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**ROCKLAND MUNICIPAL PLANNING FEDERATION**  
**SPRING 2025 CASE LAW UPDATE**  
**June 16, 2025**

**By: Christie Tomm Addona<sup>1</sup>**

**LAND USE/ZONING**

**- Subdivision**

*Denisov v. DeChance*, 236 A.D.3d 905 (2d Dep’t Mar. 19, 2025)

The Court upheld the Planning Board’s approval to subdivide a lot that was part of a prior subdivision subject to the restriction that “no lot shall be subdivided or its lot lines changed in any manner at any future date unless authorized by the” Planning Board, finding that this provision required further approval of the Planning Board but not categorical prohibition of future subdivisions. In reaching its conclusion, the Court also cited the evidence in the record, including reports from a certified appraiser and licensed contractor, the SEQRA review, and the conditions the Planning Board placed on the approval.

**- Special Use Permit**

*853-855 McLean, LLC v. City of Yonkers* 237 A.D.3d 1189 (2d Dep’t Apr. 30, 2025)

The Court overturned the Planning Board’s denial of a special use permit noting that the denial emphasized community opposition, which is not a basis for denial of a special permit as a special permit use “constitutes a recognition of a use which the ordinance permits under stated conditions” and “[o]nce an applicant shows that the contemplated use is in conformance with the conditions imposed, a special permit or exception must be granted unless there are reasonable grounds for denying it that are supported by substantial evidence.”

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*Moe's Motor Cars, LLC v. Town of Ulster*, 229 A.D.3d 984 (3d Dep't July 18, 2024)

The Court overturned the Town Board's denial of a special use permit to operate an automotive facility on the grounds that there was no bathroom or water line as the NY Department of State granted a variance from these requirements because the applicant would provide a portable toilet and hand sanitizing station and the facility would conduct business primarily online, and therefore there was no public safety risk.

- **Area Variances**

*Gabriele v. Zoning Board of Appeals of Town of Eastchester*, 228 A.D.3d 659 (2d Dep't June 5, 2024)

The Court recognized the "great deference" afforded to the Zoning Board in upholding the area variance approval for a residential apartment building based upon the Board's application of the statutory criteria for an area variance. The Court also rejected Petitioner's submission opposing the application after the public hearing was closed and further rejected Petitioner's claim that doing so violated their due process rights because Petitioner attended three of the four hearing dates and was "afforded the opportunity to be heard in a meaningful manner at a meaningful time."

*Seaview Association of Fire Island, N.Y. v. Town of Brookhaven Board of Zoning Appeals*, 228 A.D.3d 944 (2d Dep't June 26, 2024)

The Court rejected a neighbor's challenge to the Zoning Board's granting of an area variance for a five-foot high fence subject to certain conditions related to the location and material of the fence as it was not arbitrary and capricious.

- **Use Variances**

*790 Holdings Corp. v. Board of Appeals of Town of Hempstead*, 237 A.D.3d 924 (2d Dep't Apr. 16, 2025)

The Court upheld the Zoning Board's denial of a use variance to operate a used car salesroom and lot finding that because Petitioner "failed to show, based competent financial evidence, i.e. dollars and cents proof, that they cannot yield a reasonable rate of return absent the requested use variances," the use variance could not be granted and the Court need not consider whether Petitioner satisfied the remaining use variance criteria that "(2) the hardship resulted from unique characteristics of the property, (3) the proposed use would not alter the character of the neighborhood, and (4) the alleged hardship was not self-created."

*Franklin Square Realty Assocs. v. Board of Appeals of the Town of Hempstead*, 237 A.D.3d 814 (2d Dep't Apr. 9, 2025)

The Court upheld the Zoning Board's denial of a use variance to operate a self-storage facility and parking lot in a residential district finding the Zoning Board had the authority to revisit a 1959 use variance granted for the property and determine the 1959 Zoning Board exceeded its jurisdiction in granting said use variance; and even if it had not exceeded its jurisdiction, the 1959 use variance

was limited to a specific nonconforming use and did not rezone the parcel such that a different unpermitted use (the self-storage facility) would be permitted.

*Freepoint Solar LLC v. Town of Athens Zoning Board of Appeals*, 234 A.D.3d 127 (3d Dep't Dec. 19, 2024)

The Court overturned the Zoning Board's denial of a use variance to construct a new solar generation facility as use variances for public utilities, like solar energy, "are subject to the 'public necessity' use variance test, which sets a lower burden for establishing the applicant's right to an approved variance" and requires a showing that "siting a new facility or modification of an existing facility is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible to grant a use variance than to use alternative sources of power as may be provided by other facilities and that where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced."

- **Interpretation/Legal, Nonconforming Uses**

*Kreger v. Town of Southold*, 230 A.D.3d 781 (2d Dep't Aug. 29, 2024)

*Kreger v. Town of Southold Zoning Board of Appeals*, 230 A.D.3d 784 (2d Dep't Aug. 28, 2024)

The Court overturned the Zoning Board's interpretation that the applicant needed an area variance to construct a 2.5-story house with a finished floor on the space above the roof, as this was a reading of pure statutory analysis and based upon the legislative intent, with respect to which the Zoning Board's interpretation is not entitled to deference. The Court, by separate decision, overturned the Zoning Board's determination to deny the area variance on the grounds that the area variance was not needed.

*Tiekert v. Board of Appeals of Vill. of Mamaroneck*, 236 A.D.3d 803 (2d Dep't Mar. 12, 2025)

The Court overturned the Zoning Board's interpretation the property owner was improperly renting out a separate dwelling unit as this was a matter of pure legal statutory interpretation not entitled to deference and a "zoning ordinance must be strictly construed in favor of the property owner and against the municipality which adopted and seeks to enforce it" with any ambiguities having to be resolved in favor of the property owner. Where the zoning code stated a dwelling unit "may not share enclosed spaces" and these dwelling units shared a stairwell, the Court found it was one dwelling unit in accordance with the plain language of the code.

*Smith v. Town of Thompson Planning Board*, 233 A.D.3d 1107 (3d Dep't Dec. 5, 2024)

The Court overturned the Planning Board's site plan and special permit approval of a 560,000 square foot facility where there was a "genuine question" as to whether the facility was a permitted use and as "[p]lanning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals," the Planning Board should have referred this matter for a zoning code interpretation before it could consider the land use applications.

- **Zoning/Legislative Acts**

*Hudson View Park Company v. Town of Fishkill*, 234 A.D.3d 40 (2d Dep’t Oct. 30, 2024)

The Court held that a memorandum of understanding between the Town Board and a developer that the Town Board would not cease consideration of a 16-acre zone change prior to a final determination on the merits was invalid as the MOU (i) violated the term limits rule as one legislative board cannot bind a subsequent legislative board regarding governmental functions and (ii) constituted impermissible contract zoning as the Town Board could not contract away its legislative discretion concerning the proposed zoning amendments.

*Elizabeth Street Garden, Inc. v. City of New York*, 42 N.Y.3d 992 (NY June 18, 2024)

The Court held petitioner’s challenge to a SEQRA determination for a senior affordable housing development was not the appropriate vehicle to question whether the proposed project was zoning compliant because the SEQRA review did not contemplate a zoning amendment.

- **Code Enforcement**

*McWhinney v. Rockland Cider Works, LLC*, 233 A.D.3d 667 (2d Dep’t Dec. 4, 2024)

The Court refused to dismiss the litigation commenced by 13 resident taxpayers under Town Law § 268 to prohibit and enjoin the operation of a cider manufacturing and bar service business on neighboring property that allegedly violated the zoning code as the resident taxpayers satisfied the condition precedent of establishing “the Town’s official lassitude or nonfeasance in the enforcement of zoning laws.”

- **Eminent Domain**

*JHK Development, LLC v. Town of Salina*, 233 A.D.3d 1496 (4th Dep’t Dec. 20, 2024)

The Court upheld the Town’s eminent domain of .5 acre of property to create a new access road in connection with the private redevelopment of a long-vacant factory where this was a legislative act entitled to considerable deference and the Petitioner challenging the taking did not satisfy its burden of establishing the action was “without foundation and baseless” where the access road would serve a public use, benefit or purpose by allowing the redevelopment of the dilapidated factory, alleviate traffic and provide emergency access to the proposed sports facility. The Court further disregarded Petitioner’s argument that the developer was working closely with the Town as “unremarkable” where the Town had an interest in fostering redevelopment for urban renewal purposes. The fact that the land to be taken was already the subject of a drainage easement did not violate the prior public use doctrine where the construction of the access road would not interfere with the easement’s operation and related infrastructure.

- **Freedom of Information Law**

*Lost Lake Holdings, LLC v. Hogue*, 231 A.D.3d 1413 (3d Dep’t Oct. 24, 2024)

The Court held that a request pursuant to the Freedom of Information Law for any notes generated by the Town Planning Board Chair with respect to any proceedings or meetings of the Town Board, Planning Board, Zoning Committee and Board of Appeals, or any meetings with a Town official,

outside consultant or counsel related to a 2,500-acre resort and residential community could not be denied outright by the Town on the grounds that any meetings outside of the Planning Board were not Town records as records subject to FOIL would include notes, handwritten or typed, prepared in connection with any official government function.

## **THRESHOLD LITIGATION ISSUES**

### **- Statute of Limitations**

*Camarda v. Ubert*, --- N.Y.S.3d ----, 2025 WL 1450274 (2d Dep't May 21, 2025)

The Court held Petitioner's challenge of the Zoning Board's denial of certain area variances was not barred by the statute of limitations. Petitioner had obtained variances to replace an existing garage at an increased height and larger floor area in April 2021, which approval was conditioned upon Petitioner complying with the plans presented to the Zoning Board. In November 2021, after receiving a violation for exceeding the scope of the approved plans, Petitioner appealed to the Zoning Board and was denied in January 2022. The Court found that because Petitioner was presenting new plans, the statute of limitations commenced with the January 2022 denial, not the April 2021 conditional approval. The Court did not opine on the substance of the appeal and remanded the matter to the lower court for further review.

*Ratliff v. Town of Nelson*, 232 A.D.3d 956 (3d Dep't Nov. 7, 2024)

The Court rejected Petitioner's challenge to the Planning Board's site plan approval because the litigation was not timely brought within 30 days of the decision being filed with the Town Clerk, where Petitioners instead appealed the Planning Board approval to the Zoning Board. The Court further held the municipality did not act in excess of its legislative authority (which would potentially be a waiver to a statute of limitations defense) because there was no law that exceeded the authority conferred upon the Town by the NY Legislature.

*Coden v. Town of Huntington*, 235 A.D.3d 744 (2d Dep't Feb. 13, 2025)

The Court rejected a neighboring property owner's challenge in 2020 to variances and a special permit granted in 2013 on the grounds that the proceeding must have been commenced "within thirty days after the filing of a decision of the board in the office of the town clerk." The Court further rejected the neighbor's attempt to circumvent the statute of limitations by claiming the Zoning Board's action was a jurisdictional defect that is "ultra vires" and thus "not subject to the 30-day limitations period applicable to review of the site plan, special permit, or other land use determination." Although the neighbor also brought a declaratory judgment claim subject to a six-year statute of limitations, the Court explained that because the relief sought was in the nature of the Article 78 proceeding challenging the 2013 approval, the 30-day statute of limitations still applied.

- **Mootness**

*Katz v. Town of Hempstead*, 235 A.D.3d 639 (2d Dep’t Feb. 5, 2025)

The Court held Petitioner’s challenge to area variances granted by the Zoning Board to permit a neighboring property to construct a new residence was moot, which is where “a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy,” as the work had been completed. The Court looked at the applicable factors, including, whether the Petitioner had sought injunctive relief, the work was undertaken without authority or in bad faith, the work was substantially complete and the work could be undone without undue hardship. Even though the Petitioner had sought injunctive relief before the trial court, when that motion was denied Petitioner did not seek intervention from the appellate court to maintain the status quo.

- **Necessary Parties**

*Supinsky v. Town of Huntington*, 234 A.D.3d 855 (2d Dep’t Jan. 22, 2025)

The Court held the Petitioner’s challenge to the Zoning Board granting area variances to construct an assisted living facility should not have been dismissed even though Petitioner failed to name the owners of the assisted living property – who were necessary parties – and the statute of limitations had expired to do so because “[w]hen a necessary party has not been made a party and is subject to the jurisdiction of the court, the proper remedy is not dismissal of the complaint or the petition, but rather for the court to direct that the necessary party be summoned.”

- **General Municipal Law § 239-m Referrals**

*Cardella v. Zoning Bd. of Appeals of Town of Ramapo*, 235 A.D.3d 974 (2d Dep’t Feb. 26, 2025)

The Court rejected Petitioner’s challenge of the Zoning Board granting certain area variances for failure to comply with the GML § 239-m referral requirements, finding that the record showed the Zoning Board responded to each comment provided by the Rockland County Planning Department and Petitioner failed to establish any of the responses was insufficient.

- **Standing**

*Green v. Town of Ramapo*, 227 A.D.3d 994 (2d Dep’t May 22, 2024)

The Court held petitioners did not have standing to challenge area variances granted related to a mixed-use development where Petitioners’ allegations that they were “neighbors” of the property did not automatically establish standing and Petitioners did not prove they owned or leased the adjacent property where they claimed to reside. Further, while close proximity to the project may create an inference of harm, Petitioners did not establish they would suffer a harm different from the public at large generally.

*Figueroa v. Town of Wallkill*, 232 A.D.3d 729 (2d Dep’t Nov. 13, 2024)

The Court held Petitioner, an alleged neighboring property owner, did not have standing to bring a claim challenging a local law adopted by the Town Board to permit multi-unit high density

residential apartments in a planned overlay district because Petitioner failed to establish he lived within sufficiently close proximity to the actual proposed structure (not the property line of the proposed structure) or had a cognizable injury different from other members of the public at large.

- **Intervention**

*Connectivity Systems, LLC v. Zoning Board of Appeals of Town of Ramapo*, 227 A.D.3d 984 (2d Dep't May 22, 2024)

The Court denied neighbors' motion to intervene in an Article 78 proceeding brought by a developer challenging conditions imposed on an area variance by the Zoning Board and the Planning Board's denial of site plan approval for a mixed-use development as movants would not be affected to the Zoning Board's variances, movants were not part of the development property and movants failed to show they would have any real and substantial interest in the outcome of the Article 78 proceeding.

- **Collateral Estoppel**

*Town of Riverhead v. Kar-McVeigh*, 229 A.D.3d 735 (2d Dep't July 24, 2024)

The Court held the Town was not precluded from initiating a litigation against a restaurant for failure to comply with the Town's zoning regulations. The Court rejected that these issues had already been litigated on the merits despite the Zoning Board's 2004 determination that the restaurant's catering was part of the preexisting, nonconforming restaurant use, which was challenged by the restaurant's neighbors at the time. The prior litigation did not preclude the Town's current claims that the restaurant could not legally expand that nonconforming use and that the expanded use was a public nuisance as the issues in this litigation were not previously decided by parties in privity of interest to the Town.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)**

*Carlson v. New York City Council*, 227 A.D.3d 406 (1st Dep't May 2, 2024)

The Court held that even though the New York City School Construction Authority misclassified a proposed public school project as an Unlisted action instead of correctly being a Type I action because of the project's proximity to a church designated as eligible for listing on the State Register of Historic Places, this did not require the SEQRA determination be overturned even though a Type I action carries a presumption of likely significant adverse impacts on the environment that would require the preparation of an environmental impact statement because both Unlisted and Type I actions require environmental review and the review undertaken by the SCA satisfied the standard of review for a Type I action where a full environmental assessment form was prepared, the SCA took a hard look at the potential adverse environmental impacts and the SCA provided a reasoned explanation for its determination.

*Sierra Club v. New York State Department of Environmental Conservation*, 227 A.D.3d 722 (2d Dep’t May 1, 2024)

The Court upheld the NYS Department of Environmental Conservation’s SEQRA determination that there would be no significant adverse environmental impacts; explaining that it is not the function of the reviewing court to substitute its own judgment for that of the administrative body whose expertise in the subject matter has been entrusted and where the record demonstrated the DEC looked at the relevant areas of environmental concern, took a hard look at them and made a reasoned elaboration for the basis of its determination. Therefore, the SEQRA determination was not arbitrary and capricious and was supported by a rational basis in the record.

*Clean Air Action Network of Glen Falls, Inc. v. Town of Moreau Planning Board*, 235 A.D.3d 1124 (3d Dep’t Feb. 20, 2025)

The Court overturned the Planning Board’s negative declaration with respect to the proposed development of a biosolids remediation and fertilizing processing facility. Even though the project was determined to be an Unlisted action (instead of a Type I action), once the Board determined that the 96,232 tons of carbon dioxide and 12.7 tons of designated hazardous air pollutants anticipated to be generated by the facility had the potential to have a moderate to large impact on the air quality, the Board should have issued a positive declaration mandating an environmental impact statement be prepared because the Planning Board did not take a hard look at the potential air impacts. The Court found the record was devoid of evidence that the impacts on air were “thoroughly analyzed” and while the Planning Board could rely upon the Department of Environmental Conservation’s standards in its analysis, the Planning Board could not rely solely on the fact that DEC permitting would be required to determine there would not be any adverse impacts.

*Bennett v. Troy City Council*, 231 A.D.3d 1386 (3d Dep’t Oct. 24, 2024)

The Court overturned the City Council’s determination that the proposed development of an apartment complex on 11 acres of vacant forested land would not have any significant adverse environmental impacts because the City Council failed to take a hard look at the potential impacts and its characterization of the project’s archeological impacts as “moderate” unduly minimized the historic/archeologic significance of the project site while omitting the Native American community as a consulting party. Despite vacating the SEQRA determination, the Court held the petitioner failed to meet her burden that the rezoning to facilitate the multi-family residential development was illegal spot zoning as a municipality’s zoning determination is entitled to a strong presumption of validity and was consistent with the City’s comprehensive plan in that it maintained the residential use while increasing residential units available and expanded access to the waterfront. But because the SEQRA determination was invalidated, the project was remanded to the City Council for further environmental review before the zoning could be re-adopted.

*Binghamton Plaza, Inc. v. City of Binghamton*, 228 A.D.3d 1041 (3d Dep’t June 6, 2024)

The Court rejected petitioner’s claim that the City improperly segmented the SEQRA review to acquire a deteriorated and mostly vacant 285,000-square foot strip mall where the SEQRA review focused on the eminent domain and did not address the redevelopment of the parcels because the City did not yet have a plan in place for the redevelopment. The Court found separating the two

SEQRA reviews would not be less protective of the environment because future redevelopment would require permitting by the DEC's site management program to clean up any contamination on the site.

## **WIRELESS TELECOMMUNICATIONS**

*New Cingular Wireless PCS LLC v. City of Jennings Louisiana*, 2024 WL 4507832 (W.D. La. Oct. 16, 2024)

The Court overturned the City's denial of a cell tower where the Planning and Zoning Boards approved the project but yet the City Council denied the rezoning on the grounds of generalized community opposition without supporting evidence – which does not satisfy the Telecommunications Act's "substantial and substantiated evidence" standard for denial of a cell tower. The Court granted Plaintiffs injunctive relief directing the City to issue the required permits and approvals necessary for the cell tower as the Court noted this was the second litigation regarding this matter and three years since the first rezoning application was filed and therefore, there was no basis to remand the matter to the City for further review and, instead, injunctive relief "best serves the TCA's state goal of expediting resolution of this type of action."

## **RELIGIOUS USES**

*Sumana Forest Retreat v. County of San Diego*, 2025 WL 126696, Case No. 24-cv-1196 (S.D.Ca. May 5, 2025)

The Court dismissed Plaintiff's substantial burden and equal terms claims pursuant to the Religious Land Use and Institutionalized Persons Act ("RLUIPA") where Plaintiff had commenced operating a Buddhist meditation retreat and installed ten yurts for the retreatants – without obtaining the required permits and approvals. The Court rejected Plaintiff's claim that the County's enforcement of the building and fire codes as it related to the yurts violated RLUIPA as Plaintiff could not demonstrate that building and fire codes were "land use regulations...that limits or restricts a claimant's use or development of land;" and in doing so distinguished the Second Circuit decision in *Fortress Bible Church v. Feiner*, 694 F.3d 208, which address the application of SEQRA in the context of RLUIPA. The Court further held Plaintiff's claims related to the County's requirement to obtain a permit for the meditation retreat use were not ripe because as Plaintiff had not finished the permitting process, there was no finality in the outcome or lack of possibility of another outcome; and in doing so the Court addressed the U.S. Supreme Court decision in *Pakdel v. City & Cty. of San Francisco*, 594 U.S. 474 (2021).

*Miller v. City of Burien*, 2025 WL 371874, Case No. 2:24-cv-1301 (W.D. Wa. Feb. 3, 2025)

The Court denied Plaintiff's RLUIPA claim alleging that the City requiring an existing Methodist Church to obtain a temporary use permit to operate an encampment for 100 unhoused individuals in its parking lot for three months was a substantial burden on its religious exercise. The City did not challenge the encampment was a religious use and the record demonstrated that the City was willing to accommodate the Church in processing the application, including waiving the permit fees, and it was a relatively simple process of completing a two-page application. However, Plaintiff refused to make the application arguing that just having to make the permit application was a substantial burden on its religious exercise. The Court rejected this and cited to other cases, including *Westchester Day School v. Vill of Mamaroneck*, 417 F. Supp. 2d 477 (S.D.N.Y. 2006),

to support that “requiring a church to comply with land-use regulations, in of itself, does not run afoul of RLUIPA.” The Court did acknowledge the decision may be different if the Church had applied for the permit and been denied, but that was not the case here.

*Indig v. Village of Pomona*, 2024 WL 4008231 (S.D.N.Y. Aug. 30, 2024)

The Court denied summary judgment dismissal of claims under the U.S. Constitution’s Equal Protection Clause and the Fair Housing Act that municipal officials allegedly discriminated against certain Village homeowners because of their religious affiliation. The Court further determined these officials were not entitled to qualified immunity. The Court engaged in a factual analysis of all incidents and statements alleged to have occurred by the municipal officials before determining there were issues of fact that warranted a trial.