

PUBLICATION

LEED Gold Rating Not Enough to Save Building's Zoning Variance

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November 03, 2015

A New Jersey court recently reversed a variance issued by a zoning board to a building designed to achieve LEED Gold certification. The owner of the planned office building sought and obtained site plan approval and a height variance from the zoning board. Among other things, the zoning board found that the landscaping plan "conserves natural resources and prevents degradation of the environment," that the site plan fulfilled planning goals of reducing impervious coverage, and that achieving the LEED Gold standard for energy use, recycling and waste disposal "promotes the [land use law's] purpose of promoting utilization of renewable energy resources."

Despite the positive attributes of the LEED building design that influenced the zoning board's issuance of the variance, the court reversed the decision. The court did not reject or dispute the benefits of the LEED building design. Rather, the court essentially found that the zoning board had only focused on these positives, and improperly omitted consideration of the building height's negative effect on the surrounding neighborhood. Specifically, the building would have been visible above the tree line, which would "dramatically" affect the view of a preserved, historic area.

The court's reversal of the variance should not be seen as a rejection of LEED design at all. Instead, it is perhaps a cautionary tale that owners and developers should not expect the achievement of the popular LEED rating system to solve all their problems or marshal universal public support in favor of their development. Ultimately, it appears that the LEED design was useful in initially obtaining the variance, but that other key factors outside the purview of the LEED rating system carried the day.

On a positive note for owner, the court did affirm the issuance of a bulk variance reducing the number of required parking spaces. The zoning board had found that the parking variance was a better zoning alternative "by enabling increased green space and LEED Gold architecture." Although challenged like the height variance, the court upheld the parking variance because it "advanced the purposes of the [land use law] and did not act as a detriment to the zone plan or ordinance." Thus, with respect to the parking space variance, the LEED design was a factor in convincing the zoning board to issue the variance and court to uphold it.

The case is *Jacoby v. Zoning Board of Adjustment of the Borough of Englewood Cliffs*, 2015 WL 6160248 (N.J. Super. Ct. App. Div. Oct. 21, 2015).