

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

851

CA 22-01700

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, GREENWOOD, AND NOWAK, JJ.

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IN THE MATTER OF JENNIFER L. FRIEDMAN,  
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TOWN OF DUNKIRK AND ZONING BOARD OF APPEALS  
FOR TOWN OF DUNKIRK,  
RESPONDENTS-DEFENDANTS-RESPONDENTS.

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LAW OFFICES OF JENNIFER L. FRIEDMAN, PLLC, LANCASTER (JENNIFER L. FRIEDMAN OF COUNSEL), FOR PETITIONER-PLAINTIFF-APPELLANT.

HODGSON RUSS LLP, BUFFALO (HENRY A. ZOMERFELD OF COUNSEL), FOR  
RESPONDENTS-DEFENDANTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court, Chautauqua County (Grace Marie Hanlon, J.), entered October 17, 2022, in a proceeding pursuant to CPLR article 78 and declaratory judgment action. The judgment, insofar as appealed from, dismissed the petition-complaint.

It is hereby ORDERED that the judgment insofar as appealed from is unanimously reversed on the law without costs, the first cause of action in the petition-complaint is reinstated, the petition-complaint is granted insofar as it sought to annul the determination of respondent-defendant Zoning Board of Appeals for the Town of Dunkirk, and the determination is annulled.

Memorandum: Petitioner-plaintiff (petitioner) commenced this hybrid CPLR article 78 proceeding and declaratory judgment action seeking, inter alia, to annul the determination of respondent-defendant Zoning Board of Appeals for the Town of Dunkirk (ZBA) that petitioner's use of her property as a short-term rental was not permitted under the Town of Dunkirk Zoning Ordinance. Supreme Court, inter alia, dismissed the petition-complaint (petition). Petitioner appeals from the judgment insofar as it dismissed the petition, and we reverse the judgment insofar as appealed from.

"[L]ocal zoning boards have broad discretion, and [a] determination of a zoning board should be sustained on judicial review if it has a rational basis and is supported by substantial evidence" (*Matter of Fox v Town of Geneva Zoning Bd. of Appeals*, 176 AD3d 1576, 1577 [4th Dept 2019] [internal quotation marks omitted]). So long as a zoning board's interpretation of its governing code "is neither

'irrational, unreasonable nor inconsistent with the governing [code],'  
it will be upheld" (*Matter of New York Botanical Garden v Board of  
Stds. & Appeals of City of N.Y.*, 91 NY2d 413, 419 [1998]). However,  
where, as here, the issue presented "is one of pure legal  
interpretation of [the code's] terms, deference to the zoning board is  
not required" (*Fox*, 176 AD3d at 1577 [internal quotation marks  
omitted]; see *Matter of Toys "R" Us v Silva*, 89 NY2d 411, 419 [1996]).

Here, the ZBA determined that short-term rentals are not a  
permitted use in the zoning district where petitioner's property is  
located inasmuch as "single family dwelling[s]" are the only  
permissible use in that district, and, according to the ZBA, a group  
of tenants that is transient or temporary does not meet the code's  
definition of a family. Where, as here, "the language of a[n  
ordinance] is clear and unambiguous, courts must give effect to its  
plain meaning" (*Matter of Tall Trees Constr. Corp. v Zoning Bd. of  
Appeals of Town of Huntington*, 97 NY2d 86, 91 [2001]). Contrary to  
the ZBA's determination and the interpretation proposed by  
respondents-defendants, under the Zoning Ordinance, the transient or  
temporary nature of a group is but one factor that "may" be considered  
to determine whether four or more persons who are not related by  
blood, marriage, or adoption are the "functional equivalent" of a  
"traditional family." Indeed, if petitioner rented her property to  
three or fewer persons, or to four or more persons who are related by  
blood, marriage, or adoption, those groups would meet the Zoning  
Ordinance's definition of a "[f]amily" without regard to whether their  
tenancy was transient or temporary in nature. The ZBA's determination  
to the contrary lacked a rational basis (see *Fox*, 176 AD3d at 1577),  
and the court erred in sustaining the determination. We therefore  
reverse the judgment insofar as appealed from, reinstate the first  
cause of action in the petition, and grant the petition insofar as it  
sought to annul the ZBA's determination.

Petitioner's remaining contentions are academic in light of our  
determination.