

Bond Case Briefs

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ZONING - NEW YORK

Christian Airmen, Inc. v. Town of Newstead Zoning Bd. of Appeals

Supreme Court, Appellate Division, Fourth Department, New York - March 28, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 02171

Airport operator petitioned for Article 78 review of a decision of town's zoning board of appeals (ZBA), which denied the operator's request for a use variance to authorize the paving of an existing turf runway at the airport. In a special proceeding under Article 78, the Supreme Court, Erie County, vacated and annulled ZBA's decision, and granted operator's request. ZBA appealed.

The Supreme Court, Appellate Division, held that substantial evidence supported finding of town's ZBA that airport operator failed to demonstrate unnecessary hardship, and thus supported ZBA's decision to deny operator's request for use variance to authorize paving of existing turf runway at airport. Nothing in record supported operator's contention that runway predated enactment of town's first zoning ordinance, precluding any finding of prior nonconforming use, operator failed to establish that, in absence of variance, it would not realize reasonable return on property, and, because deeds proffered by ZBA demonstrated that operator did not acquire portions of subject property until nearly ten years after enactment of ordinance, any alleged hardship was self-created.