

CA - ~~111~~ general

5/3/1984

memo to Urban League Team re:  
Minor Site Plan Approval

pg 2

CA 002272D

TO: URBAN LEAGUE TEAM  
RE: MINOR SITE PLAN APPROVAL  
FROM: RACHEL L.  
DATE: MAY 3, 1984

New Jersey Municipal Land Use Law (MLUL), 40:55D-46.1 c., Minor site plan approval: The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of 2 years after the date of minor site plan approval. L. 1979, c. 216, sec. 14.

But see Urban Farms, Inc. v. Borough of Franklyn Lakes, 179 N.J. Super. 203, 431 A.2d 163 (A.D. 1981) holding that although economic reliance by developer on permit issued prior to zoning ordinance amendment will defeat its retroactivity, applicability of substantial reliance doctrine requires weighing of factors of nature, extent and degree of public interest to be served by ordinance, and nature, extent and degree of developer's reliance on state of ordinance under which he has proceeded, extent to which his undertaking has been at any point approved or encouraged by official municipal action, and extent to which developer should have been aware that municipality would be likely to change ordinance prior to actual commencement of construction. [emphasis added.]

Although 40: 55D-46.1 (c) seems not to have taken effect until January, 1980 it seems logical that retroactivity should be easier to apply to a site plan approval than to an actual building permit. In

Hill Homeowners Association v. City of Passaic, 156 N.J. Super 505, 384 A.2d 172 (App. Div. 1978) held that site plan approval does not warrant against future zoning restrictions. In that case defendant builder obtained a permit for demolition of the foundation, but a new zoning ordinance that became effective after the issuance of the permit made the proposed highrise apartment building a nonconforming use. Since a valid building permit was not issued, there was no proper reliance by the builder.

Another 1979 case, Burcam Corp. v. Planning Bd. of Medford Tp., 168 N.J. Super. 508, 403 A.2d 921 (A.D. 1979), held that a municipality may change its regulating ordinances in area of land use after application has been filed and even after a building permit has been issued.

That same case held that as long as applicant has not substantially relied upon issuance of a building permit, he is subject to an amending ordinance even if it is amended in direct response to application.