

NEW JERSEY SUPREME COURT CLARIFIES AND UPDATES THE SICA BALANCING TEST

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In a recent decision entitled Monarch Communities, LLC v. Township of Montville, our New Jersey Supreme Court clarified the test to be utilized by zoning boards when weighing the proofs necessary to satisfy the second prong of the negative criteria for a use variance application involving an inherently beneficial use.[1] More than three decades ago, our Court originally established the legal test for zoning boards to apply to use variance applications involving an inherently beneficial use in Sica v. Board of Adjustment of Wall (known as the Sica balancing test).[2] However, five years later in 1997, the State Legislature amended the Municipal Land Use Law (MLUL) without modifying the Sica balancing test. In Monarch Communities, our Court altered a portion of the Sica balancing test—commonly referred to as the second prong of the negative criteria—such that it more appropriately aligns with the Legislature’s intentions. Further, the Court offered noteworthy considerations for a zoning board’s application of the revised Sica balancing test.

Background

N.J.S.A. 40:55D-70(d) prescribes a zoning board’s ability to grant use variances if the applicant proves “special reasons,” constituting the traditional “positive criteria.”[3] The MLUL also requires an applicant to satisfy two criterion, collectively labeled as the “negative criteria,” for a zoning board to grant variance relief under N.J.S.A. 40:55D-70(d).[4] Satisfying the negative criteria entails the applicant providing proof that granting the variance (1) can be accomplished without substantial detriment to the public good (“first negative criterion”); and (2) will not substantially impair the intent and the purpose of the zone plan and zoning ordinance (“second negative criterion”).

With respect to use variance applications generally, our Court in Medici v. BPR Co., Inc. first emphasized that applications not involving a use that inherently serves the public good require an applicant to show an “enhanced quality of proof” and the zoning board to make specific findings that the application meets both negative criterion.[5] Later, our Court in Sica reiterated from principles expressed in Medici that applications for inherently beneficial uses do not require an enhanced quality of proof, and, more importantly, established a four-pronged test “as a general guide to zoning boards when balancing the positive and negative criteria” and specifically to apply while evaluating applications under N.J.S.A. 40:55D-70(d) involving inherently beneficial uses.[6]

The MLUL defines “[i]nherently beneficial use” as “a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare,” including but not limited to “a hospital, school, child care center, group home, or wind, solar or photovoltaic energy facility or structure.”[7] Caselaw has provided additional examples of inherently beneficial uses such as a house of worship, community shelter, and public housing.[8] Specifically, the Sica balancing test entailed the following general four (4) steps:

1. “First, the board should identify the public interest at stake.”
2. “Second, the board should identify the detrimental effect that will ensue from the grant of the variance.”
3. “Third, in some situations, the board may reduce the detrimental effect by imposing reasonable conditions on the use.

4. “Fourth, the board should then weigh the positive and negative criteria to determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.”[9]

Underlying the imposition of this test, the Sica Court reasoned “[a] too strict reading of the negative criteria can result in the denial of many deserving inherently beneficial uses[;]” therefore, it required zoning boards in step four to balance the negative criteria against the benefits of granting the variance. [10] Notably, the Court did not reference the second negative criterion—whether granting the variance substantially impairs the purpose of the zone plan and zoning ordinance—in any portion of its test.



Five years after Sica, the Legislature in 1997 amended N.J.S.A. 40:55D-70(d) to include explicit mention of inherently beneficial uses, thus indicating all applications under subsection (d), including applications involving inherently beneficial uses, require proof of both negative criterion.[11] Shortly thereafter, our Court, with reference to the 1997 amendment, observed that “even when a proposed use inherently benefits the general welfare, the applicant still must prove that the variance ‘can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning.’”[12] Notwithstanding this observation, the initial iteration of the Sica balancing test remained unaltered—without reference to the second negative criterion.

Monarch Communities

It was not until nearly three decades after the legislative amendment in July 2026 that our Court implemented a formal requirement for an applicant to provide proof that its variance application involving an inherently beneficial use would not substantially impair the intent and purpose of the zone plan and zoning ordinance.[13] Monarch Communities involved an application for a senior living facility, requiring a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) and related bulk variances.[14] The Montville Zoning Board held a hearing over seven days, and ultimately denied the application, accepting that a senior living facility is an inherently beneficial use, but concluding the negative effects, in particular the incompatibility of the use with exclusively residential uses permitted in the Township’s R-20A Zone, was too detrimental to grant the use and related bulk variances.[15]

The applicant challenged the zoning board’s decision, and the trial court reversed, holding the proposed use is inherently beneficial, presumptively satisfying the positive criteria, and also concluding the record did not support a finding of substantial negative impacts.[16] Notwithstanding this determination, the trial court notably “dismissed as irrelevant evidence that the Township excluded the disputed property from the Senior Overlay Zone in its 2019 Master Plan update.”[17] After remanding to the zoning board for it to impose reasonable conditions on the proposal, the zoning board approved the application with thirty-seven conditions while reserving its appellate rights.[18]

The zoning board thereafter appealed the approval, and the Appellate Division affirmed, causing the zoning board to petition for certification, contending the Appellate Division did not properly apply the second negative criterion to the facts of the case.[19]

The Court in its decision recounted the relevant legal principles, and accordingly, interpreted the text of N.J.S.A. 40:55D-70 and the applicable legislative history so as to include a requirement that “applicants must make a specific showing with respect to the second negative criterion.”[20] In so doing, the Court recognized that enshrining the second negative criterion in the Sica standard “further[s] a longstanding legislative objective: to incentivize municipalities to make zoning determinations through the planning process, not by the grant or denial of individual variance applications.”[21]

The Court therefore amended the fourth step of the Sica balancing test by inserting its own language, underlined below:

“Fourth, the board should determine whether the applicant has made a showing that the variance or other relief sought will not substantially impair the intent and the purpose of the zoning plan and zoning ordinance. N.J.S.A. 40:55D-70.

If the applicant has not made such a showing, the variance may not be granted. If the applicant has made such a showing, the zoning board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. This “[w]hile properly making it more difficult for municipalities to exclude inherently beneficial uses * * * permits such exclusion when the negative impact of the use is significant. It also preserves the right of the municipality to impose appropriate conditions upon such uses.”[22]

Initially, as a matter of practice, many applicants already offer proof to satisfy the second negative criterion, notwithstanding its absence from the previous iteration of the Sica balancing test. Therefore, substantively, the Supreme Court’s addition to the test may serve as more of a formal update rather than a true modification.

Putting aside the practical implications of the addition, a strict reading of Sica’s modified fourth step does suggest procedurally that a zoning board must first make a determination exclusively as to whether the applicant has proven the variance or other relief sought can be granted without “substantially impair[ing] the intent and purpose of the zoning plan and zoning ordinance.”[23] If the zoning board answers this question in the negative, the inquiry stops there, and “the variance may not be granted,” even if the applicant independently satisfies the first negative criterion and the balancing component of the fourth Sica step.[24]

However, “if the applicant has made such a showing” for the second negative criterion, only then should the zoning board conduct the traditional Sica fourth-step analysis—weighing the positive and negative criteria and reaching the question of whether, on balance, granting the variance would cause a substantial detriment to the public good.[25] Therefore, crucially, the wording suggests that, regardless of the results of balancing the positive and negative criteria, a zoning board may not grant the variance if an applicant does not satisfy the second negative criterion, and a zoning board need not finish its Sica analysis if the applicant fails to provide ample proof of this criterion. Further, the Court offered guidance on future application of the modified standard. First, it reaffirmed the enduring legal principle that applications for inherently beneficial uses are not subject to the enhanced quality of proof standard required for a use variance, as established by the

Court in Medici and reiterated in Sica. [26] Second, that a use is inherently beneficial is not independently sufficient—an applicant must also present evidence regarding the variance’s impact on the master plan and zoning ordinance, as is insinuated under the new fourth prong of Sica. [27]

Third, in analyzing whether granting the variance substantially impairs the zoning plan and zoning ordinance, “the board’s denial of a prior application for a variance for the same property is not itself dispositive, but may be an important consideration.”[28] Presumably, the Court implemented this new consideration into analysis under Sica in light of the zoning board in Monarch Community’s failure, in the Court’s view, to afford sufficient weight to a rejection of the prior property owner’s application to rezone the subject property for senior housing, as well as the Township’s amendment to its Master Plan which considered but excluded the subject property from a new Senior Housing Overlay Zone.

The third consideration stands in direct contrast with the longstanding principle in land use applications that every application stands on its own.[29] That is, typically, each individual case “must be decided strictly on the basis of the facts adduced at the hearing viewed in light of the statutory requirements.”[30] Now, according to the Monarch Community decision, zoning boards may consider evidence other than what was presented at the hearings in evaluating the second negative criterion. Indeed, a zoning board’s prior disposition of an application for the subject property, regardless of whether the same applicant is involved, is now a relevant factor in determining the variance application’s consistency with a municipality’s zoning plan and zoning ordinance.

Finally, to fortify the protections afforded by the update to Sica, the Court recognized “the Legislature clearly envisioned that governing bodies and planning boards would document in detail their findings regarding zoning for inherently beneficial uses in the master plan and development regulations, and that they would revise those findings at least once a decade to account for changing conditions.”[31]

References:

[1] No A-70-24, 2026 WL 2014522 (July 13, 2026).; [2] 127 N.J. 152, 165-66 (1992).; [3] N.J.S.A. 40:55D-70(d).; [4] Ibid.; [5] 107 N.J. 1, 21-22 (1987).; [6] Sica, 127 N.J. at 165.; [7] N.J.S.A. 40:55D-4.; [8] See Cox & Koenig, N.J. Zoning & Land Use Admin., § 32-5.3 (2026).; [9] Sica, 127 N.J. at 165-66.; [10] Id. at 163.; [11] L. 1997, c. 145, § 1; [12] Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 324 (1998).; [13] See Monarch Communities, 2026 WL 2014522.; [14] Id. at *3-4; [15] Id. at *4-5.; [16] Id. at *5.; [17] Ibid.; [18] Ibid.; [19] Id. at *6.; [20] Id. at *11.; [21] Ibid.; [22] Id. at *11-12 (quoting Sica, 127 N.J. at 166 (alteration and omission in original)).; [23] Id. at *11.; [24] Ibid.; [25] Id. at *12.; [26] Ibid.; [27] Ibid.; [28] Ibid.; [29] See Sica, 127 N.J. at 165.; [30] Cox, § 19-3.1 (citing Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 280, 284 (1965)).; [31] Monarch Communities, 2026 WL 2014522 at *12.

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