

PRESS RELEASE

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Simplex Technologies Inc. has dropped its law suit which sought approval to use a portion of its industrial land for retail uses.

In 1997 Simplex Technologies Inc. (now known as Ty-com) applied to the Newington Board of Adjustment for more than a dozen variances in order to locate two commercial buildings on its property. Because this land had been zoned exclusively for Industrial uses for more than 40 years, the Board of Adjustment denied the request. After a two day trial in the Rockingham County Superior Court in May of 1998, Judge Richard Galway found that “the Town’s justification for denying the plaintiff’s request for variances is extremely reasonable,” and that the ordinance “bears a substantial relationship to the welfare of the community...”. Galway then dismissed the case.

In a subsequent appeal, the New Hampshire Supreme Court indicated that the Trial Court applied the law correctly, but announced that it was changing the definition for unnecessary hardship to make it easier for landowners to obtain variance relief in the future. The Supreme Court remanded the case back to the Rockingham County Superior Court to decide the case in light of the new definition. By withdrawing its appeal on the eve of the Superior Court remand hearing, Simplex gave up its effort to try to get the Trial Court to reverse its 1998 ruling.

Newington Town Planner Thomas Morgan noted that the Trial Court’s recognition of the importance of preserving the integrity of the Newington Industrial District was critical. “If the Town did not have the ability to prohibit retail uses from creeping into the heart of its Industrial District, the Town might not be enjoying the benefits of a new 350 million dollar gas-fired electrical generation plant and New Hampshire would not be guaranteed another source of power to help avert the type of problems that are plaguing California.”