

**COURT DENYS INTERVENOR THE RIGHT OF PLANNING BOARD TO  
ENTER INTO SETTLEMENT DISCUSSIONS OF ACTION IN LIEU OF  
PREROGATIVE WRIT**

**By: Frank J. Petrino, Esq. and Todd D. Greene, Esq.**

On May 9, 2008, Judge Linda Feinberg, A.J.S.C. issued an opinion in Ricciardi Family, L.L.C. v. Zoning Board of Adjustment of Princeton Township, Governor's Lane Condominium Association, and Brian and Leahbeth McDonald, MER-L-1960-07, denying an intervenors' motion to enjoin settlement discussions between the plaintiff and the Zoning Board of Adjustment to resolve a prerogative writ action. Citing Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super 161 (Law Div. 1987), Judge Feinberg held that the parties may engage in settlement discussions provided that any settlement reached be subject to the procedural safeguards of the Municipal Land Use Law including "notice, public hearing, public vote and written resolution."

Plaintiff, Ricciardi Family, LLC, a New Jersey Limited Liability Company, is the owner of Block 56.01, Lots 2 and 4, with a combined acreage of 14.13 acres, located in Princeton Township, Mercer County, New Jersey, adjacent to Bunn Drive. Morgan Estates, L.L.C. was the contract purchaser of the above-described property and in 2005 applied to the Princeton Township Zoning Board of Adjustment ("Board") for approvals to construct ninety-eight (98) age-restricted senior housing units (later amended to 96), with twenty (20) to be designated "affordable units", on Lots 2 and 4 ("the Application"). The Application also included one hundred eighty three (183) below ground and surface parking spaces and detention basins.

In furtherance of the Application, the Plaintiff requested a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit age restricted housing on Lot 2, zoned Office-Research, and on Lot 4, zoned Residence District-2. Additionally, the Plaintiff requested a "(d)(4)" variance pursuant to N.J.S.A. 40:55D-70(d)(4), to exceed the maximum floor area ratios on Lot 2 and Lot 4. The Plaintiff also requested a "(d)(5)" variance to exceed permitted density on Lot 4, as well as to the extent necessary or required, any additional bulk or "c" variances", or design waivers necessary to develop the premises, including a lot area variance for Lot 2, a steep slope variance for a portion of Lot 2, and parking space variances and waivers.

The Board approved the Application as to Lot 2, but denied the Application as to Lot 4. In response to the denial, the Plaintiff filed a Complaint in Lieu of Prerogative Writ, seeking to reverse the Board's decision with respect to Lot 4 and to stay the one-year expiration period for the approval for Lot 2 pending the outcome of this litigation.

On October 30, 2007, the attorney for the Plaintiff and the Board agreed to permit Governor's Lane Condominium Association and Brian and Leahbeth McDonald, the owners of properties near the Plaintiff's property, to intervene as parties in this litigation.

Over the course of the next three months, the Plaintiff and the Board's attorney engaged in settlement discussions and the Plaintiff submitted a proposal to change certain elements of the development in order to address the Board's concerns. During the course of the communications between the Plaintiff, the Board and the Intervenors, neither the Board staff nor the Board itself took a position on the proposed settlement. Despite this fact, the Intervenors filed a motion to enjoin the Board from accepting the Plaintiff's proposal and to hold a public hearing and vote on whether to resolve this litigation.

Frank J. Petrino, Esq. successfully argued on behalf of the Plaintiff that the Intervenors application to enjoin the Zoning Board of Princeton Township from presenting a potential settlement of its litigation with the Plaintiff to a vote at a public hearing had no merit. Mr. Petrino established that the Intervenors could not demonstrate the elements necessary for injunctive relief. Moreover, he argued that the Intervenor's application contravened the holding in Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super 161 (Law Div. 1987) where Judge McGann held that a board can submit a conditional settlement to a prerogative writ litigation to a public hearing and public vote for approval.

Judge Feinberg, A.J.S.C. agreed with Mr. Petrino on all counts and denied the Intervenors' application to enjoin the parties' settlement discussions. Moreover, the Court cited Judge McGann's Whispering Woods opinion with approval and directed the parties to follow the due process procedures outlined therein in approving any settlement.

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