

# Caselaw Update

## 2015-2016

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# Cases Discussed

- Appellate Division, Second Department
- Court of Appeals
- Federal (SDNY and Second Circuit)

# Article 78 Proceeding

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- An action to challenge an administrative proceeding in court
- Generally decided “on the record” without court appearances

# Article 78 Proceeding

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- Questions include:
  - Whether the administrative body acted in excess of its jurisdiction
  - Whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion
  - Whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

# Article 78 Proceeding

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- Generally brought in Supreme Court
- Statute of limitations for challenging a Planning Board or Zoning Board of Appeals decision is 30 days
- Court may annul or confirm determination in whole or in part. No money judgments.

# Standing

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- Only persons with standing may bring an article 78 proceeding
- Plaintiff must show that it would suffer direct harm - injury that is in some way different from the public at large
- Ensures that the proper party is bringing the action

# Zoning Board of Appeals

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## GOOD NEWS FOR BOARD MEMBERS!

- *Decisions to grant or deny an area variance were all upheld (2 denials, 1 approval)*
- *Determinations of appeals/ interpretations were upheld 5 times and annulled 2 times*
- *Issuance of a use variance was annulled*

# Zoning Board of Appeals

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Latuga v. Giannadeo,

2016 NY Slip Op 04223 (2d Dept. 2016)

June 1, 2016

- *Constructing improvement and then asking for forgiveness is a self-created hardship*

# Zoning Board of Appeals

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Green Materials of Westchester v. Town of Cortlandt,

132 A.D.3d 868 (2d Dept. 2015)

October 21, 2015

- *When an applicant says numerous times that he will not be performing a certain action, and without any evidence to the contrary, the ZBA must take his word*

# Zoning Board of Appeals

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Green Materials of Westchester v. Town of Cortlandt,



# Zoning Board of Appeals

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East End Holdings, LLC v. Village of  
Southampton Zoning Board of Appeals,  
135 A.D.3d 860 (2d Dept. 2016)

January 20, 2016

- *A landowner has a burden of proving the legality of a nonconforming use.*

# Zoning Board of Appeals

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Watkins v. Town of North East Zoning  
Board of Appeals,

136 A.D.3d 836, (2d Dept. 2016)

February 10, 2016

- *A ZBA's interpretation of the Zoning Law is entitled to great deference*
- *Where a statute is clear, ZBA should give effect to its plain meaning*

# Zoning Board of Appeals

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Stewart Park & Reserve Coalition, Inc. v.  
Town of New Windsor Zoning Bd. Of  
Appeals,

137 A.D.3d 924 (2d Dept. 2016)

March 9, 2016

- *Allegations of speculative injury are not sufficient to confer standing*

# Zoning Board of Appeals

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Stewart Park & Reserve Coalition, Inc. v.  
Town of New Windsor Zoning Bd. Of  
Appeals



# Zoning Board of Appeals

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Harris v. ZBA of Town of Carmel,  
137 A.D.3d 1130 (2d Dept. 2016)

March 23, 2016

- *Denial of area variance upheld.*

# Zoning Board of Appeals

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DeFeo v. ZBA Town of Bedford,  
137 A.D.3d 1123 (2d Dept. 2016)

March 23, 2016

- *Applicant for a use variance did not establish a hardship justifying a use variance.*

# Dollars and Cents Proof Required

- *Splash did not submit any actual financial information, such as:*
  - *the original purchase price of the property*
  - *the expenses and carrying costs of the property*
  - *the present value of the property*
  - *the taxes*
  - *the amount of any mortgages or other encumbrances*
  - *the amount of income presently realized, if any, or an estimate as to what a reasonable return on the entire property or any portion should be*

# Zoning Board of Appeals

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Sand Land Corp. v. Zoning Board of Appeals  
of Town of Southampton,

137 A.D.3d 1289 (2d Dept. 2016)

March 30, 2016

- *ZBA Determination regarding nonconforming uses upheld*

# Zoning Board of Appeals

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Martinos v. Zoning Board of Appeals of Town  
of Brookhaven,

138 A.D.3d 859 (2d Dept. 2016)

April 13, 2016

- *ZBA Determination regarding nonconforming uses partially upheld and partially annulled*

# Zoning Board of Appeals

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Applebaum v. Village of Great Neck Zoning Board of Appeals,

138 A.D.3d 830 (2d Dept. 2016)

April 13, 2016

- *Letters accepted after close of public hearing did not warrant annulment of area variance\**

**\*Do not try this at home**

# Zoning Board of Appeals

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Sherwin v. Village of Goshen Zoning Board of Appeals,

139 A.D.3d 962 (2d Dept. 2016)

May 18, 2016

- *ZBA's determination that a road had become a village street by prescription upheld.*

# Planning Board

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## Good News For Board Members!

- *Fewer Planning Board challenges than ZBA challenges*
- *All but 1 Planning Board determination was upheld*

# Planning Board

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Ostojic v. Gee,

130 A.D.3d 927 (2d Dept. 2015)

July 22, 2015

- *Denial of subdivision based on better alternative design upheld.*

# Planning Board

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St. James Antiochian Orthodox Church v.  
Town of Hyde Park Planning Board,  
132 A.D.3d 687 (2d Dept. 2015)

October 7, 2015

- *Planning Board took a hard look at SEQRA concerns*

# Planning Board

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## St. James Antiochian Orthodox Church v. Town of Hyde Park Planning Board



# Planning Board

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Leonard v. Planning Board of Town of Union  
Vale,

136 A.D.3d 868 (2d Dept. 2016)

February 17, 2016

- *Negative Declarations do not automatically expire.*

# Planning Board

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Ten Towns to Preserve Main St. v. Planning Board of Town of N.E.,

29 N.Y.S.3d 189 (2d Dept. 2016)

May 4, 2016

- *Petitioner lacked standing to challenge approvals for new supermarket.*

# Planning Board

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CPD Energy v. Town of Poughkeepsie  
Planning Board,

139 A.D.3d 942 (2d Dept. 2016)

May 18, 2016

- *Petitioner lacked standing to challenge redevelopment project.*

# **Town Board / Board of Trustees**

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- **Local laws are considered constitutional unless proven otherwise**

# Town Board / Board of Trustees

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Lazarus v. Board of Trustees of Inc. Vil.  
Of Malverne

2016 NY Slip Op 04224

(2d Dept. App Div)

June 1, 2016

- *Board's determination to deny special permit for second staircase based on community character upheld*

# Town Board / Board of Trustees

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Tilcon New York Inc. v. Town of  
Poughkeepsie,

125 A.D.3d 782 (2d Dept. 2015)

February 11, 2015

- *Town law which prohibited truck traffic and local deliveries during certain hours was not inconsistent with the vehicle and traffic law*

# Town Board / Board of Trustees

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New York Youth Club v. Town of  
Harrison,

2015 WL 8492758 (SDNY)

December 10, 2015

- *Local Law which required solicitors to apply for permit and be fingerprinted violated first amendment.*

# Town Board / Board of Trustees

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Exeter Bldg. Corp. v. Town of  
Newburgh,

26 N.Y.3d 1129 (2016)

February 11, 2016

- *Vested rights not acquired after demolishing house and performing grading pursuant to conditional final approval*

# Town Board / Board of Trustees

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Ranco Sand & Stone Corp. v. Vecchio,  
27 N.Y.3d 92 (2016)

March 31, 2016

- *A positive declaration is not ripe for review.*

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# Ranco Sand & Stone Corp. v. Vecchio



# Town Board / Board of Trustees

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Sierra Club v. Village of Painted Post,  
26 N.Y.3d 301 (2015)

November 19, 2015

- *Selling 1 million gallons of municipal water to gas company was not Type II action.*
- *Alleged harm does not have to be unique to confer standing.*

# Town Board / Board of Trustees

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Reed v. Town of Gilbert, Arizona

138 S. Ct. 2218 (2015)

June 18, 2015

- *Sign law which regulated speech by its content or function (directional, political) violated the 1<sup>st</sup> amendment.*

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# Reed v. Town of Gilbert, Arizona



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# Reed v. Town of Gilbert, Arizona



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