



THE ZONING BOARD OF APPEALS' (ZBA'S) DENIAL OF A LOT-SIZE VARIANCE CONFLICTED WITH A PRIOR RULING BASED ON SIMILAR FACTS; THEREFORE THE ZBA WAS REQUIRED TO PROVIDE A FACTUAL BASIS FOR ITS DECISION; THE DECISION, WHICH WAS SUPPORTED ONLY BY COMMUNITY OPPOSITION, WAS ARBITRARY AND CAPRICIOUS (SECOND DEPT).

The Second Department affirmed Supreme Court's ruling that the zoning board of appeals (ZBA's) denial of a lot-size variance was arbitrary and capricious:

"A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious," and thus, "[w]here an agency reaches contrary results on substantially similar facts, it must provide an explanation"

Here, the ZBA failed to set forth any factual basis in the determination to establish why it was reaching a different result on essentially the same facts as a prior application that had been granted Further, in response to the petitioner's submission of expert testimony, the ZBA's findings were merely supported by generalized community opposition and were not corroborated by any empirical data or expert testimony [Matter of O'Connor & Son's Home Improvement, LLC v Acevedo, 2021 NY Slip Op 04915, Second Dept 9-1-21](#)