

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **ZONING & PLANNING - DELAWARE**

### **City of Lewes v. Nepa**

**Supreme Court of Delaware - June 10, 2019 - A.3d - 2019 WL 2415047**

Owners of home in historic district appealed denials of area variances to complete unauthorized addition to house.

The Superior Court reversed decision of the city's board of adjustment and city appealed.

The Supreme Court held that:

- City had the authority to adopt variance requirements;
- City ordinance required stricter standards for granting area variances than state law; and
- Statute allowed city to adopt stricter variance review standards than standards set forth in state law.

City had the authority to adopt variance requirements to be applied by its board of adjustment; charter authorized city "generally to exercise all the powers and authorities vested in the legislative body of cities," state had authorized municipalities to adopt their own laws governing their boards of adjustment, and statute allowed municipalities to "provide for the manner in which" its land use regulations and restrictions "shall be enforced."

City ordinance required stricter standards for granting area variances than state law, where ordinance contained heightened exceptional practical difficulty test by requiring the benefit to the property owner in granting the variances to substantially outweigh the detriment to the neighboring properties, ordinance imposed a "uniqueness" requirement, and ordinance excluded nonconformity as a reason for granting a variance.

Statute providing that boards of adjustment "may" grant variances when "special conditions" or "exceptional situations" exist that cause "unnecessary hardship" or "exceptional practical difficulties" allowed city to adopt stricter variance review standards than standards set forth in state law.