

June 27, 2013

## NJ Supreme Court Clarifies "Particularly Suitable" Zoning Standard

On June 25, the New Jersey Supreme Court issued a unanimous decision in which it clarified the meaning and intent of the "particularly suitable" standard under N.J.S.A. 40:55D-70(d)(1). In *Price v. Himeji, LLC*, the court considered whether, to prove particular suitability, a land developer needs to show that the proposed project must be constructed at the proposed location because it is the only one available. Defendant Himeji had applied to the municipal zoning board for approval to demolish three existing multi-unit residential buildings and to construct in their place a single new multi-unit residential building. Because the proposed use was not permitted in the mixed residential district in which the property was located, Himeji's application sought a use variance pursuant to N.J.S.A. 40:55D-70(d)(1). The application also sought certain other relief, including density and height variances, certain bulk variances, and waivers from site requirements.

In support of the application, Himeji presented expert testimony that the property was particularly suited for the proposed development because, among other reasons, it is a compilation of several contiguous lots, is a "through" lot with frontage on two major roads, is oversized in comparison to nearby properties, is immediately adjacent to a zone in which the proposed use is permitted, and is near several existing buildings of like size and dimension. In light of this testimony and the zoning board's determination that the proposed development satisfied numerous purposes of the Municipal Land Use Law and would not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance, the zoning board granted the requested variance and waiver relief and approved Himeji's site plan.

The plaintiff, a neighbor who objected to the application at the zoning board hearings, thereafter filed suit seeking to set aside the zoning board's determination. The trial court reversed the zoning board's grant of Himeji's application, concluding Himeji did not prove that the location was particularly suitable, because it failed to prove there was "no other viable location" for the proposed development.

The court, in affirming the Appellate Division's reinstatement of the zoning board's determination, clarified what an applicant must demonstrate in order to prove particular suitability of a location for a proposed use. The court concluded that the particularly suitable standard does not require proof that the site be the only possible location for the particular project nor that the project "must" be built in a particular location. Rather, the standard is met by employing a more flexible, site-specific approach in which the focus is on whether the property itself is particularly suited for the proposed use, in the sense that it is especially well-suited for the use, in spite of the fact the use is not permitted in the zone.

The *Price* decision is significant because it provides greater clarity with respect to the standard that applicants are required to meet when proving particular suitability of a location. Detailed proofs, including those that distinguish the property from surrounding sites and demonstrate a need for the proposed use, should still be presented. Although the availability of alternative locations is still relevant to the analysis, the *Price* decision relieves, to an extent, applicants of the burdensome and oft-imposed condition of disproving the suitability of any number of alternative locations for a proposed development.