

**COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
ROBERT L. ALEXANDER & ELIZABETH C. ALEXANDER, TRUSTEES, AS TRUSTEES OF THE ROBERT L. ALEXANDER REVOCABLE TRUST AND ELIZABETH C. ALEXANDER REVOCABLE TRUSTS, THE MUNDINGER PAUL - TRUST, BENJAMIN ROSENSTAD & JANE LUBOWITZ, KEVIN J. KELLY & JANET A. BRODY, JOHN S. GALANTIC & ALEXANDRA GALANTIC,

Petitioners,

**DECISION & ORDER
Index No.: 67725/2021**

- against -

**CITY OF RYE PLANNING COMMISSION, AND
WAINWRIGHT HOUSE, INC.,**

Respondents.

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ROBERT J. PRISCO, J.

The following papers, numbered 1-5, were read in determining Petitioners' Verified Petition for relief pursuant to Civil Practice Law and Rules ("CPLR") Article 78:

<u>Papers</u>	<u>Numbered</u>
Verified Petition/Notice of Petition/Petitioner's Affidavit/ Exhibits A-G	1
Certified Transcript of Proceedings ¹	2
Verified Answer of Respondent Wainwright House, Inc./Exhibits A-B/ Respondent Wainwright House, Inc.'s Memorandum of Law in Opposition To the Verified Petition/Affidavit of Robert Manheimer ² /Exhibits A-F	3

¹ References to the Certified Transcript of Proceedings are hereinafter referred to as "C.R."

² Robert Manheimer is "the President and Treasurer of the Board of Trustees of Wainwright House, Inc." (see Page 1, Paragraph 1, of the Affidavit of Robert Manheimer).

Verified Answer of Respondent City of Rye Planning Commission With
Affirmative Defenses and Objections in Point of Law/Affidavit of
Laura Brett³/Affidavit of Nick Everett⁴/Respondent City of Rye Planning
Commission Memorandum of Law in Opposition to Article 78 Petition 4

Affirmation of Attorney Joseph P. Eriole, Esq./Affidavit of Petitioner Janet
Brody/Affidavit of Petitioner Elizabeth Alexander/Affidavit of Petitioner John
Galantic/Affidavit of Petitioner Mary Munding/Affidavit of Petitioner
Benjamin Rosenstadt/Petitioners' Memorandum of Law in Reply 5

Relevant Background

Wainwright House, Inc. (hereinafter "Respondent Wainwright House") is a not-for-profit organization (*see* Internal Revenue Code 26 USC § 501 (c) (3)), duly incorporated in the State of New York, with its principal address at 260 Stuyvesant Avenue in the City of Rye (*see* Page 2, Paragraph 3, of the Affidavit of Robert Manheimer, and Page 3 of Respondent Wainwright House's Memorandum of Law). Respondent Wainwright House's "Mission Statement" states that it "is a learning center dedicated to inspiring greater understanding through body, mind, spirit and community," and that it seeks "to inspire by offering initiatives in spiritual exploration, health, healing & environmental awareness" (*see* Page 3 of Respondent Wainwright House's Memorandum of Law, and Exhibit A attached to the Affidavit of Robert Manheimer). Respondent Wainwright House is in an R-1 Single-Family Residence Zoning District, an area that includes both single-family homes and membership clubs⁵ (*see* Page 2, Paragraph 7, of the Affidavit of Robert Manheimer; *see also* Page 2, Paragraph 6, of the Affidavit of Nick Everett).

Petitioners are the owners of property which "abut and/or [are] in the same residential neighborhood with the Wainwright [House] Property" (*see* Page 2, Paragraph 3, of the Verified Petition).

³ Laura Brett is "the Vice-Chairperson of Respondent City of Rye Planning Commission" (*see* Page 1, Paragraph 1, of the Affidavit of Laura Brett).

⁴ Nick Everett is "the Chairperson of Respondent City of Rye Planning Commission" (*see* Page 1, Paragraph 1, of the Affidavit of Nick Everett).

⁵ "The membership clubs along Stuyvesant Avenue include American Yacht Club, Shenorock Shore Club, and Coveleigh Club" (*see* Page 2, Paragraph 6, of the Affidavit of Nick Everett and C.R. at Page 46).

In 1951, Fonrose Wainwright Condict (hereinafter “Fonrose”) “created the Wainwright House to provide a space for people of all backgrounds and beliefs to gather, contemplate, and put into actions means of self-improvement” (see Page 3 of Respondent Wainwright House’s Memorandum of Law, and Page 4, Paragraph 18, of the Affidavit of Robert Manheimer).

On April 3, 1951, Fonrose submitted a letter to Respondent City of Rye Planning Commission (hereinafter “Respondent Planning Commission”), seeking approval “to use the Wainwright House estate to host gatherings of the ‘Layman’s Movement for a Christian World, Inc.’” (see Page 4 of Respondent Wainwright House’s Memorandum of Law, and Exhibit E attached to the Affidavit of Robert Manheimer). Fonrose’s letter also sought recognition of Wainwright House as a “religious use” under former Zoning Code § 9-4.3(c), then defined as “Churches and other places of worship, including parish houses and Sunday school buildings” (*Id.*). In the letter, Fonrose stated that “[t]his home is not to be used as a Church but it will be used as a place of worship from time to time,” akin to a “parish house,” which on occasion would hold larger gatherings (*Id.*; see also Page 11, Paragraph 55, of the Affidavit of Robert Manheimer).

On May 8, 1951, Respondent Planning Commission “recommended approval of the use of the estate for the religious purposes described in Fonrose’s letter” (see Page 4 of Respondent Wainwright House’s Memorandum of Law, and Exhibit F attached to the Affidavit of Robert Manheimer).

In 1982, “the Layman’s Movement merged with Wainwright House” to become “Wainwright House, Inc.” (see Page 5, Paragraph 26, of the Affidavit of Robert Manheimer).

According to Respondent Wainwright House, “[a] significant portion of [their] annual revenues derive from hosting weddings and cultural events in its seasonal tent” (see Page 9, Paragraph 44, of the Affidavit of Robert Manheimer). While Respondent Wainwright House had hosted weddings and other events for many years using seasonal tents, they had not received approval from Respondent Planning Commission, the “Board of Appeals, City Counsel, or other City Board or Commission” (*Id.* at Page 11, Paragraph 58; see also C.R. at Page 43).

In 2010, the City of Rye Building Inspector requested that Respondent Wainwright House submit a site plan and a special use permit application to Respondent Planning Commission for approvals pursuant to Rye City Code §§ 197-7 and 197-10, respectively (see Page 5 of Respondent Wainwright House’s Memorandum of Law, and C.R. at Page 43).

On March 19, 2010, Respondent Wainwright House submitted an application seeking approval for the seasonal installation of three exterior tents (*see* Page 5 of Respondent Wainwright House's Memorandum of Law, and C.R. at Page 42).

On March 22, 2011, Respondent Planning Commission adopted Resolution No. 04-2011 (hereinafter "the 2011 Resolution"), which approved the installation and use of three seasonal outdoor tents for wedding and non-wedding events on the Wainwright Property until October 1, 2016 (*see* Page 3, Paragraphs 7-8, of the Verified Petition, and Exhibit A attached thereto; *see also* Page 5 of Respondent Wainwright House's Memorandum of Law). In the 2011 Resolution, Respondent Planning Commission placed conditions on the use of the seasonal tents, including a limit of ten (10) weddings per year with amplified music, and a limit of eight (8) non-wedding events per year without amplified music, commencing in 2012⁶ (*see* C.R. at 51). The 2011 Resolution was also granted in accordance with Rye City Code § 197-10 regarding "Uses Permitted Subject to Additional Standards and Requirements," and with an acknowledgment of Wainwright's historical involvement with "The Layman's Movement for a Christian World, Inc.," its "spiritual programming" in the City of Rye, and its 16-year use of seasonal outdoor tents (*see* C.R. at pages 42-52; *see also* Page 5 of Respondent Planning Commission's Memorandum of Law).

On April 17, 2015, Respondent Wainwright House submitted an application to Respondent Planning Commission seeking to modify and renew the 2011 Resolution⁷ (*see* C.R. at Page 53; *see also* Page 4, Paragraph 9, of the Verified Petition, and Page 6 of Respondent Wainwright House's Memorandum of Law).

On June 9, 2015, Respondent Planning Commission held a public hearing and re-approved and affirmed the findings of the 2011 Resolution by passing Resolution No. 15-2015 (hereinafter "the 2015 Resolution") (*see* C.R. at Pages 53-55; *see also* Page 5 of Respondent Planning Commission's Memorandum of Law, and Page 6 of Respondent Wainwright House's Memorandum of Law).⁸ The 2015 Resolution had an expiration date of October 30, 2021, and

⁶ These conditions began in 2012, as Respondent Wainwright House had already entered contracts for the remainder of the 2011 season (*see* Page 3, Paragraph 10, of the Affidavit of Nick Everett).

⁷ The only requested modification was to the permitted months of tent use (*see* Page 6 of Respondent Wainwright's Memorandum of Law).

⁸ The only amendment to the 2015 Resolution was to delay the use of the tents one week in May and to extend their use into the first weekend of October every year (*see* C.R. at Pages 53-55).

stated that after such date, “[a]ny new application for seasonal outdoor tents *should be* submitted to the Planning Commission a year or more before the expiration date in order to give the Planning Commission adequate time [to] review and process the application” (emphasis added) (*see* C.R. at Page 55.)

Between 2020 and 2021, Respondent Wainwright House developed the “Row America Proposal” to construct a building with the possible assistance of a wealthy benefactor, that could host the wedding events and ultimately eliminate their need for a tent (*see* Page 14, Paragraphs 75-76, of the Affidavit of Robert Manheimer, and Page 6 of Respondent Wainwright House’s Memorandum of Law). According to Respondent Wainwright House, “the Petitioners, the Rye City Council, and the Rye Planning Commission were all aware that Wainwright House’s Tent Permit renewal effort was on hold pending the City Council’s consideration of the alternative Row America Proposal” (*see* Page 15, Paragraph 80, of the Affidavit of Robert Manheimer, and Page 7 of Respondent Wainwright House’s Memorandum of Law).

On February 3, 2021, the Rye City Council “tabled” the Row America Proposal and Respondent Wainwright House pursued renewal of the 2015 Resolution (*see* Page 15, Paragraph 79, of the Affidavit of Robert Manheimer, and Page 7 of Respondent Wainwright House’s Memorandum of Law).

On March 8, 2021, Respondent Wainwright House submitted an application seeking a five (5) year renewal of the 2015 Resolution, subject to the same conditions but for three (3) modifications: (1) to increase the number of weddings with amplified music from 10 to 15 per year, and approval of five (5) non-wedding events per year with amplified music; (2) an extension of the time frame for tent installation through the end of October, excluding Columbus Day weekend; and (3) permission to remove the tent after the last weekend in October (*see* Page 4, Paragraphs 12-14, of the Verified Petition, and C.R. at Pages 1-41; *see also* Page 12, Paragraph 65, of the Affidavit of Robert Manheimer, and Page 7 of Respondent Wainwright House’s Memorandum of Law). The materials in support of the application included a City of Rye Land Development Application and a State Environmental Quality Review Act (hereinafter “SEQRA”) Short Environmental Assessment Form (*see* C.R. at 9-41; *see also* Page 7 of Respondent Wainwright House’s Memorandum of Law).

On April 10, 2021, Respondent Planning Commission conducted a site walk of Wainwright House’s property, reviewed the surrounding area and, shortly thereafter, opened a public comment

period (*see* Page 4, Paragraph 15, of the Verified Petition, and C.R. at Page 264; *see also* Page 8 of Respondent Wainwright House's Memorandum of Law).

On May 11, 2021, Respondent Planning Commission held a public hearing (*see* Page 5, Paragraph 17, of the Verified Petition, and C.R. at Page 264; *see also* Page 8 of Respondent Wainwright House's Memorandum of Law) and considered both Respondent Wainwright House's request and the neighbors' concerns, noting that Wainwright House complied with the conditions during the 2011 and 2015 Resolution periods (*see* Page 4, Paragraph 12, of the Affidavit of Nick Everett).

Subsequent thereto, Respondent Planning Commission encouraged Respondent Wainwright House and the neighboring Petitioners to work together to address concerns regarding the application (*see* C.R. at Page 264, and Page 8 of Respondent Wainwright House's Memorandum of Law). As a result, Respondent Wainwright House submitted a letter to Respondent Planning Commission on August 5, 2021, seeking to amend their application by decreasing the requested five-year permit renewal period to three years (*see* C.R. at Page 241, and Page 16, Paragraph 83, of the Affidavit of Robert Manheimer; *see also* Page 8 of Respondent Wainwright House's Memorandum of Law).

During a public meeting on September 14, 2021, Respondent Planning Commission adopted Resolution No. 14-2021 and Resolution No. 14A-2021 (*see* C.R. at Pages 263-274; *see also* Page 6 of Respondent Planning Commissions Memorandum of Law). Pursuant to Resolution No. 14A-2021A (hereinafter "the Site Plan Resolution"), Respondent Planning Commission reaffirmed and incorporated its findings from the 2011 and 2015 Resolutions (*see* C.R. at Pages 272-273). Respondent Planning Commission also approved the three (3) year permit renewal amendment, subject to certain conditions (*see* C.R. at Pages 272-273). Further, pursuant to Resolution 14-2021, Respondent Planning Commission adopted a SEQRA Negative Declaration (hereinafter "the Negative Declaration"), finding that "the proposed action will not have a significant adverse environmental impact," and concluding that a "full environmental impact statement" did not need to be prepared (*see* C.R. at Pages 268-269; *see also* Page 6 of Respondent Planning Commission's Memorandum of Law). The Negative Declaration was adopted immediately after the passage of the Site Plan Resolution (*see* Page 6 of Respondent Planning Commission's Memorandum of Law).

Procedural Background

On December 21, 2021, Petitioners, by way of Counsel, commenced the instant Article 78 proceeding, requesting that this Court annul and set aside Respondent Planning Commission's approval of the Wainwright Applications, remand the applications to Respondent Planning Commission for the specific purpose of compelling the Planning Commission's denial of the applications, and grant to Petitioners such other, further and different relief that the Court deems just and proper (*see* Pages 17-18, Paragraph 99 (a)-(c), of the Verified Petition). Specifically, Petitioners assert that the Site Plan Resolution was adopted prior to the adoption of a Negative Declaration under SEQRA, rendering any action taken by Respondent Planning Commission on the applications null and void; that each approval resolution was reviewed and adopted on the premise "that they were the continuation of existing, valid approvals, but each previous approval had lapsed according to its terms, and the Applications ought to have been reviewed as *de novo* applications with no previously established record;" that each resolution was adopted without substantial evidence in the record supporting Respondent Planning Commission's determinations, "in that there was no proof in evidentiary form on the record which sufficiently supported either application;" that under the Rye City Code, the use proposed is a "Use Permitted Pursuant to Additional Standards and Requirements," which was never discussed on the record or met; and that Respondent Planning Commission's actions were ultra vires and tantamount to re-zoning (*see* Pages 2-3, Paragraph 5 (a)-(f), of the Verified Petition). Petitioners also filed an Affidavit and seven exhibits labeled A-G.

On March 18, 2022, Respondent Wainwright House, by way of counsel, filed a Verified Answer with two exhibits labeled A-B. Counsel has filed a Memorandum of Law in Opposition to the Verified Petition, an Affidavit of Robert Manheimer, and six exhibits labeled A-F.

Also on March 18, 2022, Respondent Planning Commission, by way of counsel, filed a Verified Answer with Affirmative Defenses and Objections in Point of Law, Affidavits of Laura Brett and Nick Everett, and a Memorandum of Law in Opposition to the Verified Petition. Respondent Planning Commission also filed a certified transcript of the proceedings.

On April 18, 2022, Petitioners' counsel filed the Affirmation of Attorney Joseph P. Eriole, Esq., five (5) Affidavits,⁹ and a Memorandum of Law in Reply.

Analysis

Standard of Review

“The standard of judicial review in the instant proceeding pursuant to CPLR article 78 is whether the action was arbitrary and capricious, an abuse of discretion, in violation of a lawful procedure, or affected by an error of law” (*Matter of Van Dunk v Orange-Ulster Bd. of Coop. Educ. Servs. (BOCES)*, 219 AD3d 1434, 1436 [2d Dept 2023], quoting *Matter of Still v City of Middletown*, 133 AD3d 864, 865 [2d Dept 2015]; see *Matter of Hack v Town Bd. of Town of Putnam Val.*, 219 AD3d 489, 489 [2d Dept 2023]; *Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 486, 487 [2d Dept 2023]; *Matter of Dobson v New York State Dept. of Motor Vehs.*, 218 AD3d 680, 681 [2d Dept 2023]; *Matter of Andes v Planning Bd. of the Town of Riverhead*, 217 AD3d 669, 670 [2d Dept 2023]; CPLR § 7803 [3]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d at 487, quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; see *Matter of Van Dunk v Orange-Ulster Bd. of Coop. Educ. Servs. (BOCES)*, 219 AD3d at 1436; *Matter of Parsons Manor, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 945, 946 [2d Dept 2023]; *Matter of Forbes & Assoc., LLC v Nassau County Dept. of Consumer Affairs*, 208 AD3d 480, 481 [2d Dept 2022]; *C.F. v New York City Dept. of Health & Mental Hygiene*, 191 AD3d 52, 69 [2d Dept 2020]; *Matter of McCollum v City of New York*, 184 AD3d 838, 839 [2d Dept 2020]). Consequently, “[i]f the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency” (*Matter of Save America's Clocks, Inc. v City of New York*, 33 NY3d 198, 207 [2019], quoting *Matter of Peckham v Calogero*, 12 NY3d at 431; see *Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d at 487; *Matter of Forbes & Assoc., LLC v Nassau County Dept. of Consumer Affairs*, 208 AD3d

⁹ The five (5) affidavits were filed by Petitioners Janet A. Brody, Elizabeth C. Alexander, John S. Galantic, Mary Mundinger, and Benjamin Rosenstadt.

at 481-482; *Matter of Sternberg v New York State Off. for People with Dev. Disabilities*, 204 AD3d 680, 682 [2d Dept 2022]; *Matter of McCollum v City of New York*, 184 AD3d at 840).

De Novo Review

Petitioners argue that “[t]he 2015 [Resolution] had lapsed on the basis that one of its express conditions (the requirement to apply for renewal) had passed at the time of its 2021 Applications, and the time period during which the 2015 [Resolution] continued (October 2021) had expired by the time the 2021 [] Resolutions were filed with the City Clerk (November 22, 2021)” (*see* Page 10, Paragraph 51, of the Verified Petition). Thus, it is Petitioners’ contention that the Planning Commission should not have incorporated its findings from 2011 and 2015 to approve the 2021 Resolution but, rather, were required to conduct its review *de novo* (*see* Page 2, Paragraph 5(b), and Page 10, Paragraphs 52-53, of the Verified Petition; *see also* Pages 13-14 of Petitioners’ Memorandum of Law in Reply).

Respondents assert that no such deadline existed and, therefore, the Planning Commission had no obligation to review Wainwright House’s applications *de novo* (*see* Pages 13-14 of Respondent Planning Commission’s Memorandum of Law; *see also* Pages 21-22 of Respondent Wainwright House’s Memorandum of Law). Specifically, Respondent Planning Commission argues that their “intentional use of the word ‘should,’ as opposed to ‘must’ or ‘shall,’ [within the 2015 Resolution] contradicts any assertion that a requirement was intended” (*see* Page 14 of Respondent Planning Commission’s Memorandum of Law). Respondent Planning Commission further argues that they “accept[ed] the application consistent with this permissive language,” and “[a]s such, there was no ‘lapse’ as asserted by Petitioners” (*see* Page 14 of Respondent Planning Commission’s Memorandum of Law).

Upon review of the record, the 2015 Resolution included an expiration date of October 30, 2021, and stated that after such date, “[a]ny new application for seasonal outdoor tents *should be* submitted to the Planning Commission a year or more before the expiration date in order to give the Planning Commission adequate time [to] review and process the application” (emphasis added) (*see* C.R. at Page 55). Here, Petitioners and Respondents dispute the Planning Commission’s use and meaning of the word “should.” After considering the definitive and permissive language used in the 2015 Approval, Respondent Planning Commission consistently used the word “shall” when describing requirements that must be adhered to. For example, each of the nine (9) conditions

imposed on Respondent Wainwright House used the word “shall.”¹⁰ Moreover, conditions with specific time requirements also utilized definitive language, stating, for example, that “[a]ny amendments to the list of tented events *shall* be submitted to the Building Department at least ten (10) calendar days before such event is held,” and that “this approval *shall* expire on October 30, 2021” (*emphasis added*) (*see* C.R. at Pages 54-55). Thus, Respondent Planning Commission’s use of the word “should” indicates permissive language that did not establish a fixed deadline, and Petitioners have failed to cite to any case law, statutory authority, or city codes that require Respondent Planning Commission to review the 2021 Wainwright House application *de novo*.

Moreover, while Petitioners argue that the Planning Commission’s approval was not filed with the Rye City Clerk until November 21, 2021, after the expiration of the prior approval, “the record is unequivocal that the measures necessary to allow seasonal use of tents on the Wainwright property were addressed, voted upon, and passed in a public session on September 14, 2021” (*see* Page 14 of Respondent Planning Commission’s Memorandum of Law). Further, according to Respondent Planning Commission, “[f]iling with the City Clerk is an administrative and ministerial matter that is not determinative for effectuation of the approval in this matter,” and “any enforcement for violation of this approval is subject to discretion by the City of Rye, making Petitioners’ contentions moot and meaningless in practice” (*Id.*).

Accordingly, Petitioners’ claim that the review should have been conducted *de novo* is without merit and, as a consequence, the prior records were properly considered and provided a rational basis to adopt the 2021 Resolutions.

Substantial Evidence

Petitioners further contend that “[e]ach [a]pproval Resolution was adopted without substantial evidence in the record supporting the Planning Commission’s decision, in that there

¹⁰ Definitive language used in the 2015 Approval included, *inter alia*, “[t]here *shall* be no more than 10 tented weddings,” “[a]mplified music *shall* be turned off by 10:00 PM,” “[t]here *shall* be no outdoor storage of garbage” (*emphasis added*) (*see* C.R. at Page 54).

was no proof in evidentiary form on the record which sufficiently supported either application” (*see* Paragraph 5(c), Pages 2-3, of the Verified Petition).¹¹

The Court finds that there was evidence in the record to support the 2021 Resolutions since Respondent Planning Commission “did not approve each and every request of Wainwright, having heard the concerns of neighbors,” and “consistently demanded mitigation measures and restrictions in the interest of mitigating impact and engaged in compromise to address concerns of the public, including Petitioners, as shared in a series of duly noticed hearings”¹² (*see* Pages 14-15 of Respondent Planning Commission’s Memorandum of Law).

Designation as Religious Use

Petitioners also contend that each of the Planning Commission’s Approvals lacked substantial evidence in the record to support the 2021 Resolutions; specifically, that there had been no record of Wainwright’s eligibility to receive a special permit pursuant to its religious use (*see* Pages 2, Paragraph 5(c), Pages 7-9, Paragraphs 35-44, and Pages 10-13, Paragraphs 54-72, of the Verified Petition; *see also* Pages 23-27 of Petitioners’ Memorandum of Law in Reply).

Petitioners further allege that “[t]he Planning Commission’s actions were ultra vires in that it was tantamount to a re-zoning, which is the prerogative of the legislative body” (*see* Page 3, Paragraph 5(f), and Pages 13-16, Paragraphs 73-89, of the Verified Petition). Specifically, Petitioners challenge Respondent Wainwright House’s religious use designation and argue that Respondent Planning Commission committed an “ultra vires action outside its jurisdiction, by permitting an unlawful use” (*see* Page 13, Paragraph 75, of the Verified Petition).

¹¹ Although Petitioners argue that the 2021 Resolutions were not supported by substantial evidence (*see* Pages 2-3, Paragraph 5(c), of the Verified Petition, and Pages 4-5 of the Petitioners’ Memorandum of Law in Reply), that “standard of review is not applicable here as the challenged determination did not arise from a quasi-judicial hearing required by law,” and, thus, review “is limited to whether the determination was arbitrary and capricious, or without rational basis in the administrative record” (*Matter of Hack v Town Bd. of Town of Putnam Val.*, 219 AD3d 489, 490 [2d Dept 2023]; *see Matter of Razzano v Remsenburg-Speonk UFSD*, 162 AD3d 1043, 1045 [2d Dept 2018]; *Matter of Jefferson v New York City Bd. of Educ.*, 146 AD3d 779, 780 [2d Dept 2017]; CPLR § 7803 (3), (4)).

¹² According to Respondent Planning Commission there were “[s]even (7) public hearings for Resolution No. 04-2011 on October 12, 2010; October 26, 2010; November 16, 2010; December 14, 2010; January 11, 2011; February 1, 2011; and February 15, 2011. One [] public hearing for Resolution No. 15-2015 on June 9, 2015. One [] public hearing for Resolution Nos. 14-2021 and 14A-2021 on May 11, 2021. Three (3) meetings of Commission discussion and consideration on May 27, 2021; August 10, 2021; and September 14, 2021” (*see* Page 2, Footnote 3, of Respondent Planning Commission’s Memorandum of Law).

Respondent Planning Commission contends that while Petitioners argue that Wainwright House's applications "fail under review and scrutiny of Rye City Code § 197-86, with respect to qualification as a religious institution ... the Commission did not, and need not, rely on § 197-86" (*see* Page 16 of Respondent Planning Commission's Memorandum of Law). Instead, Respondent Planning Commission relied on Rye City Code § 197-10, and aver that approval of a permit for use of seasonal outdoor tents under this section "does not require any determinative finding affirming or rejecting a particular organization's religious affiliation" (*Id.*).¹³

Respondent Planning Commission further argues that their determinations were not ultra vires and "[were] consistent with the powers and duties enumerated for the Planning Commission in the Rye City Charter § C18-2"¹⁴ (*see* Page 15 of Respondent Planning Commission's Memorandum of Law). Specifically, Respondent Planning Commission states that pursuant to this authority, "the Commission adopted the 2021 [Resolutions] with a rational basis, considering history, past practice, and continuing course of conduct with respect to the seasonal use of the Wainwright parcel over many decades" (*Id.* at Page 16).

Here, Respondent Planning Commission "made known its stance on Wainwright's religious affiliation and standing as a religious institution on March 22, 2011, in Resolution No. 04-2011, and reaffirmed the same on June 9, 2015 in Resolution No. 15-2015" (*see* Page 18 of Respondent Planning Commission's Memorandum of Law).¹⁵ In the 2011 Resolution, Respondent Planning Commission acknowledged that on May 3, 1951, the Planning Commission recommended that the City Council approve the use of the property for use by "The Laymen's Movement for a Christian World, Inc.," which, in 1982, merged with Wainwright House to become

¹³ Respondent Planning Commission states that they do "not have jurisdiction to affirmatively determine whether an organization is religious-but used history as evidence to lend credibility to Wainwright's reasonable assertion that it indeed was a religious institution" (*see* Page 17 of Respondent Planning Commission's Memorandum of Law).

¹⁴ Pursuant to Rye City Charter § C18-2, "[t]he Planning Commission shall have the power and duties granted and imposed by the General City Law, including powers authorized by § 37, as limited by § 197-39 of the Code of the City of Rye and such other powers and duties as may be prescribed by law or the Council. In addition thereto, there is specifically granted and imposed upon it all powers and duties which under the General City Law and other statutes, as the same may from time to time be amended, the Council is empowered to confer or impose upon the Planning Commission, except as may otherwise be provided by the Council."

¹⁵ Respondent Planning Commission states that, "[o]ver the course of numerous years, [they have] tacitly, publicly, and reasonably accepted Wainwright's representation that it was a religious and spiritual institution protected by law" and have continued to affirm and reaffirm this stance, considering "the long tradition of the Wainwright organization, as well as its current mission" (*see* Page 17 of Respondent Planning Commission's Memorandum of Law).

Wainwright House, Inc. (*see* C.R. at Pages 42-43). Respondent Planning Commission also recognized the Wainwright House as a “religious and spiritual institution” that is “protected by laws that prohibit actions by the Commission that may impact its religious expression” (*see* C.R. at Page 47). Thereafter, the 2015 Resolution incorporated and re-affirmed Respondent Planning Commission’s findings from 2011 (*see* C.R. at Page 54). Finally, the 2021 Resolutions incorporated the findings from the 2011 and 2015 Resolutions and noted that “[Wainwright’s] use of the property is permitted under the City’s zoning and land use regulations as a religious use” (*see* C.R. at 266, 271-272). More specifically, Respondent Planning Commission noted “the use of the [Wainwright House] as a gathering place for cultural and spiritual events, as a religious use, is consistent with the City’s land use regulations for the R-1 Residence District, as a ‘use permitted subject to additional standards and requirements,’ and [that] the property has been historically used in a similar manner for decades” (*see* C.R. at Page 266).

General City Law § 81-a (5) (b) states that “[a]n appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation, or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal specifying the grounds thereof and the relief sought. The administrative official from whom appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken” (*see also* Page 18 of Respondent Planning Commission’s Memorandum of Law, and Pages 16-17 of Respondent Wainwright House’s Memorandum of Law). As Petitioners failed to appeal the 2011 and 2015 resolutions within sixty (60) days, and such findings are incorporated into the 2021 Resolutions, their challenges to Respondent Wainwright House’s religious affiliation and standing as a religious institution are barred by the statute of limitations and for failure to exhaust administrative remedies.

Standards and Requirements

Petitioners contend that under the Rye City Code, Respondent Wainwright House’s proposed use is considered a “Use Permitted [Subject] to Additional Standards and Requirements,” and that such standards and requirements were never discussed nor met on the record (*see* Page 3, Paragraph 5 (d) and (e), and Pages 16-17, Paragraphs 90-91, of the Verified Petition).

However, the standards and requirements at issue were discussed and met in the 2011 Resolution. Specifically, pursuant to Rye City Zoning Code § 197-10, titled “Uses Permitted Subject to Additional Standards and Requirements,” Respondent Planning Commission discussed and reviewed all seven (7) criteria during the adoption of the 2011 Resolution (*see* C.R. at Pages 45-49) and determined that Respondent Wainwright House’s application was “consistent” with those criteria (*Id.* at Page 45). The findings from the 2011 Resolution were then incorporated by reference into both the 2015 and 2021 Resolutions (*see* C.R. at Pages 54, 266, 272).

Therefore, Petitioners’ claims that the standards and requirements pursuant to Rye City Zoning Code § 197-10 were never discussed or met lacks merit.

SEQRA

Petitioners contend that Respondent Planning Commission adopted the Site Plan Resolution (Resolution No. 14A-2021), before adopting the Negative Declaration under SEQRA (Resolution 14-2021), rendering any action taken by the Commission null and void (*see* Page 2, Paragraph 5(a), and Page 9, Paragraphs 45-49, of the Verified Petition).

Respondent Planning Commission argues that the September 14, 2021 minutes show that the Site Plan Resolution and Negative Declaration “were reviewed and voted upon in the same meeting, one directly after another” (*see* Page 9 of Respondent Planning Commission’s Memorandum of Law). Respondent Planning Commission submits that “[t]he simple fact that the vote on the Negative Declaration itself took place a few minutes after the vote upon the seasonal tent usage does not invalidate the Commissions’ prior actions,” and “Petitioners have not argued or proven any actual prejudice with respect to the misstep in the order and sequence of the Commission’s approvals” (*Id.* at Page 10).

“SEQRA’s fundamental policy is to inject environmental considerations directly into governmental decision making” (*Matter of Sierra Club v Martens*, 158 AD3d 169, 174 [2d Dept 2018], quoting *Matter of Coca-Cola Bottling Co. of N.Y. v Board of Estimate of City of N.Y.*, 72 NY2d 674, 679 [1988]; *see Matter of Zutt v State of New York*, 99 AD3d 85, 100 [2d Dept 2012]; *Matter of Baker v Village of Elmsford*, 70 AD3d 181, 189-190 [2d Dept 2009]; *Matter of Oyster Bay Assoc. Ltd. Partnership v Town Bd. of Town of Oyster Bay*, 58 AD3d 855, 859 [2d Dept 2009]). “Judicial review of SEQRA findings ‘is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination was affected

by an error of law or was arbitrary and capricious or an abuse of discretion” (*Matter of Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 30 NY3d 416, 430 [2017], quoting *Akpan v Koch*, 75 NY2d 561, 570 [1990]; see *Matter of Route 17K Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d 969, 970 [2d Dept 2021]; *Matter of Bonacker Prop., LLC v Village of E. Hampton Bd. of Trustees*, 168 AD3d 928, 931 [2d Dept 2019]; CPLR § 7803). “This review is deferential for ‘it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively’” (*Matter of Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 30 NY3d at 430, quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416 [1986]; see *Matter of Route 17K Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d at 971; *Matter of Bonacker Prop., LLC v Village of E. Hampton Bd. of Trustees*, 168 AD3d at 931). “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR[A]” (*Matter of Riverso v Rockland County Solid Waste Mgt. Auth.*, 96 AD3d 764, 765 [2d Dept 2012], quoting 6 NYCRR § 617.3 [a]; see *Matter of Ranco Sand & Stone Corp. v Vecchio*, 124 AD3d 73, 81 [2d Dept 2014]).

While SEQRA requires “strict, not substantial, compliance” (*Matter of King v Saratoga County Bd. of Supervisors*, 89 NY2d 341, 347 [1996]; see *Matter of Neighbors United Below Canal v de Blasio*, 192 AD3d 642, 643 [1st Dept 2021]; *Matter of Calverton Manor, LLC v Town of Riverhead*, 160 AD3d 829, 831 [2d Dept 2018], *lv. denied* 35 NY3d 901 [2020]; *Matter of Village of Kiryas Joel, N.Y. v Village of Woodbury, N.Y.*, 138 AD3d 1008, 1011 [2d Dept 2016]), “the manner in which an agency identifies, considers, and analyzes alternatives is subject to a rule of reason” (*Matter of Baker v Village of Elmsford*, 70 AD3d at 189-190, citing *Matter of Town of Dryden v Tompkins County Bd. of Representatives*, 78 NY2d 331, 333-334 [1991]; see *Akpan v Koch*, 75 NY2d at 570; *Matter of WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 79 NY2d 373, 382 [1992]; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 776-777 [2d Dept 2005], *lv. denied* 7 NY3d 708 [2006]), and “[i]n various circumstances, a lead agency’s non-prejudicial misstep in the SEQRA environmental review procedure may be excused as harmless” (emphasis added) (*Matter of Rusciano & Son Corp. v Kiernan*, 300 AD2d 590, 590-591 [2d Dept 2002], *lv. denied* 99 NY2d 510 [2003]; see *Matter of Scenic Hudson v Town of Fishkill Town Bd.*, 266 AD2d 462, 463-464 [2d Dept 1999], *lv. denied* 94 NY2d 761 [2000]; *Matter of Steele v Town of Salem Planning Bd.*, 200 AD2d 870, 872 [3d Dept 1994], *lv. denied* 83 NY2d 757 [1994]).

For example, in *Matter of Golden Triangle Assoc. v Town Bd. of Town of Amherst*, 185 AD2d 617 [4th Dept 1992]), the Court found that although the Town Board approved rezoning prior to filing a negative declaration, this procedural error was harmless because “the Town Board performed a thorough and meaningful review and analysis of potential environmental impacts prior to making its determination of non-significance” (*Id.* at 617-618; *see Matter of Rusciano & Son Corp. v Kiernan*, 300 AD2d at 591; *Matter of Welsh v Town of Amherst Zoning Bd. of Appeals*, 270 AD2d 844, 845 [4th Dept 2000]).

Here, the record shows that the Negative Declaration and the Site Plan Resolution were reviewed together and ultimately approved at the same meeting on September 14, 2021 (*see* C.R. at Pages 256-258; *see also* Page 3, Paragraphs 10-11, of the Affidavit of Laura Brett, and Page 19 of Respondent Wainwright House’s Memorandum of Law). According to Nick Everett, he acted “as the Chair of the Commission for all of the public hearings,” and “the public had an opportunity to be heard” (*see* Page 4, Paragraph 14, of the Affidavit of Nick Everett). Specifically, as part of its review process, “[t]he Commission duly considered the concerns of the neighbors when it considered the number of tented events with amplified music, non-amplified music events, the permissible hours for such amplified music and traffic concerns” (*Id.*).

According to Laura Brett, the Vice-Chairperson of Respondent Planning Commission, “the Commission diligently analyzed the main areas of environmental concern when it adopted the Negative Declaration Resolution” by “closely review[ing] the ‘Impact on Community Character,’” including noise and traffic concerns raised by residents¹⁶ (*see* Page 3, Paragraph 12, of the Affidavit of Laura Brett, and C.R. at Page 266). Respondent Planning Commission also considered whether the 2021 Wainwright Application was consistent with the City of Rye’s Existing Land Use Plans¹⁷ and the traffic and air quality impacts (*see* Page 4, Paragraph 14, of the Affidavit of Laura Brett, and C.R. at Pages 266-268).

¹⁶ Respondent Planning Commission found “that the other membership clubs in close proximity to the Wainwright House and its residential neighbors generate traffic, host large events and have outdoor gatherings with ambient noise and amplified music that influence the community character of the R-1 Zone in which the Wainwright house is located” (*see* Pages 3-4, Paragraph 12, of the Affidavit of Laura Brett, and C.R. at Page 266).

¹⁷ “The Commission found that the 2021 Wainwright Application, as reduced and with the required conditions, met the standards necessary under Rye City Code § 197-10” (*see* Page 4, Paragraph 14, of the Affidavit of Laura Brett, and C.R. at Page 266).

Additionally, after a review of the Environmental Assessment Form (EAF) dated March 8, 2021 and submitted by Respondent Wainwright House,¹⁸ the criteria of 6 NYCRR Part 617.7 (a)-(c), and an evaluation of the complete record, including submissions made in 2011 and 2015, Respondent Planning Commission reaffirmed its 2011 and 2015 findings that the extension of the tent permit “will not have a significant adverse environmental impact due to the extent of the proposed improvements, the modest nature of reasonably expected impacts, and modifications to the prior conditions of the approval” (*see* C.R. at Pages 266-269).

While acknowledging that the Negative Declaration was formally adopted minutes after the Site Plan Resolution, this Court finds such to be a harmless, nonprejudicial misstep (*see Matter of Rusciano & Son Corp. v Kiernan*, 300 AD2d at 590-591; *see also* Page 3, Paragraph 10, of the Affidavit of Laura Brett), and a review of the record demonstrates that Respondent Planning Commission “identified the relevant areas of environmental concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination” (*Matter of Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 30 NY3d at 430, quoting *Akpan v Koch*, 75 NY2d at 570; *see Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 231-232 [2007], quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 417; *Matter of Jellyfish Properties, LLC, et al., v Incorporated Village of Greenport, et al.*, ---NYS3d---, 2023 NY Slip Op. 05136 [2d Dept 2023]; *Matter of Town of Beekman v Town Board of Town of Union Vale*, 219 AD3d 1430, 1432-1433 [2d Dept 2023]; *Matter of Andes v Planning Bd. of the Town of Riverhead*, 217 AD3d 669, 670-671 [2d Dept 2023]; *Matter of Tampone v Town of Red Hook Planning Bd.*, 215 AD3d 859, 861-862 [2d Dept 2023]).

As the record does not warrant the overturning of Respondent Planning Commission’s 2021 Resolutions, Petitioner’s request to remand the applications for the purpose of revoting is not justified (*see Matter of Welsh v Town of Amherst Zoning Bd. of Appeals*, 270 AD2d at 845; *Matter of Golden Triangle Assoc. v Town Bd. of Town of Amherst*, 185 AD2d at 617-618).


¹⁸ According to Respondent Wainwright House, the Planning Commission “undertook an extensive and inclusive six-month SEQRA review process between its receipt of the March 2021 Wainwright House application and the Commission’s September 2021 Negative Declaration” (*see* Page 20 of Respondent Wainwright House’s Memorandum of Law). This included the acceptance and consideration of “many public comments on the potential environmental impacts of the proposed Tent Permit, including the Petitioners’ comments, and then identified the relevant areas of environmental concern” (*Id.* at Pages 20-21).

Conclusion

As Petitioners have failed to demonstrate that the 2021 Resolutions were arbitrary and capricious, an abuse of discretion, in violation of a lawful procedure, or affected by an error of law, the Verified Petition is dismissed.

The foregoing constitutes the Decision, Order and Judgment of this Court. To the extent not addressed, the relief is denied.

Dated: White Plains, New York
November 9, 2023



HONORABLE ROBERT J. PRISCO
Acting Supreme Court Justice

To: *ALL PARTIES VIA NYSCEF*