

Bond Case Briefs

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ZONING - ARIZONA

Pawn 1st, LLC v. City of Phoenix

Court of Appeals of Arizona, Division 1 - April 12, 2016 - P.3d - 2016 WL 1427649

Pawn shop operator brought special action complaint challenging decision of zoning board approving a competing business's application for zoning variance from ordinance requiring the exterior walls of a pawn shop to be located at least 500 feet from a residential district.

The Superior Court entered summary judgment in favor of city. Operator appealed. The Court of Appeals reversed and remanded. On remand, the Superior Court affirmed board's decision. Operator appealed.

The Court of Appeals held that:

- Variance was not an unauthorized use variance, but
- Decision granting variance exceeded board's statutory authority and thus was void.

Variance from ordinance requiring the exterior walls of a pawn shop to be located at least 500 feet from a residential district was not an unauthorized "use variance." Operation of a pawn shop was a permitted use within the district, irrespective of the distance requirement.

Discontinuation of a nonconforming use of property as a strip club was not a special circumstance applying to the land that did not apply to other properties in the district which was not created by the applicant, and thus decision granting application for variance from ordinance requiring the exterior walls of a pawn shop to be located at least 500 feet from a residential district exceeded zoning board's statutory authority and was void. Discontinuation merely brought property rights and privileges in line with other properties in the same district, and any special circumstances were created by the applicant by selecting property to use as a pawn shop in violation of the ordinance.