

Bond Case Briefs

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ZONING - NEW JERSEY

TSI East Brunswick, LLC v. Zoning Bd. of Adjustment of Tp. of East Brunswick

Supreme Court of New Jersey - July 23, 2013 - A.3d - 2013 WL 3802499

Objector brought action in lieu of prerogative writs, challenging township zoning board's decision to grant conditional use variance allowing property owner to convert existing building into a for-profit health club.

The Supreme Court of New Jersey held that:

- Property owner was not required to demonstrate absence of negative criteria with enhanced quality of proofs, and
- Township could grant variance.

Property owner seeking conditional use variance was not required to demonstrate absence of negative criteria with enhanced quality of proofs, such as would be required for obtaining variance for prohibited use. Analyses of use variances and conditional use variances were fundamentally different, since a use variance would proceed in the context of a use that the governing body had prohibited, whereas the conditional use variance proceeded in the context of a use that, if it complied with certain conditions, was permitted.

In determining whether a property owner is entitled to a conditional use variance, the question is whether, in light of the failure to meet one of the conditions fixed by the zoning ordinance, the use is reconcilable with the municipality's legislative determination that the condition should be imposed on all conditional uses in that zoning district.

In determining whether a property owner is entitled to a conditional use variance, the weighing is entirely different from that demanded for a use variance because the governing body has not declared that the use is prohibited but, instead, has elected to permit the use in accordance with certain expressed conditions; accordingly, the focus of the analysis is on the effect of non-compliance with one of the conditions as it relates to the overall zone plan.