

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - NEW YORK

HV Donuts, LLC v. Town of LaGrange Zoning Board of Appeals

Supreme Court, Appellate Division, Second Department, New York - February 6, 2019 - N.Y.S.3d - 2019 WL 454279 - 2019 N.Y. Slip Op. 00874

Donut shop located across the street from gas station and convenience store, which ceased operations after a gasoline spill to commence remediation efforts, but thereafter sought to re-open, brought an article 78 proceeding seeking review of Zoning Board of Appeals decision upholding building inspector's determination that property owner was eligible to invoke Zoning Law provision which allowed re-establishment of nonconforming uses after casualties.

The Supreme Court, Dutchess County, denied petition to review, confirmed determination of the building inspector, and dismissed the proceeding. Donut shop appealed.

The Supreme Court, Appellate Division, held that:

- Property owner was entitled to invoke prior nonconforming use exception to Zoning Law, and
- Zoning Law provision, which required an owner to obtain a building permit for restoration of buildings damaged by casualty within one year and to complete repairs within two years, did not apply to property owner's remediation efforts.

Property owner, who operated gas station and convenience store on property, which were nonconforming uses of the property, prior to petroleum spill, was entitled to invoke prior nonconforming use exception, which addressed re-establishment of nonconforming uses after casualties, to town zoning ordinance, which prohibited property owner from resuming nonconforming use, if nonconforming use was discontinued for a period of one year or more, where remediation of petroleum spill amounted to a continuation of the nonconforming use.

Town Zoning Law, which required an owner to obtain a building permit for restoration of buildings damaged by casualty within one year and to complete repairs within two years, did not apply to property owner's remediation efforts following petroleum spills on property on which owner operated a convenience store and gas station, where petroleum spills did not affect the convenience store building.