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ZONING - NEW YORK

Albany Basketball & Sports Corp. v. City of Albany

Supreme Court, Appellate Division, Third Department, New York - April 3, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 02370

Proprietor of auditorium petitioned for Article 78 review of a decision of a city's board of zoning appeals (BZA), which found that current use of premises was not permitted use under city code. The Supreme Court, Albany County, dismissed proprietor's application. Proprietor appealed.

The Supreme Court, Appellate Division, held that term "auditorium" did not require fixed seating.

Although a reviewing court will generally grant deference to the interpretation of an ambiguous zoning ordinance by a municipal BZA, where the issue presented is one of pure legal interpretation of the underlying zoning law or ordinance, deference is not required.

Local zoning regulations, being in derogation of the common law, must be strictly construed against the municipality which has enacted and seeks to enforce them, and any ambiguity in the language used must be resolved in favor of the property owner.

Resolving ambiguities in city's zoning ordinances in favor of auditorium proprietor, term "auditorium" was not limited to area of concert hall, theater, school, or other structure in which audience sat, but instead included building for public gatherings or meetings or large room or building where people gather to watch performances, hear speeches, or other similar activities.

Thus, city's BZA unreasonably interpreted that term as requiring fixed seating, and on those grounds finding that using premises for "rave" party, nightclub, dance club, or other similar events did not constitute permitted use under ordinance applicable to commercial office zoning district in which auditorium was located.