

Bond Case Briefs

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ZONING & LAND USE - NEW JERSEY

Dunbar Homes, Inc. v. Zoning Board of Adjustment of Township of Franklin

Supreme Court of New Jersey - June 20, 2018 - A.3d - 2018 WL 3041000

Landowner sought review of planning board's ruling that landowner was not entitled to benefit of time of application statute in determining what conditional use variance was required for site plan approval.

The Superior Court reversed. Township appealed. The Superior Court, Appellate Division, reversed. Landowner petitioned for certification.

The Supreme Court of New Jersey held that:

- To benefit from the protections of the "time of application rule" (TOA) landowner was required to submit the application for development form and all accompanying documents required by ordinance, and
- Landowner's application for development was incomplete, and thus, TOA rule was not triggered.

To benefit from the protections of the "time of application rule" (TOA) embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, landowner was required to submit the application for development form and all accompanying documents required by ordinance for approval of a site plan, conditional use, zoning variance, or direction of the issuance of a permit.

The submission of an application for development will provisionally trigger the "time of application" (TOA) rule embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, if a waiver request for one or more items accompanies all other required materials; if the zoning board grants the waiver, then the application will be deemed complete; if the board denies the waiver, its decision will be subject to review under the customary arbitrary and capricious or unreasonable standard.

Landowner's application for development form was incomplete, and thus, time of application (TOA) rule, which would allow review of application to be governed by regulations in effect on date of submission of application, was not triggered; landowner's submission lacked numerous ordinance requirements for a use variance application, including drainage calculations, a site plan indicating domestic water demand, a submittal letter to the Department of Transportation, and four additions copies of the site plan and architectural documents.