

CASE SYNOPSIS EXCERPTS

Matter

BROADWAY, LAGUNA, VALLEJO ASSOCIATION et al. v. BOARD OF PERMIT APPEALS OF THE CITY AND COUNTY OF SAN FRANCISCO et al.

Issue

We must decide whether the San Francisco Board of Permit Appeals exceeded the scope of its authority in granting a variance under the circumstances of this case. That variance rested upon the alleged attractiveness of the proposed building, coupled with the belated discovery of subsoil conditions requiring a more costly foundation than anticipated. We conclude that the approval of a variance on such a basis would undermine the foundation of a comprehensive zoning law.

Holding

The judgment is reversed and the cause is remanded to the trial court with directions to issue a writ of mandate requiring the board to vacate its order awarding a variance and to affirm the zoning administrator's original decision denying that variance, and with additional directions to the trial court to grant such further relief as is appropriate.

Matter

COW HOLLOW IMPROVEMENT CLUB et al. v. BOARD OF PERMIT APPEALS OF THE CITY AND COUNTY OF SAN FRANCISCO et al.

Issue

This is an appeal by Lena and Lorenzo DiBene (hereafter referred to as DiBene) from the judgment of the trial court in favor of Cow Hollow Improvement Club and its members (hereafter referred to collectively as the "Club") ordering that a writ of mandate issue compelling the Board of Permit Appeals of the City and County of San Francisco and the individual commissioners and officers thereof (hereafter referred to collectively as the "Board") to set aside its order granting permission to DiBene to construct a two-family dwelling on the property which is owned by him and is zoned "R-1"; further compelling the Board to enter a new order affirming the decision of the Zoning Administrator, which decision denied DiBene's application for a zoning variance; and finally compelling the Department of Public Works, its director, and the Zoning Administrator to disapprove any building permit application filed by DiBene in relation to his proposal to construct such a dwelling on the subject property. DiBene's sole contention on this appeal is that the trial court erred in compelling the Board to set aside its decision granting him the requested variance.

Holding

The judgment is affirmed.

Matter

ORINDA ASSOCIATION v. BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY et al.

Issue

This appeal is from a judgment in an action consolidating petitions for writ of mandate brought by appellants Friends of the Orinda Theatre (Friends), Berkeley Architectural Heritage Association (BAHA), and the Orinda Association (the Association) to challenge various aspects of a proposed mixed-use office/commercial/retail development complex known as "the Crossroads," to be built in the downtown area of Orinda adjacent to the Highway 24 freeway. The Association charges that the responsible county governmental and administrative agencies approved the Crossroads Project (the Project) and granted zoning variances therefor in violation of applicable local land-use regulations. Friends and BAHA focus on the Project's destruction of the Orinda Theatre and the adjoining Bank Building, designed by the same architect in the "Art Deco" style; they challenge the County's compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the certification of the final project EIR by the Board, and the county building inspection department's issuance of an unqualified permit for demolition of the subject buildings.

Holding

The judgment denying appellants' petitions for mandate is reversed, and the cause is remanded with directions to the superior court to issue a writ of mandate requiring the Board and the Planning Commission to vacate and set aside their approval of the development plan and zoning variances for the proposed Project, and a writ of mandate requiring the County building inspection department and any other agencies involved to vacate and set aside the issuance of the permit to demolish the Theatre and Bank Building. The superior court shall exercise its discretion under Code of Civil Procedure section 1021.5 with respect to an award of attorneys' fees to the Association.