

Bond Case Briefs

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ZONING - NEW JERSEY

Price v. Himeji, LLC

Supreme Court of New Jersey - June 25, 2013 - A.3d - 2013 WL 3184784

Landowner filed complaint against developer to bring action in lieu of prerogative writs to set aside zoning board's approval of variances for developer's multi-unit residential building.

The Supreme Court of New Jersey held that:

- Application for variance required evaluation of whether use would promote the general welfare, not that there was no other potential location for the use;
- Appellate division properly exercised original jurisdiction; and
- Zoning board demonstrated compliance with negative criteria for developer's application.

The Municipal Land Use Law exhibits a preference for municipal land use planning by ordinance rather than by variance, which is accomplished through the statute's requirements that use variances be supported by special reasons and proof of the negative criteria.

Proof of the negative criteria requires the applicant for use variance to demonstrate, in accordance with the enhanced quality of proof, both that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.