



MATTER ANGELO J. PALIOTTO v. JOHN P. COHALAN

177 N.Y.S.2d 553 (1958) | Cited 0 times | New York Supreme Court | July 14, 1958

In a proceeding to annul a zoning ordinance amendment to the extent that it is not in harmony with the published notice of hearing thereof, the appeal is from (1) an order (designated in the notice of appeal as a judgment) dated June 12, 1957 (a) denying appellants' motion to dismiss the petition, (b) declaring that as respects respondent's property the revised zoning ordinance rezoning certain property from a residence to a business district is not in harmony with the general purpose and intent of the published notice of the proposed amendment, (c) decreeing that respondent's property belongs in the business district instead of the residence district, and (d) directing that appellants alter the zoning map accordingly, and (2) from so much of an order dated July 23, 1957 as on reargument adhered to the original decision. Order dated July 23, 1957 modified by striking from the ordering paragraph thereof everything following the words "on reargument" and by substituting therefor the words "the motion to dismiss the petition be and the same hereby is granted and the petition is dismissed". As so modified, order insofar as appealed from unanimously affirmed, without costs. The petition seeks, in effect, a review of the validity of a legislative action. An article 78 proceeding may not be prosecuted for such purpose (*Matter of Neddo v. Schrade*, 270 N. Y. 97). Appeal from order dated June 12, 1957, dismissed (*Edell v. Edell*, 279 App. Div. 657; *Van Valkenburgh v. Lutz*, 6 A.D.2d 812. Present - Nolan, P.J., Wenzel, Beldock, Ughetta and Hallinan, JJ. [6 Misc. 2d 1.]

