

# Condition rescission

Court rules against town requirement for owner occupancy

By DAVID WINZELBERG

A zoning condition that required a two-family home to be occupied by its owner has been struck down by a precedent-setting court ruling, which could call similar zoning rules by other municipalities into question.

The case against the Town of Hempstead originated after its Board of Appeals tried to impose a requirement that a two-family home in Bellmore must be occupied by its owner. The property on Bellmore Road had been granted a variance for it to be used as a two-family home in 1956. The variance eventually lapsed and when the new owner renewed the variance, the town approved the application but with several conditions, one of which was that the owner must live in one of the two units in the house.

State Supreme Court Associate Justice Denise Sher annulled the condition in a Dec. 10 decision, ruling that the condition is illegal because it pertains to "who owns and occupies the subject premises and not the real estate itself. Conditions which relate not to the real estate involved, but to the person who owns and occupies the subject real estate, are invalid."

Attorney Christian Browne, a partner of the Sahn Ward Coschignano law firm in Uniondale, who represented homeowner Kenneth Sullivan, had argued that the owner-occupied condition is illegal and unenforceable because a zoning board is not permitted to regulate who uses or owns a property, but only how such property is used.

"The court applied the law properly and we are pleased with the outcome," Browne said. "A zoning board may only regulate the use of land and not by whom it is used. Thus, this ruling calls into question the legality of these kinds of condi-



CHRISTIAN BROWNE: 'The zoning is about how the property is used, not who uses it.'



The two-family house at 1541 Bellmore Road in Bellmore.

tions that are commonly imposed on homeowners, not only in the Town of Hempstead, but by municipalities throughout the region."

It's not known whether the town will appeal the court ruling. Both the town's outside counsel on the

case, attorney Darnell Morrow of the Bee Ready Fishbein Hatter & Donovan law firm in Mineola, and an official from the town's Board of Appeals declined to comment.

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