

Town Loses Article 78 Proceedings

By Barbara LaMonica, *Suffolk Life*, August 7, 2002

When Robert Olivieri purchased a piece of residential property in the town of Brookhaven in 2000, his vision was to improve the land and build a new 1,100-square-foot, single-story home. But Olivieri said the town's building department informed him that construction of his home would be subject to his satisfying a variance by providing a 25-foot natural buffer on the westerly side of his land at the request of his neighbor, in addition to paving a portion of the private right-of-way which aligns his property.

After submitting to an appeals process through the town's Zoning Board of Appeals, whose final decision supported the building department's variance requirements, Olivieri turned to the Coalition of Landlords, Homeowners & Merchants to protect his property rights.

Olivieri filed an Article 78 and won his case in New York State Supreme Court. He was required to pave the right-of-way; however, the court annulled and dismissed the ZBA's buffer variance requirement.

In his decision, Judge Ralph Costello states, "Equally puzzling is the board's basis for a buffer zone condition ... the board, by its conclusion seems to espouse the buffer requirement under the guise of protecting the nature and character of the nearby property."

"When I first started my plight for justice it was an uphill battle, but I was determined to follow through, because it was a matter of principle that made me forge ahead," Olivier said. "Supervisor (John Jay) LaValle wants changes, and I believe he should make changes on the zoning board, because I was met with arrogance there.

"But," Olivieri continued, "I feel justice was serve, and others should go about the same route as I did with the Coalition if they have similar problems, because I went to several attorneys before going to the Coalition, and they all told me I was wasting my time."

In dismissing the ZBA's would-be variance, Costello stated that "... it is difficult to comprehend how the variance would have an undesirable effect on the character of the neighborhood, and how the buffer zone is necessary to protect that supported character."

Paul Palmieri, president of the Coalition of Landlords, Homeowners & Merchants, who has represented a number of property owners against various townships, asserts that the imposition of such variances would take away people's property rights.

"This zoning (variance requirement) is a violation of our Constitutional rights," Palmieri said. "Property rights are how this county was founded, because the colonists fought and broke away from Mother England; so if property owners don't waive their rights, they won't lose them."

Palmieri invites property owners who are in conflict with property issues against municipalities to call him at (631) 661-7015.