

Bond Case Briefs

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ZONING - NEW YORK

Colin Realty Co., LLC v. Town of North Hempstead

Court of Appeals of New York - October 16, 2014 - N.E.3d - 2014 N.Y. Slip Op. 07008

Owner of retail building brought hybrid Article 78 proceeding and declaratory judgment action against town, town's zoning board of appeals (ZBA), ZBA members, owner of neighboring building, and prospective operator of proposed restaurant in neighboring building, challenging ZBA's granting, for proposed restaurant, of variances from town code's parking and loading/unloading restrictions, and alleging that proposed restaurant required a use variance rather than an area variance.

The Supreme Court, Nassau County, denied the petition and dismissed the proceeding/action on the merits. Owner of retail building appealed. The Supreme Court, Appellate Division, affirmed. Leave to appeal was granted.

The Court of Appeals held that:

- Requests for off-street parking variances should be evaluated by applying the standards for an area variance so long as the property is intended to be used for a purpose permitted in the zoning district, overruling *Matter of Off Shore Rest. Corp. v. Linden*, 30 N.Y.2d 160, 282 N.E.2d 299, 331 N.Y.S.2d 397, and

Town ZBA properly considered the application for off-street parking variance as a request for an area variance.