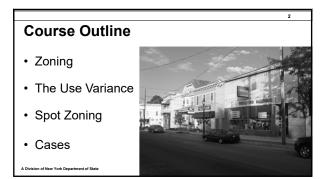
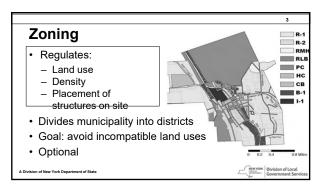


Spot Zone or Grant the Illegal Use Variance

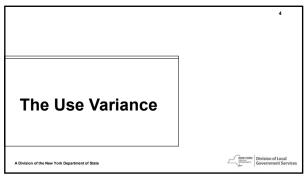
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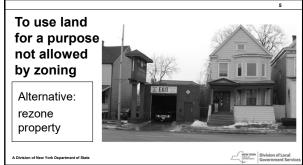
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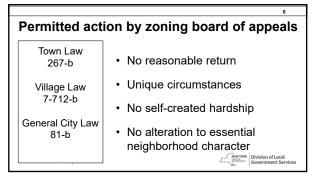




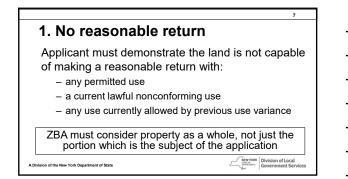


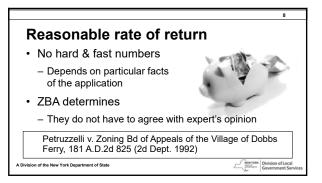


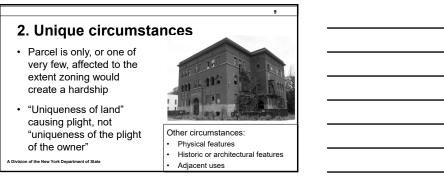










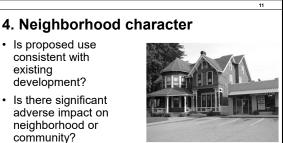


3. Self-created hardship

- · Examples:
 - Request relief from restrictions which existed at time of sale;
 - Owner bound by zoning restrictions, even without knowledge of them;
 - Spending money on project not allowed by zoning

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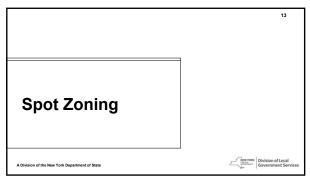
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FOR SALE 3.5 ACRES 185' FRONTAGE

584-5940

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Spot Zoning

To rezone one or a few parcels for the benefit of the owners and the detriment to those around them



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Spot Zoning

"...the relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community"

Rodgers v. Village of Tarrytown, New York Court of Appeals, 1951

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Rustuccio v. City of Oswego 2014, Appellate Division, 4th Department

Court found rezoning for hotel underwent review by county planning staff, city planning board, city council planning committee before council acted.

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- Said "strong presumption of validity" exists in zoning • amendments and that such amendments will not be disturbed unless they're found to be in conflict with comprehensive plan
- Court found legitimate interest consistent with 2020 Vision Plan A Division of the New York Department of State

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Hart v. Town Board of Huntington 2014, Appellate Division, 2nd Department

- · Rezoning of tract from 1 unit per acre to Retirement Community. Proposal for 66 units, several affordable.
- "Master Plan" included goals of maintaining low density, but acknowledged changing demographics and need for diversity of housing, including affordable and senior housing.
- Proposal higher density but preserved open space and provided senior and affordable housing.
- Court found rezoning consistent with overall priorities of comp plan. Not spot zoning. Division of Local Government Ser

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VTR FV, LLC v. Town of Guilderland

- 2012, Appellate Division, 3rd Department
- · Zoning amendment expanded definition of "nursing home." Owners of nearby assisted living facility challenged, fearing competition.
- Court said no standing because zoning does not protect business interests.
- Still ruled amendment does not constitute illegal spot zoning. Original enactment was to "encourage the creation of mixed use neighborhood."
- · Changed definition furthered purpose of original law. A Division of the New York Department of State Division of Local Government Serv

Rotterdam Ventures v. Town Board of Rotterdam 2012, Appellate Division, 3rd Department

- 2008 purchase of former military property zoned industrial but immune from zoning and used for multifamily housing. New owner requested town update comprehensive plan and rezone for multifamily housing.
- · Neighbor operating industrial park charged spot zoning.
- Court said factors considered for spot zoning: consistency with comp plan; compatibility with surrounding uses; likelihood of harm to surrounding property, etc.
- · Court agreed with town: proposal would benefit community.
- A Division of the New York Department of State

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Riya Finnegan LLC v. Township of S. Brunswick 2008, Supreme Court of New Jersey

- Developer filed site plan application for professional office and retail buildings that met requirements of C-1 zone.
- Residents asked township to rezone to Office, arguing area was already developed, and more retail would create more "traffic, noise, dust, and pollution."
- Council amended zoning, admitting it was inconsistent with "Master Plan" but added it would "prevent an intensification of traffic congestion" that would result from further commercial development.

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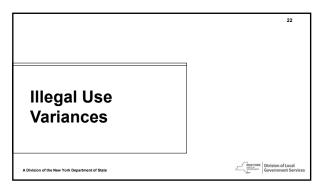
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Riya Finnegan LLC v. Township of S. Brunswick Reverse Spot Zoning

- Supreme Court of NJ held action was 1) arbitrary, capricious, and unreasonable; and 2) impermissible spot zoning.
- · Court's test: intent and effect of action
 - If intent or action was to further comprehensive planning, it was planned zoning.
 - Intent and effect in this case was to benefit neighboring community by rezoning one parcel differently than those around it, to the detriment of the owner: reverse spot zoning

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Elam Sand and Gravel v. Town of West Bloomfield 2016, Appellate Division, 4th Department

- Mine owner leased land when mining was permitted.
- Town passed moratorium on sand and gravel mining before SUP was issued, and ultimately prohibited mining in low density zone where property was located.
- Owner appealed for use variance. ZBA denied: applicant failed to prove 3 of 4 factors.
- Court found test was properly applied and upheld. Furveral Division of Local Covernment of State

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Defeo v. ZBA of the Town of Bedford 2016, Appellate Division, 2nd Department

- Site plan for car wash with express lube and detail mostly in "Roadside Business" with a portion in "Residential ½ Acre"
- · ZBA granted area and use variances.
- Neighbor challenged. Supreme court found use variance not supported by a rational basis.

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Defeo v. ZBA of the Town of Bedford 2016, Appellate Division, 2nd Department Appellate court agreed: hardship must be demonstrated by dollars and cents proof. Owners: without use variance property available for business was reduced by 27%, for retail by 35%, and for office 53%

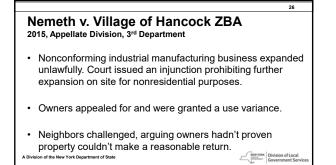
 Court: Developers entitled to reasonable, not necessarily most profitable, return.

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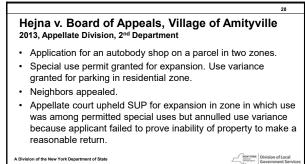


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Nemeth v. Village of Hancock ZBA 2015, Appellate Division, 3rd Department

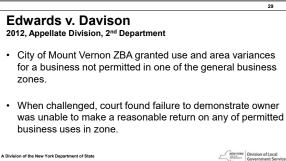
- Owners suggested it would cost much more to find site of similar size and that they would "go out of business" without use variance.
- Appellate court said claim did not constitute "dollars and cents" proof that property could not realize reasonable return.
- Lacking that proof, court argued, use variance should not have been granted, and invalided use variance.

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Vomeo v. City of New York 2009, Appellate Division, 2nd Department

- · City's board of appeals granted use variance for construction of commercial building on parcel zoned residential.
- · Court of Appeals reversed decision of appellate court, finding uniqueness factor was not satisfied.

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Washington Avenue Armory v. City of Albany

- "Rave" style music events in armory
- "Auditoria" permitted use in C-O District; no definition in zoning
- BZA: dictionary definition, fixed seating; use akin to "nightclub" in zoning
- Appellate Division ruled City must define "auditoria" in petitioner's favor
- Council could simply have amended zoning, but for use variances granted



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Use variance never acted upon

- Use variance granted for a tavern 15 years ago
- Tavern never opened
- Does variance go away?
- Only if a provision exists in zoning that a variance not acted upon expires within X months (usually 12)



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An informal survey

- Court reversal of denial of area variances: many
- Court upholding denial of area variances: many
- Court reversal of grant of area variances: a few
- Court reversal of grant of use variances: a few
- Court upholding grant of use variances: fewer
- · Court upholding denial of use variances: many
- Court reversing denial of use variances: none

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