

Bond Case Briefs

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ZONING - NEW YORK

Qing Dong v. Town of North Hempstead

United States District Court, E.D. New York - December 9, 2013 - Slip Copy - 2013 WL 6407724

On January 3, 2006, Town enacted a zoning ordinance that included a prohibition on the development of vacant corner lots that were at least 100 feet wide on each side adjacent to the street.

In September 2008, Plaintiff purchased an undeveloped corner lot in the Town. The property's dimensions measure 154 feet by 80 feet.

In October 2008, Plaintiff applied for, and was denied, a building permit by the Town's Department of Buildings because the property's dimensions did not meet the zoning ordinance requirements to allow for development. Plaintiff subsequently sought a variance from the Town Board of Zoning Appeals (BZA), but such application was also denied.

Plaintiff commenced an Article 78 proceeding in the Supreme Court of New York, Nassau County to review the BZA's decision on her application for a variance. The Supreme Court sustained the BZA's decision denying Plaintiff's application for a variance. On appeal, the Appellate Division likewise affirmed denial of a variance.

Plaintiff commenced an action alleging a Fifth Amendment takings claim and seeking an injunction to require Defendant to either issue Plaintiff a building permit or a variance.

In New York, a plaintiff may address a takings or just compensation claim either through an Article 78 proceeding or under New York's Eminent Domain Procedure Law.

Here, Plaintiff commenced an Article 78 proceeding following the BZA denial of her variance application. However, Plaintiff did not seek just compensation in that action, but rather sought a review and annulment of the BZA's decision. Consequently, the court held that Plaintiff had not satisfied the ripeness requirements set forth in *Williamson*, which holds that, before a federal takings claim can be asserted, compensation must first be sought from the state if it has a reasonable, certain and adequate provision for obtaining compensation.

Finally, Town argued, and the Court agreed, that Plaintiff's taking claim must be dismissed with prejudice. Although a dismissal without prejudice would typically be appropriate, Plaintiff's time to seek just compensation had passed, and therefore her claims could never be ripe. The BZA denied Plaintiff's variance application in October 2009. However, the statute of limitations to commence an Article 78 proceeding is four months.