

ZBA

DATE August 20, 1974

LEGAL OPINION

TO: ANTHONY SBONA, MAYOR
FROM: FRANCIS O'NEILL, CITY ATTORNEY
SUBJECT: REQUEST OF ZONING BOARD OF APPEALS - RE: HEARINGS ON
SUCCESSIVE APPLICATIONS

FACTS:

An application was made to the Zoning Board of Appeals for a side yard variance to erect a building. The application was heard April 30, 1974. It was denied at a meeting held May 21, 1974. The applicant has submitted a new application apparently seeking the same variance involving the same property as was sought in the previous application which was denied. The applicant was not represented by an attorney on the first application. He is now represented by an attorney who has stated that a new application is being resubmitted with some changes and that additional information will be submitted which was not submitted at the original hearing to prove undue hardship.

QUESTIONS:

The following questions are raised by the request:

1. Does the ZBA have authority to reverse its prior decision denying a variance?
2. Who decides whether the application is seeking substantially the same relief as has already been denied?

1. If it is determined that substantially the same relief is requested, must the board hold a hearing on the new application?

4. If so, what procedure should be followed?

OPINION

It has clearly been the law in this state for many years that a Zoning Board of Appeals may not reverse its prior decision denying a variance unless there is evidence presented of a change in conditions or that other considerations materially affecting the merits of the subject matter have intervened and no vested rights have arisen. *Mynyk* The Board of Zoning Appeals, 151 Conn. 34, 193 A 2d 519; Conn Law of Zoning, 41, CBJ 261, 461. This is the generally prevailing rule throughout the United States. 3 American Law of Zoning, Section 16.52. The reason for the rule as stated by the courts is that otherwise there would be no finality to the proceedings and the result would be subject to change at the whim of members or due to the effect of influence exerted upon them, or other undesirable elements tending to uncertainty and impermanence. *St. Patrick's Church Corp. v. Daniels* 113 Conn 132, 137, 154 A 345.

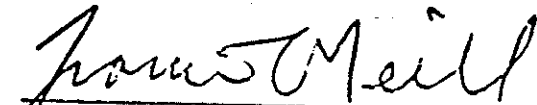
To authorize a reversal of a prior decision, there must be an actual change in circumstances or other material considerations such as a change in the neighborhood or vicinity of the proposed variance since the earlier decision. *Dadurkian v. Zoning Board of Appeals* 135 Conn 706, 68 A 2d 123. The changed conditions which are required are not merely newly thought of grounds which

could have been presented at the earlier hearing. There must be something which was not and could not have been advanced as a reason for seeking the prior application. It must relate to some material new factor which was non-existent when the prior application was denied. Slipperly v. Board of Appeals 140 Conn 164, 98 A 2d 90. The Zoning Board of Appeals is without authority to reverse a prior decision where it merely reviews evidence which was presented or could have been presented at the first hearing. Bright v. Zoning Board of Appeals 149 Conn 698, 699, 183 A 2d 603.

It is for the Zoning Board of Appeals in the first instance to determine whether an application seeks substantially the same variance which has already been denied. Fiorilla v. Zoning Board of Appeals 144 Conn 275, 129 A 2d 619. If upon examination, the board finds that an application seeks the same variance as one which has already been denied, the better practice is for the board to schedule a hearing rather than deny the application without a hearing. However, upon a hearing on such an application, the board first must satisfy itself that there has been a change

of conditions or that other considerations materially affecting the merits of the subject matter have intervened and no vested rights have arisen before considering the merits of the application. Once this rule is satisfied, the board may then consider the merits of the request using the same criteria that the board would consider in otherwise passing upon a variance within its power under the statute.

There is no statute requiring a waiting period before a second application may be submitted for the same variance. This is consistent with the rule requiring a change of conditions since a change may occur in a relatively short period of time.


Francis O'Neill
City Attorney