

SUPREME COURT OF NEW JERSEY

Docket No. 090287

HOBOKEN FOR RESPONSIBLE
CANNABIS, INC., AN NJ
NONPROFIT CORPORATION,

Plaintiff-Petitioner,

and

ELIZABETH URTECHO

Intervenor/Plaintiff-Petitioner
vs.

CITY OF HOBOKEN PLANNING
BOARD and BLUE VIOLETS, LLC,

Defendants.

ON PETITION FOR CERTIFICATION
FROM THE APPELLATE DIVISION
OF THE SUPERIOR COURT OF NEW
JERSEY

Appellate Docket No.: A-556-23

Sat Below:

Hon. Robert Gilson, P.J.A.D.

Hon. Lisa Firko, J.A.D.

Hon. Avis Bishop-Thompson, J.A.D.

ON APPEAL FROM FINAL ORDER OF
THE SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION, HUDSON
COUNTY

Law Division Docket No.:
HUD-L-3520-22

Sat Below:

Hon. Anthony V. D'Elia, J.S.C.

**PLAINTIFFS-PETITIONERS HOBOKEN FOR RESPONSIBLE
CANNABIS, INC. AN NJ NON-PROFIT CORPORATION'S AND
ELIZABETH URTECHO'S PETITION FOR CERTIFICATION**

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QUESTIONS PRESENTED

1. Whether an application to a local cannabis review board established to undertake local licensing and/or endorsement under N.J.S.A. 24:6I-45(c)(2) is an "application for development" under the Municipal Land Use Law.
2. Whether a local cannabis review board established pursuant to N.J.S.A. 24:6I-45(c)(2) is an “municipal agency” under the Municipal Land Use Law.
3. Whether an application to a municipal advisory board that precedes the adoption of a zoning ordinance triggers the Time of Application Rule, N.J.S.A. 40:55D-10.5 and insulates a developer from that zoning ordinance even if the ordinance takes effect before an application for site plan and conditional use approval is filed with the municipal planning board.

STATEMENT OF THE MATTER INVOLVED

In 2021, shortly after the adopted the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMM Act), N.J.S.A. 24:6I-31 *et seq.*, and in response to a directive in N.J.S.A. 24:6I-45(b) that failure to zone within six months would bar future efforts to do so for five years, Hoboken authorized the sale of cannabis in specific locations in the City as a conditional use but prohibited it elsewhere. [Da363]. Blue Violets, LLC, a developer seeking to open a retail cannabis store located less than 600 feet from two elementary schools sent a letter to Hoboken’s Planning Board (the

“Board”) dated April 29, 2022 that enclosed the City’s Planning Board and Board of Adjustment Application for Development form (also dated April 29, 2022), the checklists for site plan and conditional use applications and various documents required by those checklists. [Da316-334]. But three weeks earlier, on April 6, 2022, the City Council, still trying to perfect its cannabis zoning, amended its ordinance to require at least 600 feet between cannabis retailers and primary or secondary schools. [Da387]. That ordinance took effect on April 28, 2022 (Hoboken is a Faulkner Act municipality, and Hoboken’s Mayor signed Ordinance B-446 on April 8, 2022), the day before Blue Violets’ principal brought his application form into City Hall. [Da393].

The Board’s Subdivision and Site Plan Review (“SSPR”) Committee reviewed the April 29, 2022 submission on May 10, 2022 and found that because Blue Violets did not submit many of the items required by the checklists, the application was incomplete. [Da56 at 65-10 to 65-20]. Even after Blue Violets retained counsel and submitted additional documentation for the next SSPR meeting on June 14, 2022, its application was still incomplete. [Da77 at 25-7 to 25-24]. The SSPR did not deem the application complete until July 7, 2022, seventy days after the 600-foot restriction took effect. It did so despite receiving objections from community members, including members of the City Council that asserted the Board lacked jurisdiction to even consider

the application because it required a conditional use variance from the board of adjustment (Da444), the SSPR scheduled Blue Violets for a hearing on its site plan and conditional use application on July 7, 2022. [Da88 at 30-24 to 31-19].

The Board held a hearing on September 15, 2022 and approved the application over the objections of the public. [Da94-314]. That included Plaintiff-Petitioner Elizabeth Urtecho, who formed Hoboken for Responsible Cannabis, Inc. (“HfRC”) after that hearing. In its October 13, 2022 Resolution, the Board rationalized its decision because Blue Violets had “started the process” of applying when it sought approval from a separate advisory board, the Cannabis Review Board¹ (“CRB”), triggered the Time of Application (“TOA”) Rule codified at N.J.S.A. 40:55D-10.5 in the Municipal Land Use Law (“MLUL”) that it determined exempted Blue Violets from the 600-foot rule. [Da456]. HfRC challenged that decision on October 21, 2022. [Da1].

For reasons explained below, this land use case sits at the intersection of the definitions in the MLUL, the rights of municipal government to exercise the zoning power and control the use of land within their borders and the rights of developers to be free from interference after relying on the laws. In 2018,

¹ The Appellate Division’s decision refers to the CRB as a seven-member board. [Pc4a]. But when the CRB reviewed Blue Violets’ application, it only had three members, who were either City employees or elected officials. [Da485]. The CRB expanded to also include four residents in June of 2022 as Hoboken continued to further fine-tune its cannabis ordinances. [Da380].

this Court analyzed the TOA Rule in Dunbar Homes, Inc. v. Bd. of Adj., 233 N.J. 546 (2018), and mandated what developers must do to gain protection under the TOA Rule. The TOA Rule requires an “application for development” to be “complete,” meaning that the application form and all accompanying documents required by the ordinance for the type of approval sought must be filed before a zoning ordinance goes into effect. Id. at 562-63. The MLUL defines “application for development” in N.J.S.A. 40:55D-3; the definition includes site plans, subdivisions, conditional uses, and variances. Other MLUL applications, such as appeals of an administrative officer under N.J.S.A. 40:55D-70(a) or requests for interpretation of the zoning ordinance or zoning map under N.J.S.A. 40:55D-70(b) are unmentioned.

On appeal, the Law Division followed Dunbar and reversed the Board’s decision on jurisdictional grounds because it found that the 600-foot restriction applied to the review of Blue Violets’ project and that Blue Violets needed a conditional use variance from Hoboken’s zoning board of adjustment. [Pc40-43a]. But the Appellate Division found that Blue Violets’ application for site plan and conditional use was not its “application for development;” instead, it concluded – with limited analysis of the consequences of its decision – that the application Blue Violets submitted several months earlier to the advisory CRB was its “application for development” and that the CRB application, once

complete, triggered the TOA Rule and exempted Blue Violets from the 600-foot zoning requirement. [Pc28-30a].

Finding that the CRB was an “arm” of the Planning Board, the Appellate Division overlooked that the CRB was established merely to advise the City Council how to allocate dispensary licenses. [Pc29-30a]. Yet, the Appellate Division concluded that Blue Violets’ application to the CRB furthered the “spirit” of the TOA Rule, while ignoring both its plain language and its actual purpose – to create a uniform rule that establishes predictability for developers while balancing the rights of municipal government to control development through the exercise of the zoning power. [Pc30a].

THE ERRORS COMPLAINED OF

The MLUL defines the term “application for development” as

[T]he application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291. [N.J.S.A. 40:55D-3]

The Appellate Division’s decision effectively re-writes this definition to include applications to other bodies that have no power under the MLUL.

Although Hoboken’s ordinance states the CRB was expressly established under the auspices of the CREAMM Act and the Jake Honig Compassionate Use Medical Cannabis Act, N.J.S.A. 24:6I-1, *et seq.*, the Appellate Division

found the CRB to be an “arm” of Hoboken’s Planning Board, and therefore a “municipal agency” to whom an “application for development,” both statutorily defined terms in the MLUL, could be filed. [Pc29a]. But the MLUL does not authorize “arms” of planning or zoning boards. Neither this Court, the Appellate Division nor the Law Division has ever recognized another body as an “arm” of a planning board or zoning board that can perform the functions authorized by the MLUL of the type at issue here. This new theory, untethered to the statute, is error unto itself and requires this Court’s supervision.

These errors created an unauthorized exception to this Court’s decision in Dunbar. Dunbar holds the TOA Rule insulates a developer from a change in zoning if its application for development is complete on the date that the ordinance takes effect. 233 N.J. at 563-564. That occurs only when the application form and all accompanying documents required by ordinance for the discrete subset of relief sought by the development are filed before the ordinance is adopted. Ibid. The Appellate Division concluded that Blue Violets’ application to the CRB was an “application for development,” or in other words, itself an application for “. . .the approval of subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291.” See N.J.S.A. 40:55D-3. [Pc29a]. It was not.

Treating the CRB application as a statutorily unauthorized “application for development” deprived the City’s governing body of its power to zone for the general welfare and deprived citizens of their right to petition their government for zoning changes that were responsive to their needs. Here, the City’s elected officials adopted an amendment to its cannabis ordinance that imposed a minimum distance between stores that sell cannabis and primary and secondary schools to better protect school-aged children. But the Appellate Division nevertheless allowed Blue Violets to proceed before the Board with a store that was closer than the minimum distance required to two schools even though its site plan and conditional use application was not only not complete when the ordinance took effect, it had not even been filed.

**REASONS WHY CERTIFICATION SHOULD BE GRANTED AND
COMMENTS ON THE APPELLATE DIVISION’S DECISION**

- I. Certification is warranted because the Appellate Division’s decision raises questions of general public importance about what a “municipal agency” and an “application for development” under the MLUL are; these questions have never been addressed by the Court but should be.**

The Appellate Division’s December 30, 2024 decision raises a question of general public importance which has not, but should be settled by this Court – namely, whether an advisory board that exercises no power and performs no function under the MLUL can be a “municipal agency” thereunder. The MLUL defines a “municipal agency” to mean “a municipal planning board or board of

adjustment, or a governing body of a municipality when acting pursuant to [the MLUL].” N.J.S.A. 40:55D-5. The panel found there was a separate definition in N.J.S.A. 40:55D-10.3, but there is not. [Pc29a]. Until December 30, 2024, no court had ever held, or even suggested, that a municipal board – other than a planning board, a board of adjustment, a governing body, or a regional land use board created pursuant to N.J.S.A. 40:55D-77 – was a “municipal agency.”

When the Appellate Division considered whether a municipal body involved in the development of land that has real powers was a “municipal agency” in Deegan v. Perth Amboy Redevelopment Agency, 374 N.J. Super. 80 (App. Div. 2005), it noted: “A municipal redevelopment agency such as [the Perth Amboy Redevelopment Authority] is plainly not a planning board, board of adjustment or municipal governing body, and a redevelopment agency acts pursuant to the Local Redevelopment and Housing Law, not the MLUL.” Id. at 85. The Appellate Division reached a different conclusion about the CRB – created under CREAMM - without any support in the text of the MLUL.

Instead, the Appellate Division rationalized that the application the CRB reviewed – which, under §36-4(A) of the Cannabis Ordinance precedes the submission of a conditional use application – was itself an “application for development.” [Pc29a; Da381]. But an “application for development” is strictly defined by N.J.S.A. 40:55D-3 as a limited set of relief that can only be

sought from a planning board or a zoning board . See N.J.S.A. 40:55D-20; N.J.S.A. 40:55D-25; N.J.S.A. 40:55D-76. The only authorizations in the MLUL for different public bodies to review an “application for development” are found in N.J.S.A. 40:55D-17, which authorizes a municipal governing body to sit in an appellate capacity when the municipal ordinance permits an interested party to appeal the approval of a “d” variance, and N.J.S.A. 40:55D-111, when a referral is made to a historic preservation commission.

Hoboken established its CRB to assist in the issuance of cannabis licenses pursuant to N.J.S.A. 24:6I-45(c)(2), not to participate in the review of “applications for development.” The Cannabis Ordinance make this clear:

“There is hereby created a City of Hoboken Cannabis Review Board (“Review Board”) which shall serve as an advisory committee to the City of Hoboken whose duty it shall be to review applications for cannabis wholesaler, cannabis retailer, medical cannabis dispensary and cannabis delivery operations based within the City of Hoboken.” [Da380; emphasis added].

The ordinance also states that the CRB “shall provide an endorsement, or report to the contrary, to the land use board of jurisdiction prior to the applicant’s submission of a conditional use application to the board.” [Da381; emphasis added]. Once that review occurs, the CRB and the applicant are to enter into a “community host agreement” that is subject to final review and approval by the City Council; it is that community host agreement to be

adopted pursuant to § 36-4(B) of the Cannabis Ordinance that is the purpose and end-point of Hoboken’s cannabis licensing process. [Da382].

Neither the CREAMM Act, the MLUL nor Hoboken’s ordinances make the CRB an “arm” of the Board for “applications for development” pertaining to cannabis or anything else. The MLUL forbids such a delegation. N.J.S.A. 40:55D-20. Regarding completeness determinations, Hoboken’s Land Use Procedures Ordinance hews closely to the MLUL. In furtherance of N.J.S.A. 40:55D-10.3’s allowance that a land use board can authorize a committee or designee to determine completeness, § 44-106(B) of the Land Use Procedures Ordinance assigns that function to the Board Secretary if the SSPR concurs:

. . .the Secretary of the Planning Board shall certify an application as complete, with the concurrence of the SSPR, and in consultation with any applicable municipal commissions and administrators, only if the application, checklist, all documents required by the checklist, application fee, and escrow fees have been received . . . [Pa5].

Moreover, there is nothing in the Cannabis Ordinance that is remotely similar, nor any delegation in the Land Use Procedures Ordinance that delegates review of cannabis applications – whether filed or unfiled, to the CRB.

This highlights the CRB is not a “municipal agency” under the MLUL. Although the Appellate Division concluded otherwise, it failed to grapple with how it resolved the issue. For example, it did not articulate the powers of the MLUL the CRB exercised or their source even though N.J.S.A. 40:55D-5

states a “municipal agency” must be “acting pursuant to [the MLUL].”

Similarly, it referenced no provision in the Hoboken Code authorizing the CRB to exercise any powers under the MLUL or what action it took thereunder. Yet if the Appellate Division’s summary conclusion that the CRB is a “municipal agency” is correct, simply because it reviewed Blue Violets’ CRB license application – which it then concluded was an “application for development” – did it also have the authority to approve the “application for development?” The Court need look no further than at the glaringly groundless conclusion found on page 28 of the panel’s decision that “the CRB had the responsibility to review cannabis site plan applications for land use compliance” to see the problem. [Pc29a]. Land use compliance is reserved to planning boards and boards of adjustment under the MLUL and cannot be delegated to an advisory board. See N.J.S.A. 40:55D-20; Nuckel v. Little Ferry Planning Bd., 208 N.J. 95, 101 (2011). However, the CRB did not review the cannabis site plan application or even a site plan or architectural plan, a contradiction the Appellate Division failed to address. [Pc5-8a].

Additionally, the panel did not explain why, under the “arm” framework it endorsed, Blue Violets needed to file a separate conditional use and site plan application with the Board three months later. If its theory were correct, logic would dictate that Blue Violets would have submitted the CRB application to

the Board when it filed for site plan and conditional use approval, since according to the Appellate Division, the CRB played a role in reviewing cannabis site plan applications. But its application to the CRB was not provided to the Board, as Blue Violets' April 29, 2022 submission letter and the Board Planner's review memo confirm. [Da316; Da395]. This is why the Appellate Division's determination that Blue Violets' application to the CRB was an "application for development" under the MLUL is equally deserving of this Court's supervision, as well as matter of great public import. The conclusion is palpably wrong and unjustly handcuffs the governing body's ability to protect the community's safety and general welfare.

Although the term "application for development" defines, with precision, the specific relief the MLUL affords to developers in N.J.S.A. 40:55D-3, the Appellate Division's concluded that "the submission to the CRB was an 'application for development,' as defined by N.J.S.A. 40:55D-10.5." [Pc29a]. But there is no definition of anything in N.J.S.A. 40:55D-10.5, and the term "application for development" cannot include the CRB application because the Legislature directed what an "application for development" is when it defined the term in N.J.S.A. 40:55D-3. The Appellate Division's decision to re-write a plainly written, defined term is at odds with the rules of statutory construction. DiProspero v. Penn, 183 N.J. 477, 492 (2005).

Research reveals no case reaching a similar conclusion. And other applications that mentioned but not included in the definition of “application for development” in N.J.S.A. 40:55D-3 have been excluded from that rubric. For example, in Ientile v. Bd. of Adj. of the Twp. of Colts Neck, 271 N.J. Super. 326 (App. Div. 1994), Judge Skillman noted in a concurrence that a request for interpretation of the zoning ordinance by the board of adjustment pursuant to N.J.S.A. 40:55D-70(b) “plainly does not fall within th[e] definition of an ‘application for development.’” Id. at 332 (Skillman, concurring). If an application that is specifically authorized by and subject to the specific processes of the MLUL is not an “application for development” because it is not defined by N.J.S.A. 40:55D-3, why would an application not part of the MLUL and reviewed by another board be an “application for development?”

The Appellate Division’s judicial revision of the statutorily-defined terms “municipal agency” and “application for development” upsets a balance careful crafted by the Legislature. Once an “application for development” is complete, not only is it protected under the TOA Rule from changes in zoning (as will be discussed below), the board of jurisdiction is obligated to act within a statutorily-mandated timeframe² unless an extension is granted, depending on

² See N.J.S.A. 40:55D-46(c)(preliminary site plan: 45/95 days); -46.1(a)(minor site plan: 45 days); -47(b)(minor subdivision: 45 days); -48(c)(preliminary

the type of “application for development” that is filed. Allowing a developer to claim any application to any municipal board relating to its future use of property is an “application for development” frustrates the Legislature’s intent in vesting exclusive jurisdiction over the review of an “application for development” with planning or zoning boards. This is a matter of general public importance that the Court should address because every municipality exercises some form of land use control pursuant to the delegation of the zoning power in the MLUL. The decision creates uncertainty as to which boards or bodies may wield that power, as well as when and how they must do so, despite no uncertainty in the text of the MLUL. Nuckel, *supra*.

II. Certification is warranted because the Appellate Division’s decision directly conflicts with this Court’s holding in Dunbar.

Certification is warranted because the Appellate Division’s decision conflicts with Dunbar’s explication of the TOA Rule. The TOA Rule provides:

[T]hose development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development.[N.J.S.A. 40:55D-10.5].

Dunbar’s holding is clear and unambiguous: for an “application for development” to be protected under the TOA Rule, it must be complete, which

major subdivision: 45/95 days); -50(b)(final site plan/subdivision: 50 days); -67(conditional use: 95 days); -73(variance: 120 days).

means that the application and all accompanying documents required by the municipal ordinance for the relief sought by the application must be filed with the board prior to the effective date of the ordinance. 233 N.J. at 551, 563.

The Appellate Division’s decision undermines this clear and unambiguous rule because it allowed the Board’s approval of Blue Violets’ site plan and conditional use application to stand when neither the site plan and conditional use application, nor any of the accompanying documents required by Hoboken’s land use ordinances were filed with the Board on April 28, 2022 – the date Ordinance B-446 went into effect. The Appellate Division concluded that because the CRB application was filed and complete in February of 2022, the TOA Rule governed the Board’s review of the conditional use and site plan application filed on April 29, 2022 even though the CRB application used a different form and required different documents. [Pc30a].

Without certification and reversal, the Appellate Division’s decision will allow a developer to submit an application to a municipal board other than a planning board or zoning board of adjustment related to a proposed development. For example, a shade tree commission authorized under N.J.S.A. 40:46-5 to regulate the planting of trees near public roads and “the use of the ground surrounding the same” could be argued is an “application for development.” If that application form includes all the information that the

land use board requires (or even if it does not), and all the accompanying documents are submitted, it is irrelevant that the developer has not yet filed an application with the planning board, whatever it may be, and the governing body is deprived of exercising its zoning power in relation to the use of that property (the same could be said about an application for an interpretation to the zoning board under N.J.S.A. 40:55D-70(b), Judge Skillman's concurrence in Ientile, notwithstanding). The situation the panel's decision creates is intolerable since it allows an inferior body that has no role in the land use approval process or powers under the MLUL, such as Hoboken's CRB, to undermine the zoning power established in N.J.S.A. 40:55D-62 that is the centerpiece of the MLUL. There is also a conflict with Deegan, *supra*, since there is no basis to distinguish a redevelopment agency and a cannabis review board. Compare, N.J.S.A. 40A:12A-22(n), with Pc30a ("reviewing cannabis-related applications and holding hearings³")

The Appellate Division's reasoning here was based upon a flawed analysis of its earlier decision in Jai Sai Ram, LLC v. Planning/Zoning Bd. of the Bo. of Toms River, 446 N.J. Super. 338 (App. Div. 2016). The question on

³ Even the CRB notice requirement, mentioned twice in the panel's decision(Pc7-8a), was a product of the ordinance that took effect in April of 2022 (Da390), that the Appellate Division determined did not apply to Blue Violets.

appeal was whether the developer could take advantage of the new ordinance that took effect after the board approved the application or whether it needed to return to the board⁴ upon a reversal. Jai Sai Ram considered the TOA Rule’s legislative history to find a zoning amendment adopted *one year* after a planning board granted approval applied to an “application for development” while it was on appeal, eliminated the need for the use variance a developer obtained and mooted the use variance appeal. Id. at 342.

Citing that legislative history, Jai Sai Ram recognized that even though the literal terms of the TOA Rule prohibited the application of the ordinance because it was adopted after the submission of the application, doing so was “completely contrary to [the] purpose” of the TOA Rule to protect developers from harmful zone changes while their applications were pending before land use boards. Id. at 345; cf. Manalapan Realty, L.P. v. Twp. Committee of the Twp. of Manalapan, 140 N.J. 366, 378-79 (1995)(discussing former municipal right to amend zoning ordinance to block developer after planning board hearings started by requiring use variance to prevent a Home Depot use). Thus, in those unique circumstances, the Appellate Division held that the TOA Rule,

[D]oes not apply where the local zoning is amended to specifically permit the use which is the subject of a variance application. In that

⁴ The board in that case was a combined land use board pursuant to N.J.S.A. 40:55D-25(i), so if the developer needed to return, the board would re-hear the same application again, without a use variance. Id. at 340, fn. 1.

situation, the variance is no longer necessary, and it would be absurd, as well as contrary to the Legislature’s purpose, to hold the applicant to the less favorable standards of the pre-existing ordinance.” Ibid.

Unlike in that case, Hoboken’s governing body did not make a zoning change favorable to Blue Violets after it received approval from the Board that helped it avoid this litigation; this litigation resulted because the Board ignored the ordinance that was in effect before it determined Blue Violets’ site plan and conditional use application was complete. [Da422]. Indeed, the change occurred before Blue Violets submitted anything to the Planning Board, and was enacted to prevent cannabis sales within 600 feet of primary and secondary schools without a conditional use variance from Hoboken’s Board of Adjustment pursuant to N.J.S.A. 40:55D-70(d)(3) and this Court’s decision in Coventry Square, Inc. v. Westwood Bd. of Adj., 138 N.J. 285 (1994).

This is why the panel’s appeal to the “spirit” of the law based on the unique facts of Jai Sai Ram was misguided. [Pc28a]. The purpose of the TOA Rule was to correct the unfairness of the former time of decision rule, not merely to protect developers from the democratic process so long as they have spent money and filed something with any public body. Yes, Blue Violets incurred costs preparing its CRB application, but that is true for every developer in advance of every project. Dunbar Homes, Inc. v. Bd. of Adj., 448 N.J. Super. 583 (App. Div. 2017), cataloged what was submitted, including:

engineering and architectural drawings, engineering reports, a traffic report, an environmental impact statement and a soil conservation application for a 55-unit addition to its existing garden apartment complex, likely at great cost. Id. at 590. But this Court gave no consideration to the costs associated because Dunbar had not met the strict requirements to satisfy the TOA Rule – the submission of the application form and all accompanying documents. Every developer incurs costs as soon as work on a project starts. If all it takes is the filing of any application with any board or body, such as the shade tree commission, board of health, or even a liquor license transfer, then developers with controversial projects will circumvent the prescribed land use process.

This is particularly true where a property owner learns of a newly introduced ordinance that could impair the developability of its property. Rather than adhere to the required process of filing a complete “application for development” with the planning board, the Appellate Division’s decision gives the property owner the option to find another board with fewer requirements that are far easier to meet, file an application with that board, and claim protection from an impending zoning change. But unlike the MLUL, the Appellate Division’s decision imposes no time constraints; a developer who has not yet submitted an actual planning board application seeking to develop property is still protected by the TOA Rule and would be theoretically

protected from changes in zoning forever. This is not what the Legislature intended and cannot be the law. The Court should grant the petition and reverse the Appellate Division's decision.

CONCLUSION

The TOA Rule strikes a balance between a municipality's right to zone for the health, safety and general welfare of the public and the unfairness to developers if the rug is pulled out from under their applications for development at the last minute. The decision below upsets that balance by improperly applying the TOA Rule to an application submitted to an advisory board filed months before the actual application for development was filed. At the same time, the Appellate Division disregarded two unambiguous definitions in the MLUL without considering the impacts. The interests of justice, the conflict with the Dunbar decision, and the need for this Court's supervision over this matter of public importance justify granting the petition.

I certify that this petition represents a substantial question and is filed in good faith and not for purposes of delay.

Respectfully submitted,

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By: /s/ Daniel L. Steinhagen
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