

Court Upholds Denial of Use Variance for a Ski Lift

The Appellate Division upheld a Zoning Board's denial of a use variance to extend a ski lift over a currently unused parcel. In [Matter of Holimont, Inc. v Village of Ellicottville Zoning Board of Appeals, et.al.](#) the Court noted that the applicant failed to meet the criteria for obtaining a use variance. Although, the applicant submitted expert evidence on the issue of why it could not obtain a reasonable return without the use variance, the Court held:

"...the "sole province of the ZBA . . . as administrative factfinder" to resolve issues of credibility (Matter of Supkis v Town of Sand Lake Zoning Bd. of Appeals, 227 AD2d 779, 781). Additionally, petitioner failed to establish that its proposed development would not alter the essential character of the surrounding neighborhood (see Matter of Genser v Board of Zoning & Appeals of Town of N. Hempstead, 65 AD3d 1144, 1147). Indeed, the record establishes that permitting petitioner to maintain an active ski lift and snowmaking equipment on its parcel will alter the quiet residential area surrounded by nature in which that parcel is located because of the increased use of the parcel. Finally, the record establishes that petitioner's hardship was self-created inasmuch as petitioner previously had stipulated to restrictions calling for an "undisturbed green area" in the location petitioner now seeks to develop..."

[-Steven Silverberg](#)