

# Real Estate Journal

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## Zoning boards give new meaning to what constitutes a detriment to the character of a neighborhood

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Developers understand all too well that the character of a neighborhood is the single most important factor to consider when appearing

a closer look at what constitutes a detriment to the character of a neighborhood and are looking beyond the codified regulations which

of using this statutory threshold, the BZA compared the proposed lots to other oversized lots in the neighborhood and concluded that the variances were substantial and denied the application. The second department affirmed the BZA's determination adopting the BZA's finding that "although the variances sought were not substantial, the proposed substandard lots would have an adverse affect on the character and physical or environmental conditions of the neighborhood,

that the minor deficiency in lot area would not have been noticeable to a passerby or neighbor walking along either street that abutted the property because the configuration, lot widths and proposed homes were consistent with the character of the neighborhood. The fact that the lots would have had shorter backyards should not have been the basis for a denial.

The lesson learned is that there is no such thing as a "minor" lot area

**The lesson learned is that there is no such thing as a "minor" lot area variance when creating substandard lots in a neighborhood with primarily oversized lots. Boards and courts are giving greater emphasis on existing neighborhood conditions rather than the minimum codified thresholds set forth in zoning codes when determining whether the granting of a variance will have an adverse affect on the character of a neighborhood.**

before a zoning board for variances to subdivide property. Board members will typically conduct a site inspection before a hearing to determine whether the proposed development will cause overcrowding and whether the proposed homes are in proportion to the other homes on the block. What most boards and civic associations oppose are the "McMansions" that accompanied the spike in new home development in recent years. Now that development has slowed down considerably, municipalities are taking a closer look at their zoning regulations and trending towards restricting the bulk and massing of new homes. Boards are also taking

establish the minimum thresholds required.

A case on point is Matter of Roberts v. Wright, – N.Y.S.2d –, 70 A.D.3d 1041 (2nd Dep't 2010), wherein the Town of Hempstead Board of Zoning Appeals (BZA) denied petitioner's application for a minor 3.4% lot area variance that would have enabled him to subdivide his premises into two building plots, each having a lot area of 5,795 s/f. The denial of the variances was shocking given that the BZA conceded in its decision that the variances were not substantial when compared to the 6,000 s/f minimum lot area requirement for that zoning district. However, instead

which was characterized by lots much larger than required by the ordinance." Id.

What is even more compelling is that the petitioner in Matter of Roberts v. Wright proposed lots that would have been the same configuration as most of the existing lots in the area except for lot depth. The proposed lots also would not have created an appearance of over-development because they were wider than most of the other lots in the neighborhood. In brief, the most important factor that was ignored by the BZA and both reviewing courts that affirmed the BZA's denial of the application was

variance when creating substandard lots in a neighborhood with primarily oversized lots. Boards and courts are giving greater emphasis on existing neighborhood conditions rather than the minimum codified thresholds set forth in zoning codes when determining whether the granting of a variance will have an adverse affect on the character of a neighborhood.

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