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NYS Dept. of State

Case Law Update
Capital District Regional Planning Commission

Sign Regulation

1. Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015) - U.S. Supreme Court held that the town's regulation of directional signs was content-based and violated the free speech rights of church.
2. People v. On Sight Mobile Opticians, 24 N.Y.3d 1107 (2014) - The Court of Appeals upheld Brookhaven sign regulation banning the placement of signs on public property within the Town.
3. Vosse v. City of New York, --- F.Supp.3d --- (S.D.N.Y. 2015) – NYC could constitutionally regulate the placement of illuminated signs.

Area Variances

4. Colin Realty Co., LLC, v. Town of North Hempstead, 24 N.Y.3d 96 (2014) – Court of Appeals decides that parking is an area restriction, for which an area variance may be necessary.
5. Fund for Lake George, Inc v. Town Of Queensbury Zoning Board of Appeals, 126 A.D.3d 1152 (3rd Dept. 2015) – Unless a person is aggrieved, he lacks standing to appeal to the zoning board of appeals.
6. Kramer v Zoning Bd. of Appeals of Town of Southampton, 131 AD3d 1170 (2nd Dept. 2015) – ZBA properly denied area variance for outdoor kitchen in the front yard.

Use Variances

7. Nemeth v. Village of Hancock Zoning Board of Appeals, 127 A.D.3d 1360 (3rd Dept. 2015) - Court overturns ZBA's grant of use variance allowing manufacturing use in a residential zoning district.

Interpretation of Zoning

8. Bove-Fulgenzi v. ZBA of the Town of Mount Pleasant, 47 Misc.3d 1226(A) (Sup. Ct. Westchester Co. 2015) - ZBA incorrectly interpreted the zoning regulation by construing that petitioner's rescue dog operation was a business.
9. Fruchter v. Zoning Board of Appeals of the Town of Hurley, 133 A.D.3d 1174 (3rd Dept. 2015) – Rental of home for short periods could not be classified as bed and breakfast or hotel under town's zoning regulations. Special use permits were not needed.
10. Meier v. Village of Champlain Zoning Board of Appeals, 129 A.D.3d 1364 (3rd Dept. 2015) - Village of Champlain ZBA determined that poultry husbandry was an impermissible agricultural use in a residential zone.
11. Witkovich v Zoning Board of Appeals of Town of Yorktown, 133 A.D.3d 679 (2nd Dept. 2015) – Court decides whether a zoning board of appeals can rely on the dictionary to help them interpret the zoning.

Cellular Telephone Antennae Facilities

12. T-Mobile South v. City of Roswell, Georgia, 135 S.Ct. 808 (2015) – Supreme Court ruled that, when denying an application for a cellular facility, local government provide written reasons for its denial either in the decision or in some written document essentially contemporaneous with the issuance of the denial, such as a transcript.

Nonconforming Uses

13. Suffolk Asphalt Supply, Inc. v. Board of Trustees of the Vil. of Westhampton Beach (Sup. Ct., Suff. Co. 2016) (Elizabeth H. Emerson, J.) – Federal judge discusses appropriate time period for amortization and termination of nonconforming asphalt plant.

Special Use Permits

14. Matter of 7-Eleven, Inc. v Incorporated Vil. of Mineola, 127 AD3d 1209 (2nd Dept. 2015) – Special use permit application for convenience store cannot be denied on the ground that use is not compatible with the neighborhood, if zoning permits it.

Vested Rights

15. Exeter Building Corp. v. Town of Newburgh, 2016 NY Slip Op 00999 (February 11, 2016) – Vested rights to complete project under prior zoning cannot be acquired unless substantial expenditures and construction are undertaken in reliance on a legally issued permit,

16. Town of North Elba v. Grinditch, 131 A.D.3d 150 (3rd Dept., 2015) – Landowners who built boathouses without permits did not acquire vested rights to complete them.

Subdivision

17. Lucente v. Terwilliger, 46 Misc. 3d 1217(A) (Sup. Ct. Tompkins Co., 2015) – Default approval of subdivision plat does not occur if SEQRA is not completed.

