

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**426**

**CA 15-00871**

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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IN THE MATTER OF ANN MEYER AND 1262 CULVER  
AVENUE REALTY, LLC, PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

ZONING BOARD OF APPEALS OF CITY OF UTICA,  
STEWART'S SHOPS CORP., CARLTON J. BURTH AND  
JAMES STASAITIS, RESPONDENTS-RESPONDENTS.

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WOODS OVIATT GILMAN, LLP, ROCHESTER (REUBEN ORTENBERG OF COUNSEL), FOR  
PETITIONERS-APPELLANTS.

WILLIAM M. BORRILL, CORPORATE COUNSEL, UTICA (KATHRYN HARTNETT OF  
COUNSEL), FOR RESPONDENT-RESPONDENT ZONING BOARD OF APPEALS OF CITY OF  
UTICA.

MILLER, MANNIX, SCHACHNER & HAFNER, LLC, GLENS FALLS (LEAH EVERHART OF  
COUNSEL), FOR RESPONDENT-RESPONDENT STEWART'S SHOPS CORP.

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Appeal from a judgment of the Supreme Court, Oneida County (David  
A. Murad, J.), entered May 12, 2015 in a proceeding pursuant to CPLR  
article 78. The judgment dismissed the petition in its entirety.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: In this CPLR article 78 proceeding, petitioners  
appeal from a judgment dismissing their petition seeking, inter alia,  
to annul the determination granting the application of respondent  
Stewart's Shops Corp. (Stewart's) for a use variance to construct a  
"vehicle service station with an accessory retail establishment" on  
the subject property. We affirm.

We reject petitioners' contention that the determination to grant  
the use variance lacks a rational basis and is not supported by  
substantial evidence (*see generally Matter of Pecoraro v Board of  
Appeals of Town of Hempstead*, 2 NY3d 608, 613). Stewart's established  
that "applicable zoning regulations and restrictions have caused  
unnecessary hardship," i.e., that it could not realize a reasonable  
return with respect to the property, that the hardship was unique,  
that the variance would not alter the essential character of the  
neighborhood, and that the hardship was not self-created (General City  
Law § 81-b [3] [b] [i] - [iv]).

We further conclude that respondent Zoning Board of Appeals of City of Utica (ZBA) complied with the requirements of the State Environmental Quality Review Act (ECL art 8) in issuing a negative declaration. Contrary to petitioners' contention, we conclude that the ZBA properly "identified the relevant areas of environmental concern . . . [and] took a 'hard look' at them" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417). Petitioners' contention that there was no reasoned elaboration underlying the ZBA's determination is not preserved for our review inasmuch as petitioners failed to raise that issue in their petition (see generally *Matter of Blue Lawn v County of Westchester*, 293 AD2d 532, 534, lv denied 98 NY2d 607). In any event, we conclude that the contention is without merit (see *id.*; cf. *Matter of Dawley v Whitetail 414, LLC*, 130 AD3d 1570, 1571).

We have considered petitioners' remaining contention and conclude that it is without merit.