matter of Essex County v Zagata***, 91 NY2d 447, 453, 672 NYS2d 281 [1998]). The harm suffered must not be "'amenable to further administrative review and corrective action'" (***Matter of Eadie v Town Bd. of Town of N. Greenbush***, 7 NY3d 306, 316, 821 NYS2d 142 [2006], quoting, ***Matter of City of New York*** [Grand Lafayette Props. LLC], 6 NY3d 540, 548, 814 NYS2d 592 [2006]). Here, no concrete injury was inflicted until the respondent denied the petitioner's application for the special permit and the variances as such denial was based, in large part, upon the respondent's reliance upon the environmental review that was erroneously applied to the petitioner's expansion project. Until that determination was rendered, and there was an actual rejection of the petitioner's claims of exemption from the SEQRA process, the petitioner's injury was contingent as it would have suffered no injury had the respondent concurred in petitioner's claim that the expansion project, as then finally constituted, was exempt from SEQRA review due to the petitioner's status as an educational institution duly charted by the Board of Regents of the University of the State of New York.

The respondent's reliance on ***Gordon v Rush*** (100 NY2d 236, *supra*), is misplaced. In ***Rush***, the Court of Appeals declined to adopt the bright line rule recognized by some appellate courts that the issuance of a Positive Declaration under SEQRA is not considered ripe for judicial review until the SEQRA process is completed (*see* ***Brierwood Vil., Inc. v Town of Hamburg Planning Bd.,*** 277 AD2d 1051, 715 NYS2d 351 [4th Dept 2000]; ***Matter of Sour Mtn. Realty v New York State Dept. of Envtl. Conservation***, 260 AD2d 920, 921, 688 NYS2d 842 [3d Dept 1999], *lv. denied* 93 NY2d 815, 697 NYS2d 562 [1999]; ***Matter of PVS Chems. v New York State Dept. of Envtl. Conservation***, 256 AD2d 1241, 682 NYS2d 787 [4th Dept 1998]; ***Matter of Rochester Tel. Mobile Communications v Ober***, 251 AD2d 1053, 1054, 674 NYS2d 189 [4th Dept 1998]). It thus allowed the petitioner to challenge the issuance of a positive declaration issued by a non-lead agency who entered the field of environmental review long after it had declined to participate as a non-lead agency. As argued by the petitioner here, ***Rush*** does not require a zoning applicant to challenge a

positive declaration within four months of its issuance to prevent preclusion of challenges to the application or validity of the SEQRA process when faced with a time bar challenge in an action timely commenced following agency determination of the application. ***Rush*** merely requires that challenges to Positive Declarations, like challenges to any administrative action, must be sufficiently final to qualify for judicial review under CPLR 7801(1).

Judicial review of the validity of the respondent's SEQRA review and its determinations thereunder are not precluded by any of the legal doctrines of tardiness that are relied upon by the respondent ZBA. The respondent's claims of time bar, laches and mootness are thus rejected as unmeritorious. The July 23, 2010 Findings Statement and the environmental review undertaken by the respondent pursuant to the classification of the project as a Type I action, were affected by errors of law and arbitrary and capricious. They are, therefore, hereby annulled.

***The July 23, 2010 Special Permit and Variance Denials are Annulled:***

The deferential standard that the law affords to religious and educational uses for the zoning arena does not afford a full exemption from zoning rules for all such uses; rather the controlling consideration in reviewing the request of a school or church to expand into a residential or other specialty zoned area must always be the over-all impact on the public's welfare (*see* ***Cornell Univ. v Bagnardi***, 68 NY2d 583, *supra*). Rare as they be, some educational uses may be unarguably contrary to the public's health, safety or welfare and thus need not be permitted at all (*Id.*, at 596). Categorical exclusions are not permitted, as the decision to restrict a proposed religious or educational use can be properly made only after the intended use is evaluated against other legitimate interests, with primary consideration given to the over-all impact on the public welfare (*see* ***Trustees of Union Coll. in Town of Schenectady in State of NY v Members of Schenectady City Council***, 91 NY2d 161, 667 NYS2d 978 [1997]). A municipality's pursuit of legitimate zoning objectives does not diminish the importance of striking a balance between the important contribution made to society by educational institutions and the inimical consequences of their presence in residential neighborhoods (*Id.*, at 166).

Less obtrusive expansions of existing educational institutions that may be technically inconsistent with either the letter or spirit of a particular zoning ordinance, require a more balanced approach than absolute denial (*see* ***Cornell Univ. v Bagnardi***, 68 NY2d 583, *supra*). Expansions of existing facilities or accessory structures within the confines of property that houses an existing educational use frequently fall within such benign expansions and are thus not likely subject to outright denial (*see* ***Town of Islip v Dowling College***, 275 AD2d 366, 712 NYS2d 160 [2d Dept. 2000]). The imposition of reasonable, mitigative conditions aimed at reducing any rationally founded, adverse impacts will serve to accommodate the joint beneficial public interests that educational uses and zoning ordinances are deemed to promote (*see* ***Trustees of Union Coll. in Town of Schenectady in State of NY v Members of Schenectady City Council***, 91 NY2d 161,

*supra*). Thus, where the negative impacts are not so extreme as to justify the denial of an educational or religious use, it is incumbent on the zoning board to accommodate the educational or religious use while imposing conditions to mitigate any potential adverse effects (*see* ***Pine Knolls Alliance Church v Zoning Bd. of Appeals of Town of Moreau***, 5 NY3d 407, *supra*). Indeed, the denial of a permit has been held to be arbitrary and capricious where "no hard evidence" that "any effort was made to find ways to mitigate ... inconveniences short of outright denial" (***Jewish Reconstructionist Synagogue of N. Shore, Inc. v Incorporated Vil. of Roslyn Harbor***, 38 NY2d 283, 289-90, 539, 379 NYS2d 747, 754 [1975]; *cf.*, ***Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v Zoning Bd. of Appeals of Town/Village of Harrison***, 296 AD2d 460, 745 NYS2d 76 [2d Dept 2002]).

For these reasons, "a zoning ordinance may properly provide that the granting of a special permit to churches or schools may be conditioned on the effect the use would have on traffic congestion, property values, municipal services, the general plan for development of the community, etc. The requirement of a special permit application, which entails disclosure of site plans, parking facilities, and other features of the institution's proposed use, is beneficial in that it affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them. These conditions, if reasonably designed to counteract the deleterious effects on the public's welfare of a proposed religious or educational use should be upheld by the courts, provided they do not, by their cost, magnitude or volume, operate indirectly to exclude such uses altogether" [citations omitted] (***Cornell Univ. v Bagnardi***, 68 NY2d 583 at 596, *supra*).

A showing of need by a religious or educational use applicant is not required since such uses are presumed consistent with the public health, safety and welfare that zoning ordinances, themselves, are designed to promote (*see* ***Cornell Univ. v Bagnardi***, 68 NY2d 583, *supra*). The presumed beneficial effect of an educational use may only be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like (*see* ***Pine Knolls Alliance Church v Zoning Bd. of Appeals of Town of Moreau***, 5 NY3d 407, *supra*).

A special permit application "affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them" (***Cornell Univ. v Bagnardi***, 68 NY2d 583, *supra*). Variance applications are also governed by a balancing test, the five elements of which, are now codified (*see* Town § 267; Village Law § 7-712-b(3); ***Matter of Sasso v Osgood***, 86 NY2d 374, 633 NYS2d 259 [1995]). This court, following recent appellate precedent, has previously held that the balancing tests imposed upon the granting of special permits and/or variances to non-educational and non-religious use applicants should be applied first, leaving resort to the accommodation standard applicable to educational and/or religious use applicants only if such applicant failed to meet the traditional balancing tests (*see* ***Corporation of Presiding Bishop of Church of Jesus Christ of***

***Latter Day Saints v Zoning Bd. of Appeals of Town/Village of Harrison***, 296 AD2d 460, *supra*; ***Matter of the Apostolic Holiness Church v Zoning Bd. of Appeals of Town of Babylon***, 220 AD2d 740, 633 NYS2d 321 [2d Dept 1995]; ***Case v Guidera***, 2008 WL 4103213, 2008 N.Y. Slip Op. 32311(U), [Sup Ct Suffolk County, Aug 15, 2008]; ***Lafiteau v Guzewicz***, 831 NYS2d 354, 354, 13 Misc3d 1228(A), 2006 NY Slip Op. 52046(U) [Sup Ct Suffolk County, 2006]).

It is well established that a special use permit, unlike a variance, authorizes the use of property in a manner expressly permitted by the zoning ordinance under stated conditions (*see* ***Twin County Recycling Corp. v Yevoli***, 90 NY2d 1000, 665 NYS2d 627 [1997]). The significance of the distinction between special permit uses and variances is that the "inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the generalized zoning plan and will not adversely affect the neighborhood" (***North Shore Steak House, Inc. v Board of Appeals of Town of Thomaston***, 30 NY2d 238, 331 NYS2d 645 [1972]). The burden on one seeking a special use permit is thus lighter than one seeking a variance since the issuance of a special permit is a duty enjoined upon zoning officials whenever there is compliance with the statutory conditions (*see* ***Peter Pan Games of Bayside, Ltd. v Board of Estimate of City of New York***, 67 AD2d 925, 413 NYS2d 164 [2d Dept 1967]). Where however, the applicant for a special use permit does not meet the requirements for issuance of special use permit, a variance therefrom is available (*see* Village Law § 7-725-b[3]; *see also* ***Matter of Real Holding Corp. v Lehigh***, 2 NY3d 374, 384, 633 NYS2d 259 [2004]).

Rejected as unmeritorious are the petitioner's claims that the ZBA erred in interpreting its zoning ordinance in such a manner that it determined that both a front yard, set back variance and a lot coverage variance were required prior to considering whether the petitioner was entitled to the special use permit. Under the East Hampton Village Code, a library is a permitted special permit use in the residential districts within the Village. As proposed, the new addition to the existing library attaches to the rear of the existing building. However, 588 sq. ft. of the addition will lie within the 70 ft., front yard setback minimum required under Village Zoning Code at § 278-3(A)(2)(a). Admittedly, subparagraph (b) of § 278-3(A)(2) provides an exemption for residences under these circumstances. The ZBA concluded, however, that since the exemption is applicable to "residences" and the Library is not a "residence" the exemption is not available and a front yard set back variance is required. This interpretation is not irrational since the term "residence" as used in § 278-3(A)(2)(b) is not ambiguous and a similar interpretation has been upheld by at least one appellate case authority (*see* ***Matter of the Apostolic Holiness Church v Zoning Bd. of Appeals of Town of Babylon***, 220 AD2d 740, *supra*). Nor was the ZBA's interpretation of the term "structure" to include a paved parking lot in the calculation of lot "coverage" so as to require a lot coverage area variance erroneous, arbitrary or capricious. The ZBA's departure from prior precedent on this issue was adequately explained and had been previously applied to at least to other venues in the vicinity of the petitioner's property (*see* ***Nozzelman 60, LLC v Village of Cold Spring Harbor Zoning Bd. of Appeals***, 34 AD3d 682, 825 NYS2d 107 [2d Dept 2006]).

Nevertheless, the court finds that the denial of the variances were erroneous, arbitrary, capricious, and irrational. The determination of whether or not to grant a variance entails due consideration of the factors set forth in Village Law § 7-712-b(3)(b). In making its determination, the zoning board must consider the benefits to the applicant if the variance is granted as weighed against the determinant to the health, safety and welfare for the neighborhood or community by such grant. The board is also required to consider: 1) whether an undescribable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by such grant; 2) whether the benefit sought by the applicant can be achieved some method feasible for the applicant to pursue other than an area variance; 3) whether the requested variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and 5) whether the alleged difficulty was self-created, which consideration shall necessarily preclude the granting of the area variance. While a zoning board is not required to justify a particular variance determination with supporting evidence of each of the five factors, such determination must balance the relevant considerations in a manner that is rationally related to the record (*see* ***Caspian Realty Inc. v Zoning Bd. of Appeals of Town of Greenburgh***, 68 AD3d 62, 886 NYS2d 442 [2d Dept 2009]).

Here, the respondent ZBA concluded that the proposed library expansion would have undesirable effects upon the character of the Library's neighborhood; that the benefits sought are achievable without a variance and that the relief sought is substantial. However, the ZBA failed to engage in the requisite balancing of the statutory factors and its determination to deny both variances is not supported by evidence in the record. While the petitioning Library is situated within a residential district, the actual character of the neighborhood is a downtown "Main Street" village area wherein commercial , religious, historical, civic, and cultural uses predominate. In its determination to deny the subject variances, the ZBA repeatedly referred to the surrounding neighborhood as "residential" which belies its true character. Indeed, the ZBA found that the front yard variance would have no undesirable change in the character of the neighborhood or any detriment to nearby properties. Its denial of such a variance is thus irrational and appears to be based on pre-conceived notions of board members and subjective considerations that have no place in determining zoning applications such as the ones at issue here (*see* ***Eddy v Neifer***, 297 AD2d 410, 745 NYS2d 631 [3d Dept 2002]).

The ZBA's denial of the subject area variances rests upon findings of increased vehicular traffic and a perceived nexus to an increase in the risk of accidents as well as purported adverse impacts to open space views and other aesthetic characteristics now enjoyed by those who currently enjoy the character of the surrounding neighborhood. However, the record is replete with evidence that increases in traffic generated by the proposed expansion would have negligible effects upon the surrounding streets including traffic flow on the two state roadways nearby and that such increased traffic could be accommodated by the adjacent road systems and proposed modified driveway plan (*see* Petition Exhibits 39; 42; 43; 45 and 47). While critical of this analysis, the ZBA points to no

evidence in the record to the contrary (*see* ***Lerner v Town Bd. of Town of Oyster Bay***, 244 AD2d 336, 663 NYS2d 661 [2d Dept 1997]). The ZBA's concerns about the adverse impacts of the proposed expansion would have upon public parking is also highly speculative as it ignores the requirements imposed upon the petitioner to provide parking to accommodate the expansion project and to improve the already existing parking areas that serve the existing library building.

The ZBA's denial of the lot coverage variance because of increased traffic, diminution in open space and quality of life impacts were found to outweigh any benefit to the library is likewise irrational, arbitrary, and capricious. The empirical evidence in the record reflects that half of the 6,802 sq. ft. expansion would be located underground and that 84% of the existing open space around the Library would remain undisturbed. The total loss of open space, including the additional parking areas required by Town officials measures just over one-quarter of an acre. The Village's own expert agreed that the proposed design appropriately preserved swaths of existing open space. The ZBA's reliance upon a previously unidentified "open space plan" as a justification for its findings of open space diminution, is misplaced and rejected by this court as beyond the record.

Where a zoning board disregards facts in the record and/or predicates its determination to either grant or deny an area variance on irrational speculation, the determination is subject to annulment under CPLR 7803(3) (*see* ***Trump on the Ocean, LLC v Cortes-Vasquez***, 76 AD3d 1080, 908 NYS2d 694 [2d Dept 2010]). Such was the case here, as the respondent ZBA failed to provide a nexus between facts stated in its decision and the perceived adverse effects upon the objectives of the zoning ordinance. Moreover, in light of the petitioner's status as an educational institution, a fact rejected by the respondent here, its determination to deny the variances without considering reasonable conditions was erroneous as the respondent ZBA failed in its duty to suggest reasonable measures to accommodate the proposed expansion of the petitioner's educational use so as to mitigate any real and substantial adverse effects to the surrounding community (*see* ***Capriola v Wright***, 73 AD3d 1043, 900 NYS2d 754 [2d Dept 2010]).

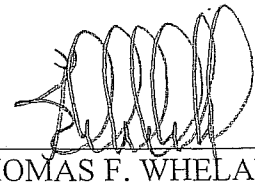
For like reasons, the ZBA's denial of the petitioner's request for a special use permit to allow the proposed library expansion was irrational, arbitrary, and capricious. There is an insufficient basis in the record to support the ZBA's findings that the proposed expansion project was not compatible with the purpose and objectives of the recently adopted Comprehensive Plan due to the erosion of open space, the increase in traffic with its allegedly concomitant opportunity for accidents and the negative consequences of a use as intensive as the one proposed by the petitioner in its expansion project.

In addition, the respondent's failure to recognize the deferential standard to which the petitioner was entitled due to its status as an educational institution was erroneous and constitutes a separate ground for reversal of the denial of its application for a special permit. While religious and educational uses may certainly bring more traffic and congestion than that which a strictly

residential use may bring, any irreconcilable conflicts between the right to erect a religious or educational structure and the potential hazzards and other adverse impacts such structure might cause, the latter must yield to the former (*see* ***Apostolic Holiness Church v Zoning Bd. of Appeals of Town of Babylon***, 220 AD2d 740, *supra*). The respondent ZBA's claims that the court must defer to its determination is rejected under the rule that where a municipality imposes more stringent requirements on a religious [or educational] use than it would on a residential use, such requirements are viewed with suspicion (*see* ***Jewish Reconstructionist Synagogue of N. Shore v Incorporated Vil. of Roslyn Harbor***, 38 NY2d 283, *supra*; ***Apostolic Holiness Church v Zoning Bd. of Appeals of Town of Babylon,*** 220 AD2d 740, *supra*). Indeed, controlling principles of law provide otherwise. Where, as here, the petitioner is an educational institution seeking to expand its educational use by the construction of an addition to its existing building, application of a heightened sense of judicial scrutiny to the board's decision is appropriate (*see* ***Pine Knolls Alliance Church v Zoning Bd. of Appeals of Town of Moreau***, 5 NY3d 407, *supra*; ***Cornell Univ. v Bagnardi***, 68 NY2d 583, *supra*). To sustain its denial of relief to the petitioner, the determination of the respondent ZBA must be grounded in record evidence of a significant impact on traffic congestion, property values, municipal services and the like (*see* ***Jewish Reconstructionist Synagogue of N. Shore v Incorporated Vil. of Roslyn Harbor***, 38 NY2d 283, *supra*). Review of the record here reveals that the ZBA's determinations which culminated in its decision to deny all relief demanded by the petitioner were not so grounded.

In view of the foregoing, the SEQRA findings statement adopted by the respondent ZBA on July 23, 2010 is annulled while its determination set forth in the separate resolution of July 23, 2010 to deny the petitioner the two area variances found necessary for the project and the special use permit are reversed, as this court grants both variances and the special permit requested by the petitioner for the reasons set forth above. The proposed expansion of the petitioner's library may proceed subject only to such reasonable conditions that the respondent ZBA may impose thereon within 30 days of hearing at which the petitioner shall have notice and the opportunity to attend that is conducted within 60 days of the date of this decision.

Settle Judgment upon a copy of this order.



THOMAS F. WHELAN, J.S.C.