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The Role of Precedent in Granting Bulk Variances

Variance applicants often face concerns by board members that approval of the requested relief will establish a precedent which future applicants can rely upon in claiming their own entitlement to relief. Perhaps this phenomenon occurs most frequently in the context of sign variances, out of concern that approving one oversize sign will lead all local businesses to seek their own oversize signs, but it can just as easily occur in applications for setback or other variances.

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Applicants and their attorneys typically respond to these concerns by arguing that each case stands on its own merits, based on the particular facts and circumstances that relate to individual future variance requests, and that the grant of relief in one instance does not obligate the board to grant future variances when the same type of relief is sought.

For example, one recent court decision confirmed that past precedent does not, in and of itself, justify the grant of variances to subsequent applicants. The case involved redevelopment of an existing lot which did not meet lot frontage and lot width requirements. These deficiencies were existing conditions that the applicant did not propose to change. The board granted relief, with the support of its attorney, on the basis that similar applications had been granted in the past.

An appeal was filed, presumably by a neighboring property owner. In its opinion, the court pointed out that the board was required to consider the statutory criteria applicable to variances. However, the record did not reflect that the board had considered them. The court concluded that prior precedent "does not obviate" the board's obligation to consider and apply the statutory criteria. Moreover, the court also found that other than the attorney's "conclusory statement…it was never established that applications for…variances involving similar factual circumstances had been granted in the past." Thus, not only did the board fail to apply the statutory criteria, it did not even establish a factual record with respect to the prior variances that had been granted and the factual circumstances which existed to support that relief. Therefore, the case was remanded to the board for a new hearing and determination.

This decision, and others like it in a number of jurisdictions, serves as an important reminder that each variance application must stand on its own merit. Although past precedent may be a relevant consideration when deciding a variance application, it does not substitute for meeting the statutory criteria which apply to the grant of variance relief. If the facts in a subsequent variance application are substantially similar to prior cases in which variance relief was properly granted, the grant of similar relief may be appropriate, but only if the board is satisfied that the statutory criteria are met.

As a result, the concern that granting one variance will establish a precedent that requires others to be granted in the future largely is overblown since each case involves unique facts and circumstances. Thus, applicants and their attorneys would be well served to remind land use boards that past precedent, in and of itself, will not necessitate the grant of future variance relief to applications that do not on their own merit satisfy the statutory criteria. Understanding that point could assuage concerns that granting an otherwise meritorious variance request creates an obligation to grant other variances in the future.

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