

Bond Case Briefs

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ZONING - NEW JERSEY

Jai Sai Ram, LLC v. Planning/Zoning Bd. of Borough of South Toms River

Superior Court of New Jersey, Appellate Division - July 27, 2016 - A.3d - 2016 WL 4005449

Convenience store chain applied for a use variance to construct a combined convenience store and gas station on a piece of property located partially in a highway development zone and partly in a residential zone.

Borough planning/zoning board approved the application. Gas station operator filed an action in lieu of prerogative writs challenging board's decision. The Superior Court affirmed. Operator appealed. While appeal was pending, the borough amended its zoning ordinance to benefit of chain.

The Superior Court, Appellate Division, held that time of application rule does not apply when the municipality amends the ordinance to specifically permit the use which is the subject of the application.

Time of application rule, providing that development regulations which are in effect on the date of submission of an application for development shall govern review of that application and any decision made regarding such, does not apply when, after a use variance application is filed, seeking relief under existing zoning ordinance, the municipality amends the ordinance to specifically permit the use which is the subject of the application, and the developer is entitled to the benefit of the ordinance as amended.

Where there is a pending appeal challenging the grant of a use variance, the appeal becomes moot by virtue of an amendment to zoning ordinance specifically permitting the use which is the subject of the development application, because the applicant could proceed with the project without the variance.