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SUPREME COURT UPHOLDS RELAXED STANDARD FOR GRANT OF A CONDITIONAL USE VARIANCE

In *TSI East Brunswick, LLC v. East Brunswick Zoning Board of Adjustment*, the Supreme Court of New Jersey held that zoning boards of adjustment must use the “relaxed standard” of proof, known as Coventry Square criteria, when evaluating the negative criteria in an application for a conditional use variance. The “enhanced quality of proofs,” known as the Medici criteria, is inapplicable to an application for a conditional use variance. This decision is expected to make it easier to secure conditional use variances.

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The use variance and the conditional use variance are among the six types of “d” variances established by the Municipal Land Use Law (MLUL), N.J.S.A. 44:55D-70(d). Under the MLUL, an applicant for the “d” variance must establish that there are “special reasons” warranting the variance; this is known as the positive criteria. The applicant must also establish that the variance will not cause “substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance;” this is known as the negative criteria.

In the 1987 case of *Medici v. BPR Co.*, the Supreme Court held that an applicant for a use variance must satisfy these criteria by an “enhanced quality of proofs.” The Court reasoned that enhanced proofs are warranted because a use variance is inherently at odds with the uses permitted in the zone as established by the municipality’s zoning ordinance. The “enhanced quality of proofs” requirement was intended to ensure that the negative criteria would remain “an essential ‘safeguard’ to prevent the

improper exercise of the variance power.”

In its 1994 decision in *Coventry Square, Inc. v. Westwood Zoning Board*, the Supreme Court decided that the enhanced quality of proofs does not apply to a conditional use variance. In contrast to a use variance, which involves a use the governing body has prohibited, a conditional use variance involves a situation where the use, if it complies with certain conditions, is permitted. The Court reasoned that an inability to comply with one or more of these conditions does not convert the use into a prohibited one.

The specific issue before the Court in *Coventry Square* was the standard of proof required to satisfy the positive criteria in an application for a conditional

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use variance. That case did not explicitly address the proofs required to satisfy the negative criteria. This led to confusion as to whether zoning boards should apply the relaxed standard of proof or the enhanced quality of proofs when evaluating whether an applicant for a conditional use variance has satisfied the negative criteria.

The Supreme Court’s decision in *TSI East Brunswick* eliminates this ambiguity, holding that in the conditional use variance context, the relaxed standard of proof applies across-the-board to both the positive and negative criteria.

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About the Author



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