

**WESTCHESTER MUNICIPAL PLANNING FEDERATION  
2017 LAND USE LAW INSTITUTE**

**ZONING CODE INTERPRETATIONS**

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**I. INTRODUCTION**

**A. Permitted Action by Zoning Board of Appeals Under New York State Law**

- a. Under municipal zoning codes, applicants may appeal a Building Inspector's interpretation of any provision of the zoning code or make a request for a variance to seek relief from said provision.
  - i. The zoning board of appeals has the authority to "reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken." NY Gen. City Law § 81-b(2); NY State Town Law § 267-b(1); NY Village Law § 7-712(b)(1).
  - ii. Unless otherwise provided by local law or ordinance, the jurisdiction of the zoning board of appeals (ZBA) is appellate only. The authority of the ZBA is limited to hearing and deciding appeals based on a review of any order, requirement, decision, interpretation, or determination, made by the Building Inspector or Code Enforcement Officer.

**B. Zoning Board of Appeals Procedure to Provide an Interpretation**

- a. Before the planning board can provide an interpretation of a zoning provision, the Building Inspector or Code Enforcement Officer must make a determination or provide an interpretation on the issue.
  - i. For example, the Building Inspector must determine whether or not a certain use is permitted in a specific zoning district.
- *Meier v. Village of Champlain Zoning Bd. of Appeals*, 11 N.Y.S. 3d 743 (3d Dep't 2015).

The property owner owned a residence in the Village of Champlain where he kept several chickens. Pursuant to the Village of Champlain Zoning Code, his home was located in a residential district. The Zoning Enforcement Officer for the Village notified the property owner that he was not allowed to keep chickens at his residence because such a use was considered agricultural and not permitted in the residential zoning district. In response, the property owner filed an appeal, seeking an interpretation of the Village Zoning Code and an appeal from the Zoning Enforcement Officer's decision. The Zoning Board denied the application and affirmed the Zoning Enforcement Officer's interpretation.

- b. The Building Inspector's determination may be reviewed by the ZBA if challenged by the applicant or by neighbors within 60 days of the filing of the order or decision

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appealed from. NY Gen. City Law § 81-a(5)(b); NY Town § 267-a(5)(b); Village Law § 7-712-a(5)(b). Any person aggrieved by any decision of the ZBA may appeal to the Supreme Court for review by a proceeding under article seventy-eight. Such proceeding must be instituted within 30 days after the filing of a decision of the ZBA in the office of the town clerk. NY Gen. City Law § 81-c(1); NY Town § 267-c(1); Village Law § 7-712-c(1).

- c. All other proceedings related to the action appealed from must stop while an appeal is pending. However, such proceedings may continue if the Building Inspector or Code Enforcement Officer certifies to the board of appeals that a stay on such proceedings would cause imminent peril to life or property. NY Gen. City Law § 81-a(6); NY Town § 267-a(6); Village Law § 7-712-a(6).

**II. STANDARD OF REVIEW**

**A. Role of the Zoning Board of Appeals**

- a. In an interpretation case, the role of the ZBA is to decide whether to uphold or overturn the Building Inspector's determination. The ZBA must find evidence in the record to support a decision to overturn or affirm the Building Inspector's determination.

**B. Review of the Building Inspector's Determination**

- a. The ZBA is required to use the "de novo standard" when reviewing the Building Inspector's or Code Enforcement Officer's original determination, rather than the arbitrary and capricious standard. The ZBA has the authority and responsibility to interpret the provisions of the Zoning Code and make any determination in its opinion as ought to have been made by the Building Inspector. Comparatively, judicial review of an administrative determination is limited to whether the administrative action is arbitrary and capricious or lacks a rational basis. This point will be further discussed later in the presentation.
- b. The ZBA may uphold the Building Inspector's determination and his interpretation of the Zoning Code after review of the Building Inspector's reasoning and other evidence in the record.
- c. The ZBA may not simply rely on the Building Inspector's determination, but must review the record and evidence presented before making a final determination.
- d. The ZBA is under no obligation to accept or give deference to the Building Inspector's determination. Under New York State Law the ZBA is required to make whatever determination the Building Inspector should have made in the first place. NY Gen. City Law § 81-b(2); NY State Town Law § 267-b(1); NY Village Law § 7-712(b)(1).

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- *Concetta T. Cerame Irrevocable Family Trust v. Town of Perinton Zoning Bd. of Appeals*, 776 N.Y.S. 2d 660 (4th Dep’t 2004).

Landowners applied to the Town of Perinton (Town) for a permit to build a 2,500-foot berm and noise barrier where their property adjoins an interstate highway. The Town's Commissioner of Public Works denied the application on the ground that additional information was required from landowners. The landowners appealed the Commissioner's decision to the ZBA. In its final determination the ZBA found that the Commissioner's decision was not arbitrary and capricious and affirmed the Commissioner's decision. The court concluded that the ZBA applied the wrong standard of review. The role of the ZBA is to provide an interpretation or determination "as in its opinion ought to have been made." This standard is set forth in the Town law. The role of the ZBA is not to review whether the Building Inspector's original determination was arbitrary and capricious.

- *Sand Land Corp. v. Zoning Bd. of Appeals of Town of Southampton*, 28 N.Y.S.3d 405( 2d Dep’t 2016).

Sand Land filed an application with the Town's Chief Building Inspector requesting a "pre-existing certificate of occupancy" for certain uses of the property. The Town's Chief Building Inspector found that Sand Land was entitled to a preexisting certificate and issued a certificate of occupancy. The neighbors appealed to the Town's Zoning Board of Appeals. The ZBA reviewed the evidence presented and vacated portions of the Chief Building Inspector's determination and certificate of occupancy. The ZBA was authorized to consider the Chief Building Inspector's determination de novo and make such a "determination as in its opinion ought to have been made in the matter" based on review of the record and evidence presented during the appeal. The ZBA does not have to give deference to the Building Inspector's determination.

**C. The ZBA's reasoning for its final determination must be documented in a final decision.**

- a. The ZBA must clearly explain its reasoning behind its final determination in a written decision. The written decision must demonstrate that the ZBA's final determination has a rational basis and is supported by substantial evidence. The court will review and scrutinizes the written decision to determine whether the ZBA's final decision was arbitrary and capricious. The ZBA's interpretation will be upheld if challenged in court if it has a rational basis supported by evidence in the record.

- *Greene v. Johnson*, 503 N.Y.S.2d 656 (2d Dep’t 1986).

The Building Inspector of the Town of Blooming Grove denied the landowner's application for a permit to perform certain alterations upon several dwellings providing that the proposed construction constituted an enlargement or extension of a nonconforming use. The landowner sought review of the Building Inspector's determination and if that determination was upheld, a variance. The Zoning Board of Appeals of the Town of Blooming Grove denied the variance application on the basis that

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the requisite hardship was not established. However, the ZBA did not issue any decision upholding or denying the Building Inspector's initial interpretation denying the permit application. The court was unable to complete any judicial review because the ZBA failed to provide any findings of facts with regard to the issue of whether the construction proposed was an enlargement or extension of a nonconforming use. The court directed the ZBA to review the evidence and issue such findings of fact.

- *In Emmanuel Brethren Assembly v. Village of Hempstead Board of Zoning Appeals*, 34 Misc.3d 1208(A) (Sup. Ct. Nassau Co. 2011)(unreported).

The board of appeals refused to render a decision and findings of fact and, instead, relied on the transcripts of four nights of hearings which, according to the board, constituted the basis for the board's decision at the final meeting. The court related that generally in the absence of a written decision and a proper statement of findings of fact, "the court is unable to intelligently exercise its review function." Consequently, the denial of the variance application was determined to be arbitrary and capricious.

### **III. MAKING AN INTERPRETATION**

#### **A. Review of the Zoning Code**

- a. Consider the intent of the law. Review old minutes and documents where the provision was discussed or contemplated. Review applications where the provision was at issue or applied. However, it must be noted that the intent of the law cannot override the clear provisions and language of the law, particularly when you are proscribing property rights.

- *Alfie's Fish and Chips of Houston Tex. v. Zoning Bd. of Appeals of City of Saratoga Springs*, 318 N.Y.S.2d 107 (3d Dep't 1971)

The city zoning ordinance provided that every amendment and every map incorporated must be entered in the minutes of city council and published and posted. One of the maps incorporated into the ordinance showed a tract as being zoned within a business district. The record indicated that the zoning district had never been amended. The city was not entitled to revoke property owners building permit on grounds that the tract was zoned for residential and not business because the City did not follow the code to properly rezone the parcel. The intention of the city council cannot override the clear provisions of the ordinance itself, especially since the zoning ordinance is to be strictly construed against the city, not the property owner.

- b. Consider whether a proposed use is compatible with other uses allowed in the zoning district at issue.

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**B. Interpretation of Statutory Terms**

- a. A zoning ordinance must be read as a whole. The ZBA must consider all relevant provisions of the Zoning Code.
  - i. “A statute or legislative act is to be construed as a whole, and all parts of an act are to be read and construed together to determine the legislative intent.” N.Y. Statutes § 98[a]
- *Matter of Saratoga County Economic Opportunity Council, Inc. v. Village of Ballston Spa Zoning Board of Appeals*, 977 N.Y.S.2d 419 (3d Dep't 2013)

The landowner was a not-for-profit organization that provided a variety of programs and services, many federally funded, in Saratoga County. The landowner wanted to purchase property located in the Central Business District Zone of the Village of Ballston Spa. The landowner applied to the Village Code Enforcement Officer for an interpretation of whether the services it planned to provide at that property were permitted by the Village zoning ordinance as a vital human service. The Building Inspector determined that the proposed uses were not permitted uses in the business district. The ZBA affirmed the Building Inspector’s determination. The Town Zoning Code provided that “any change of use on the ground floor of a structure located within the Central Business District Zone shall be used only for retail space with the exception of 1. vital human services; 2. offices by special permit; 3. churches and houses of religious worship; 4. libraries; 5. museums; 6. hotels; 7. banks and financial institutions; and 8. parking garages. Vital human resources is defined as “any health related services such as doctors, dentists, physical therapists, hair and skin care and other necessary human services.” A statute such as a zoning ordinance must be construed as a whole, reading all of its parts together. All of which should be harmonized to ascertain legislative intent and given its plain meaning, avoiding a construction that renders superfluous any language in the ordinance. Neither “health related services,” which is unambiguous, nor “other necessary human services,” which is somewhat vague, is defined in the legislation. The court reviewed the plain meaning of those terms. The court overturned the ZBA’s determination and found that the proposed uses qualified as a vital human service in that the use was health related and a necessary human service comparable to that offered by medical professionals, under the plain meaning and common understanding of those terms.

- *Matter of McLiesh v. Town of Western*, 891 N.Y.S.2d 825 (4th Dep't 2009)

The Zoning Board of Appeals for the Town of Western denied an application for an area variance to construct a detached garage on residential property. The court determined that the ZBA's interpretation of the Town of Western Zoning Ordinance had no rational basis and was arbitrary and capricious. A zoning ordinance must be interpreted as to give effect to all of its provisions, and an interpretation that nullifies any provision of a zoning ordinance is irrational and unreasonable. In this case, the ZBA applied the wrong section of the zoning ordinance in denying the application for area variance to construct a detached garage on residential property. The ZBA’s interpretation of one section of the

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zoning ordinance nullified the existence of another section and was therefore arbitrary and capricious.

- *Matter of Robert E. Havell Revocable Trust v. Zoning Bd. of App. of Vil. Of Monroe*, 8 N.Y.S. 3d 353 (2d Dep’t 2015)

The Assistant Building Inspector of the Village of Monroe advised a property owner that the proposed use of his parcel for automotive tire sales and service was a conditional use. The property owner appealed to the ZBA. The ZBA denied the application for interpretation and determined that the proposed use of the property for tire sales and service was a conditional use rather than a use permitted as of right. Under the Village Zoning Code, permitted uses and conditional uses are set forth in accompanying zoning schedules. The uses listed in column A of the applicable schedules “are permitted by right,” while the uses listed in column C “are permitted only on approval of the planning board. In the GB Zoning District in which the property was located tire sales were listed as both a permitted use and a conditional use. Section 200–3 of the Code the Village of Monroe provided that “[i]n the event of conflict in the terminology of any section or part thereof of this chapter, the more restrictive provisions shall control” (Code of the Village of Monroe § 200–3[B] ). Construing the Zoning Code with its schedules as a whole, that tire sales and related services were conditional uses in the GB Zoning District. The court affirmed the ZBA’s determination.

- b. The expression of one thing implies the exclusion of another.
  - i. “Where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.” N.Y. Statues §240.
- *Eaton v. New York City Conciliation and Appeals Board*, 56 N.Y.2d 340 (1982)

In this case the issue was whether residential apartments owned and operated by a religious institution and rented to the general public were exempt from rent stabilization laws. The Emergency Tenant Protection Act of 1974 provided that apartments previously vacancy decontrolled were to be restored to rent stabilization. However, the law provides an exemption for housing accommodations owned or operated by a hospital, convent, monastery, asylum, public institution or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis.” Where the statutory language is clear and unambiguous, the court should construe the statute to give effect to the plain meaning of the words used. Under the language of the statute rent stabilization housing, accommodations owned or operated by any institution exclusively for charitable or educational purposes on a nonprofit basis were clearly exempt. There was no language in the statute which would permit an interpretation providing a similar exemption for institutions operated for religious purposes nor is there statutory language which would suggest this legislative intent. The statute in this case clearly described the particular situations to which it applied. Where a statute describes the particular situations to which it is to apply an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or

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excluded. If the Legislature intended to extend the exemption to religious institutions, it would have chosen to do so through appropriately worded legislation. In view of the Legislature's failure to include religious institutions generally within the exemption provisions of the statute an "irrefutable inference" arises that housing accommodations owned or operated by religious institutions are outside the scope of this statute.

- *Biggs v. Zoning Bd. Of Appeals of Town of Pierrepoint, N.Y.*, 30 N.Y.S. 3d 797, 800 (S. Ct. St. Lawrence Cty 2016).

Mr. and Mrs. Frederick Biggs (the "Biggs"), challenged the determination of the Zoning Board of Appeals of the Town of Pierrepoint, New York. The Biggs filed a complaint with the Town of Pierrepoint to protest the neighbor's use of his property to process logs into firewood with a mechanical wood processor; the firewood was then trucked off the property for sale. The Biggs argued that the use occurring on the neighbor's property were commercial uses which violated the Town Zoning Code and were not permitted. The Town Code Enforcement Officer did not find any code violations and denied the complaint. The Biggs appealed to the ZBA. The ZBA reviewed the evidence and agreed with the Town Enforcement Officer to find that there were two activities being conducted on the neighbor's property- top soil screening and firewood processing. Because these uses were not specifically defined in the Zoning Code, the ZBA interpreted the firewood processing activity as a "Forestry" use which was permitted in the residential district. The Zoning Code of the Town of Pierrepoint defined "Forestry" as "the commercial operation of timber tracks, tree farms, forest nurseries, including the gathering and/or harvesting of forest products."

Biggs filed an Article 78 proceeding against the Town arguing that the firewood processing activity should have been interpreted by the ZBA as a "Natural Resource Based Industry" which is only permitted in the Open Country-Side Zoning District or the Agriculture Zoning District. The Zoning Code of the Town of Pierrepoint defined "Natural Resource Based Industry" as "manufacturing and industrial activities which depend upon the use of natural resources of the County as raw materials." The court found that by distinguishing and separately defining "forestry" and "Natural Resource Based Industry" the local zoning regulations made clear that the scope and duration of "Forestry" is inherently limited by the finite forest resources available on a particular property, while "Natural Resource Based Industries" are not so limited. Thus, the court read all the provisions of the zoning code to avoid a construction rendering any language superfluous with regards to the definition of "Forestry and "Natural Resource Based Industry"

Zoning Board of Appeals of the Town of Pierrepoint unreasonably determined that the landowner's firewood processing was classifiable as forestry, which was permitted use in rural-residential (R-R) district, rather than as natural resources based industry, which was prohibited use in R-R district. The only difference between the classifications was the source of the natural resources used as raw materials, with forestry depending on natural resources of subject property, but natural resource based industry depending on natural resources imported from outside subject property, specifically from county, so production

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of firewood by use of mechanical wood processor from logs transported onto subject property from other locations was excluded from definition of forestry.

- c. When there is an interpretation of a statutory term, zoning codes must be construed according to the ordinary definitions of the words used in a specific provision. It is appropriate to apply dictionary definitions when making your determination. Words in a statute are to be given their usual and commonly understood meaning, unless it is clear from the statute that a different meaning is intended. N.Y. Statutes § 232,
- *Witkovich v. Zoning Board of Appeals of Town of Yorktown*, 19 N.Y. S.3d 327 (2d Dep’t 2015)

A zoning code must be construed according to the words used in their ordinary meaning. The ZBA determined that the proposed structure, consisting of an attached den and garage area, was an addition to the main building, not an “accessory” building within the meaning of section 300–3(B) of the Town Zoning Code which provided that an accessory structure which was defined as “a subordinate building, whether or not attached to the main building via a breezeway or connecting corridor, the use of which is customarily incidental to that of a main building on the same lot.” Consequently, the ZBA found that the size limitations for “accessory” buildings set forth in section 300–14(D) of the Town Zoning Code were not applicable to the proposed structure. In reaching its determination, the ZBA considered record evidence that the proposed den area was to be used as conventional living space and not a connecting “breezeway” or “connecting corridor.” Since the terms “breezeway” and “connecting corridor” were not defined in the ordinance, the ZBA used the Dictionary of Architecture and Construction and the Merriam–Webster Dictionary to define those terms. The ZBA determined that, according those words their ordinary meaning, the den area of the proposed structure, designed to be an enclosed, heated living space, not open to the outdoors, cannot reasonably be construed to constitute a “breezeway” or “connecting corridor.” The court held that the evidence supported the ZBA’s determination that the proposed structure was an addition to the main building.

**C. Construing Zoning Regulations Against the Municipality**

- a. It is a general principal that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality, and any ambiguities in a zoning ordinance must be resolved in favor of the property owner.
- b. Any ambiguity in the language used in a zoning regulation must be resolved in favor of the property owner, particularly where a contrary interpretation would subject the landowner’s property to a lengthy and involved process contemplated by site plan approval.
- c. If the ZBA finds that the language in the Zoning Code is clear and unambiguous then the principle of interpretation must be construed in favor of the property owner is not applicable. If the ZBA does find that there is an ambiguity in the language of the Zoning Code, then such ambiguity must be resolved in favor of the property owner.

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- *Bonded Concrete Inc. v. Zoning Bd. Of Appeals of Town of Saugerties*, 702 N.Y.S.2d 184 (3d Dep't 2000).

Bonded Concrete owned a plot of vacant land zoned industrial in the Town of Saugerties. It applied to the Town Building Inspector for a certification of occupancy to place and operate portable concrete batch equipment on this property to produce concrete. The production of concrete is a permitted use in the industrial district under the Town's Zoning Law. The Building Inspector found that site plan approval was not required under the Town's Zoning Law for the proposed use on this property and issued a certificate of occupancy. Neighboring property owners appealed to the ZBA and the ZBA reversed the Building Inspector's decision and rescinded the certificate of occupancy. The court found that the Zoning Code was ambiguous as to whether site plan approval was required for this proposed use. Zoning restrictions are in derogation of the common law and, as such, must be strictly construed against the municipality which adopt and enforce them. Any ambiguity in the language employed must be resolved in favor of the property owner. Where a particular provision in a zoning ordinance is ambiguous and its context convincingly demonstrates that the ambiguity may be reasonably resolved in the landowner's favor, the court will strictly construe it against the municipality, particularly where a contrary interpretation would subject the landowner's property to a lengthy and involved process contemplated by site plan approval. Accordingly, the court concluded that the ZBA's interpretation resolving the ambiguity against the landowner was not rational or reasonable.

**IV. DEFERENCE TO ZONING BOARD'S INTERPRETATION**

**A. Interpretation of Zoning Provision**

- a. The ZBA has the power to interpret the provisions of a local zoning ordinance, code, or zoning resolution. An Article 78 proceeding can be brought to challenge a zoning or land use body's interpretation of a statute. In an Article 78 proceeding for review of a determination of the ZBA, the ZBA's interpretation of its own zoning ordinance is entitled to great deference, and it will not be overturned by the courts unless unreasonable or irrational.
  - b. If the matter is only an interpretation of the zoning code, the ZBA will be accorded great discretion interpreting an ordinance that addresses an area of zoning where it is difficult or impractical for a legislative body to lay down a rule which is definitive and all encompassing.
- *Sanantonio v. Lustenberger*, 901 N.Y.S.2d 109 (2d Dep't 2010).

Homeowner commenced Article 78 proceeding challenging determination of village zoning board of appeals, denying homeowner's application to review the Building Inspector's interpretation of village code. The Zoning Board of Appeals of the Village of Irvington interpreted the provisions of the Town's Zoning Code to determine that the homeowner's use of her residence for professional hairdressing did not qualify it as a home occupation. Generally, zoning ordinances are in derogation of the common law and

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must be strictly construed against the municipality; however, this rule is subject to the limitation that where it would be difficult or impractical for a legislative body to promulgate an ordinance which is both definitive and all-encompassing, a reasonable amount of discretion in the interpretation of the ordinance may be delegated to an administrative body or official. Under a zoning ordinance which authorizes interpretation of its requirements by the zoning board of appeals, specific application of a term of the ordinance to a particular property is governed by the board's interpretation, unless unreasonable or irrational. The court agreed with the ZBA and held that the proposed use of the residence for professional hairdressing was not authorized under the village code.

- *Stone Industries, Inc. v. Zoning Bd. of Appeals of Town of Ramapo*, 13 N.Y.S. 3d 92 (2d Dep't 2015)

The ZBA denied the landowner's application for an interpretation of the Code of the Town of Ramapo and affirmed the Building Inspector's determination that the proposed asphalt facility was not permitted use. In a proceeding pursuant to CPLR article 78 to review a determination of a zoning board of appeals, judicial review is limited to ascertaining whether the ZBA's action was illegal, arbitrary and capricious, or an abuse of discretion. The court concluded that where a determination is made by a zoning board of appeals after a public hearing, the determination of the zoning board should be upheld if it has a rational basis supported by evidence in the record. Here, it was rational for the ZBA to find production of asphalt from recycled materials, including recycled asphalt, was prohibited where the Town Code prohibited the primary production of asphalt.

- *La Russo v. Neuringer*, 962 N.Y.S.2d 633 (2d Dep't 2013)

Village residents filed an Article 78 proceeding to review a determination by Zoning Board of Appeals of the Village of Mamaroneck that a racing pigeon did not constitute a customary household pet. The ZBA determined that the landowner's proposed use of a coop in his backyard to keep and raise 40 or more racing pigeons, or "racing homers," did not qualify as keeping "a reasonable number of customary household pets" within the meaning of section 342-21(B)(7) of the Code. In reaching this determination, the ZBA considered record evidence that these pigeons would be specially bred, trained, and handled to compete in races, at least some of which may result in cash prizes. The court concluded that the evidence in the record supported the ZBA's determination.

**B. Legal Interpretation**

- a. Although the courts ordinarily defer to a ZBA's interpretation of a local ordinance, when the issue presented is one of pure legal interpretation of the underlying statutory terms of the zoning law or ordinance, deference is not required.
  - i. If the question is "a pure legal interpretation of statutory terms," deference by the court to the ZBA is not required. Deference associated with an agency applying its special expertise in a particular field only applies when an agency is interpreting statutory terms. The ultimate responsibility of interpreting the law is that of the court,

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particularly where an issue is one of first impression for the board and does not involve a long-standing practical construction of a statute.

- *Toys R Us v. Silva*, 89 N.Y.2d 411 (1994)

A landowner commenced an Article 78 proceeding to annul the Board of Standards and Appeals' (BSA) revocation of a building permit to maintain a nonconforming use. The BSA determined that the use of the building failed to preserve the nonconforming use status of the property. The Board of Standards and Appeals (BSA), comprised of five experts in land use and planning, is the ultimate administrative authority charged with enforcing the Zoning Resolution. Consequently, in questions relating to its expertise, the BSA's interpretation of the statute's terms must be given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute. Its determination, moreover, must be sustained if it has a rational basis and is supported by substantial evidence. Where, however, the question is one of pure legal interpretation of statutory terms, deference to the BSA is not required. The Court of Appeals determined that the question regarding the standard for abandonment under the Zoning Resolution was a pure legal question that did not mandate deference to the BSA, instead the court made a determination as to whether the BSA's conclusion that Morgan abandoned a nonconforming warehouse use was supported by substantial evidence.

- *Bartolacci v. Village of Tarrytown Zoning Board of Appeals*, 41 N.Y.S. 3d 116 (2d Dep't 2016)

The Zoning Board of Appeals of the Village of Tarrytown determined that the village planning board had the authority to review the applicant's building permit application. The applicant commenced an Article 78 proceeding to challenge the ZBA's determination. In a proceeding pursuant to CPLR Article 78 to review a determination of a zoning board of appeals, a zoning board's interpretation of its zoning ordinance is entitled to great deference, and judicial review is generally limited to ascertaining whether the action was illegal, arbitrary and capricious, or an abuse of discretion. However, where the issue involves pure legal interpretation of statutory terms, deference to the zoning board of appeals is not required. In such circumstances, the judiciary is free to ascertain the proper interpretation from the statutory language and legislative intent. The court determined that the issue in this case was a question of legal interpretation. The court independently reviewed the law and found that the ZBA complied with applicable legal principles.