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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2064-15T1

RATAN HOTEL PLAZA, LLC,

Plaintiff-Appellant,

v.

ZONING BOARD OF THE CITY OF
EAST ORANGE and EAST ORANGE
HOSPITALITY, LLC,

Defendants-Respondents.

Argued September 11, 2017 – Decided October 11, 2017

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No.
L-3579-15.

R.S. Gasiorowski argued the cause for
appellant (Gasiorowski & Holobinko,
attorneys; Mr. Gasiorowski, on the brief).

Victor J. Herlinsky, Jr., argued the cause
for respondent East Orange Hospitality, LLC
(Sills Cummis & Gross, PC, attorneys; Mr.
Herlinsky and Adam J. Faiella, of counsel
and on the brief).

Michael S. Rubin argued the cause for
respondent Zoning Board of Adjustment of the
City of East Orange (Law Offices of Michael
S. Rubin, attorneys, join in the brief of
respondent East Orange Hospitality, LLC).

PER CURIAM

Defendant East Orange Hospitality, LLC, sought to redevelop a long-vacant hotel in the Evergreen Square Redevelopment District in East Orange by reducing the number of rooms and turning its restaurant and nightclub into a separate adult day care center with medical facilities. Hospitality needed two use variances, one for the adult day care center and the other to combine two principal uses on one site, with one being a hotel. It also needed bulk variances for the number and width of parking spaces, non-attendant stacked parking, ninety degree parking, non-conforming parking lot landscaping, front yard parking, rear yard setback relief and a monument sign exceeding permitted height and width. Except for the number of parking spaces and the sign, the bulk variances were all for conditions existing when the former hotel was operating.

At the direction of the East Orange zoning officer, Hospitality applied to the City's zoning board for major site plan approval and variance relief. Plaintiff Ratan Hotel Plaza, LLC, owner of a nearby Ramada Inn, objected to the application, which the zoning board unanimously approved after several public hearings involving the testimony of many professionals on both sides.

Ratan filed a prerogative writs action challenging the approval. It claimed the zoning board lacked jurisdiction to grant site plan approval under the Redevelopment Plan, and the grant of the required variances was arbitrary and capricious. Judge Rothschild rejected Ratan's jurisdictional argument in a written opinion. The judge noted there was no dispute that the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163, vests exclusive authority in the zoning board to grant site plan approval when an application requires a use variance. See N.J.S.A. 40:55D-76b; Najduch v. Twp. of Indep. Planning Bd., 411 N.J. Super. 268, 277 (App. Div. 2009). The parties also agreed that the Redevelopment Plan vests authority to grant use variances in the zoning board and bulk variances in the planning board, and further provides that "site plan review shall be conducted by the Planning Board in accordance with N.J.S.A. 40:55D-1 et seq."

Judge Rothschild acknowledged "the unfortunate circumstances" that "the Redevelopment Plan's language does not run smoothly parallel to the authoritative language within the MLUL." He found it highly unlikely, however, that the Legislature in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, under which the Redevelopment Plan was adopted, would have silently stripped zoning boards of their

long-held, exclusive power to grant site plan approval in cases in which the applicant was seeking a use variance. Judge Rothschild concluded if the Legislature intended such a significant change, "it is far more likely that it would have added language that explicitly" expressed its intention, "yet [the Local Redevelopment Law] is silent on the matter."

Reading the Local Redevelopment Law in pari materia with the MLUL, Judge Rothschild found the Local Redevelopment Law did not strip zoning boards of their exclusive power under the MLUL to hear site plan applications and grant bulk variances to applicants seeking a use variance. Our cases and the commentators are in accord. See Weeden v. City Council of the City of Trenton, 391 N.J. Super. 214, 228 (App. Div.), certif. denied, 192 N.J. 73 (2007); William M. Cox and Stuart R. Koenig, New Jersey Zoning and Land Use Administration, § 11-10.2 at 250-51 (2017). The judge thus concluded the Redevelopment Plan's provision that "site plan review shall be conducted by the Planning Board in accordance with N.J.S.A. 40:55D-1 et seq." permitted the zoning board to hear Hospitality's application in accordance with N.J.S.A. 40:55D-76b, as it would under the MLUL.

Turning to Ratan's substantive arguments, Judge Rothschild found Ratan failed to establish the zoning board's decision to grant the variances was arbitrary or capricious. As to the

positive criteria, the judge concluded an operating hotel was clearly preferable to a neglected building vacant since 2007 and that an adult day care center "would also serve to enrich the surrounding community" more so than the restaurant and nightclub formerly on the site. He found Hospitality easily demonstrated the need for adult day care in East Orange, and that the property was uniquely suited for its proposed new use.

Regarding the negative criteria, Judge Rothschild found "no basis to conclude the grant of the variances will cause a substantial detriment to the public good" or impair the intent and purpose of the zoning plan and ordinance. To the contrary, he found that "the implementation of the hotel and adult day care on the property seems to directly advance the goals of the Redevelopment Plan by generating business in the area and providing lodging and hospitality services."

Ratan appeals, reprising the arguments it made in the Law Division that the zoning board was without jurisdiction to grant the approvals, and that the grant of both the use variances and the bulk variances was arbitrary and capricious. We conclude Ratan's appeal of the use variances has become moot by intervening events and that its challenge to the zoning board's ability to grant the site plan approval and its approval of the

bulk variances is without merit for the reasons expressed by Judge Rothschild.

Two weeks after Judge Rothschild entered judgment dismissing Ratan's prerogative writs complaint, East Orange amended the Redevelopment Plan to permit adult day care facilities and multiple principal uses on a site when one is a hotel. Because Hospitality no longer requires a use variance for its proposed redevelopment, the propriety of the Board's grant of those variances has become wholly academic, and thus moot. See Jai Sai Ram, LLC v. Planning/Zoning Bd. of the Borough of S. Toms River & Wawa, Inc., 446 N.J. Super. 338, 345 (App. Div.), certif. denied, 228 N.J. 69 (2016).

We reject Ratan's challenge to the zoning board's jurisdiction to hear Hospitality's application for site plan approval for the reasons expressed by Judge Rothschild. As we explained in Weeden, "an application for an exception to a redevelopment plan requirement, of a type that would ordinarily constitute a use variance, should be heard by a zoning board." Weeden, supra, 391 N.J. Super. at 226.

We agree with Judge Rothschild that the Redevelopment Law and the MLUL should be read together in a manner that harmonizes both. Id. at 228-29. Doing so leads ineluctably to the conclusion that the zoning board properly exercised its

jurisdiction to entertain Hospitality's application for site plan approval and bulk variances ancillary to its review of the requested use variance. See Najdich, supra, 411 N.J. Super. at 277. To the extent the bulk variances were not subsumed in the grant of the use variances, see Price v. Himeji, LLC, 214 N.J. 263, 300 (2013), Judge Rothschild's conclusion that any harm from granting them was substantially outweighed by the benefits is amply supported in the record. See Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 471 (App. Div. 2015).

Ratan's challenge to the zoning board's grant of the use variances to Hospitality is moot. We reject the remainder of its arguments for the reasons expressed by Judge Rothschild in his carefully reasoned opinions of July 24 and December 14, 2015.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION