

# **Bond Case Briefs**

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## **ZONING - RHODE ISLAND**

### **Kenlin Properties, LLC v. City of East Providence**

**Supreme Court of Rhode Island - June 23, 2016 - A.3d - 2016 WL 3449976**

Owner and operator of construction and demolition debris processing facility brought action, seeking judicial review of zoning board's decision to uphold notice of violation issued by city zoning officer finding several violations of use variance that had been granted to owner and operator.

The Superior Court reversed decision. Petition for writ of certiorari filed by city and zoning board was granted.

The Supreme Court of Rhode Island held that:

- Issues in prior declaratory judgment proceeding brought by city were not identical to issues in subsequent proceeding, challenging zoning board's decision that facility violated use variance, and thus, city was not barred under doctrine of collateral estoppel from pursuing violations against facility;
- As matter of apparent first impression, scope of use variance was question of fact to be determined by zoning board by referring to entire public record, subject to judicial review; and
- Zoning board's findings of fact were not clearly erroneous in view of reliable, probative, and substantial evidence, and thus, reversal of board's decision was not warranted.

Scope of use variance was question of fact to be determined by local zoning board by referring to entire public record, subject to judicial review. Use variances were strictly construed to limit relief granted to minimum degree necessary to relieve property owner's hardship, and could not exceed relief originally requested by property owner in variance application and testimony before zoning board.

Findings of fact by city zoning board were not clearly erroneous in view of reliable, probative, and substantial evidence, and thus, reversal of board's decision, that construction and demolition debris processing facility violated use variance by processing excess debris and accepting products other than wood, was not warranted. Proposed use was recycling of natural and processed wood materials into mulch products, facility agreed to ton limitation of operation per day and grinding hours, board found that scope of use variance limited amount and materials that facility could process, and that facility exceeded the limitations.