

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D23606  
W/kmg

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Argued - May 18, 2009

ROBERT A. SPOLZINO, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2008-09732

DECISION & ORDER

In the Matter of 1215 Northern Boulevard, LLC,  
appellant, v Board of Zoning Appeals of Town  
of North Hempstead, respondent.

(Index No. 6461/08)

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Sahn Ward & Baker, PLLC, Uniondale, N.Y. (Michael H. Sahn and Jason Horowitz  
of counsel), for appellant.

Richard S. Finkel, Town Attorney, Manhasset, N.Y. (Simone M. Freeman of  
counsel), for respondent.

In a proceeding, inter alia, pursuant to CPLR article 78 to review a determination of  
the Board of Zoning Appeals of the Town of North Hempstead dated June 6, 2007, which, after a  
hearing, denied the petitioner's application for conditional use permits and area variances, the  
petitioner appeals from a judgment of the Supreme Court, Nassau County (Iannacci, J.), entered  
September 29, 2008, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The petitioner applied for a permit to demolish an existing building and use the parcel  
for off-street employee parking. The Town of North Hempstead Department of Building Safety,  
Inspection & Enforcement denied the application and informed the petitioner that the intended use  
required conditional use permits and area variances. The petitioner submitted an application for the  
conditional use permits and area variances to the Board of Zoning Appeals of the Town of North

June 23, 2009

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Hempstead (hereinafter the BZA). The application ultimately was denied because the BZA interpreted the Code of the Town of North Hempstead (hereinafter the Town Code) as requiring a use variance, not conditional use permits, for the petitioner's intended use. In this ensuing proceeding pursuant to CPLR article 78, the Supreme Court determined that the BZA's denial of the application was proper and, in effect, denied the petition and dismissed the proceeding. We affirm.

“Under a zoning ordinance which authorizes interpretation of its requirements by the 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” (*Matter of Frishman v Schmidt*, 61 NY2d 823, 825; see *Matter of Kennedy v Zoning Bd. of Appeals of Vil. of Patchogue*, 57 AD3d 546; *Matter of Conti v Zoning Bd. of Appeals of Vil. of Ardsley*, 53 AD3d 545, 547). Here, the BZA's determination that the petitioner's proposed use of the premises as an employee parking lot for its nearby business did not constitute “[p]arking space for the parking, storage and sale of automobiles” (Town Code § 70-126.D [emphasis supplied]) was neither unreasonable nor irrational. There is no merit to the petitioner's argument that the use of the word “and” by the drafters of the relevant Town Code provision must properly be interpreted to mean “or.”

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court