

[D] Modification of the Decision

The Court has reviewed three types of modifications. First, a board's initial decision may contain clerical errors or omissions. "The law is clear that the board has the inherent power, without holding a further public hearing, to correct an inadvertent or clerical error in its decision so that the record reflects its true intention."¹²⁷ This power, however, is limited to situations where "the correction does not constitute a 'reversal of a conscious decision,' . . . does not grant relief different from that originally sought, and does not change the result of the original decision, . . . and so long as no one relying on the original decision has been prejudiced by the correction."¹²⁸ The courts have allowed such modifications up to seven years after the filing of the original decision.¹²⁹

Second, a board may be asked by a successful petitioner to modify a condition imposed in an earlier decision. *Huntington v. Zoning Board of Appeals of Hadley*¹³⁰ contains an extensive discussion of such modifications.¹³¹ In 1976, the board was requested by the petitioner to remove a condition contained in a 1973 variance. The board did so, after public hearing.

In dictum, the Court reviewed general guidelines for substantive modifications of zoning decisions. "[T]he board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements."¹³²

Huntington specifically reserves judgment on a third type of modification: those sought by the board on its own motion or on motion of other interested parties.¹³³ Of course, if this power is available, it is certainly tempered by a

¹²⁷ *Board of Selectmen of Stockbridge v. Monument Inn*, 8 Mass. App. Ct. 158 (1979). See also *Shuman v. Board of Aldermen of Newton*, 361 Mass. 758, 764-765 (1972); *Dion v. Board of Appeals of Waltham*, 344 Mass. 547, 553 (1962); *Burwick v. Zoning Bd. of Appeals of Worcester*, 1 Mass. App. Ct. 739, 742 (1974).

¹²⁸ *Monument Inn*, 8 Mass. App. Ct. at 164-165 (citations omitted). See also *Tenneco Oil Co. v. City Council of Springfield*, 406 Mass. 658, 659-660 (1990).

¹²⁹ *Monument Inn*, 8 Mass. App. Ct. at 160-161.

¹³⁰ 12 Mass. App. Ct. 710, 715-717 (1981). See also *Potter v. Board of Appeals of Mansfield*, 1 Mass. App. Ct. 89, 95-96 (1973).

¹³¹ For an interesting, but narrow, decision regarding modifications to signs authorized by a variance, see *Barron Chevrolet, Inc. v. Town of Danvers*, 419 Mass. 404 (1995).

¹³² *Huntington*, 12 Mass. App. Ct. at 714-715 n.4. See also *Chambers v. Building Inspector of Peabody*, 40 Mass. 762, 767 (1996). When such modification is sought, "the permit granting authority must again exercise its discretion in weighing the factors relevant to a decision. . . . Whether we term the application as a modification of a special permit or a new one, the matter involves the discretion of the . . . board." *Barlow v. Planning Board of Wayland*, 64 Mass. App. Ct. 314, 320 (2005).

¹³³ 12 Mass. App. Ct. at 713-714. "Nor is it necessary to hold that a local zoning board possesses a broad general power to modify substantive conditions attached to an existing variance." *Id.* The Appeals Court also noted that the old Zoning Enabling Act was silent on this point. *Id.* at 714 n.4. *Huntington* suggests that the Court will be guided by the standard treatises when confronted with this question. They are not particularly helpful. Perhaps more illuminating is *Cassani v. Planning Bd. of*