

## TOWNSHIP OF WEST MILFORD

**TO:** Mayor Bieri  
Township Council  
Township Planning Board

**FROM:** Zoning Board of Adjustment

**DATE:** May 24, 2011

**RE:** 2010 Annual Report  
For January – December 2010

---

In accordance with N.J.S.A. 40:55D-70.1, the Board of Adjustment hereby submits its Annual Report on variances that were heard and decided in 2010. The Municipal Land Use Law (MLUL) requires that the Board of Adjustment review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions that were the subject of variance requests. Furthermore, the Board is to provide its recommendations for zoning ordinance amendments or revisions, if any. The MLUL requires that the report be forwarded to the Governing Body and to the Planning Board.

In accordance with N.J.S.A. 40:55D-70.1, the Board of Adjustment hereby submits its Annual Report on variances that were heard and decided in 2010. The Municipal Land Use Law (MLUL) requires that the Board of Adjustment review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions that were the subject of variance requests. Furthermore, the Board is to provide its recommendations for zoning ordinance amendments or revisions, if any. The MLUL requires that the report be forwarded to the Governing Body and to the Planning Board.

### **Application Synopsis and Summary**

The Board held 12 public hearings and decided the following number of variance relief requests:

Bulk	(N.J.S.A. 40:55D-70c)	14
Use	(N.J.S.A. 40:55D-70d)	2

Of the bulk, or “c” variances requested, seven were for improvements to residential lots, while the other requests were considered as part of site plan applications considered by the Board ( to be discussed later in the report). The Board approved the thirteen bulk variance requests.

### **Analysis by Variance (N.J.S.A. 70:55D-70.1)**

The statute provides boards with the power to hear and decide “c” cases for reasons of exceptional narrowness, Shallowness, or shape of a specific piece of property; for exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or for an extraordinary and exceptional situation uniquely affecting a specific property [collectively known as c(1) variances.] There were ten variance requests that were granted based upon the c(1) criteria.

Two of the c(1) variance requests were found to have natural hardships due to topographic conditions existing on the property. The topographic features impacted the Decker case ( LR Zone) and Shiloh Bible Camp (R4 Zone), while wetlands also impacted the Bible Camp as well. There was one case that was found to have a hardship due to the lot configuration i.e., a through lot (Pellett).

The c(2) variance is another category of “c” variances. The statute allows a variance to be granted when the purpose of the MLUL would be advanced by a deviation from the zoning ordinance and the benefits of the deviation substantially outweigh any detriment. The Board heard two such cases. In the one case the Board found that installing a roof over the front deck (front yard setback) to provide safe access and shelter from inclement weather was a benefit and that it outweighed any detrimental negative impact that may occur to the neighborhood (Bongiardino). In the other case the house addition was being placed so as to minimize the variance relief necessary ( front yard setback and lot coverage), thereby improving the property while not adversely impacting the neighboring properties (Borelli-Grace). Both properties are located in the LR Zone.

The statute also provides Boards with the power to hear and decide (d) or use variances which means that in particular cases for special reasons, the Board may grant a variance to allow departure from the regulations with respect to use. The Board heard and favorably decided two use variance applications in the past year approving them both. As set forth in the statute, there are six different classifications of use variances. The two cases that the Board heard

were use variances because the proposed uses did not meet the conditional use provisions of the zone in which the property is located (d3).

One of the d3 variance requests was to co-locate telecommunication antennas on an existing monopole located in the LMI Zone. The other d3 request was to expand an existing bible camp in the R4 Zone.

Another provision in the statute provides boards with the power to hear and decide appeals (N.J.S.A. 40:55D-70a) and interpretations (N.J.S.A. 70:55D70b). The Board did not hear any requests for appeals or interpretations in 2010.

### **Other Cases Heard**

The Board also spent time in 2010 hearing preliminary and final site plan applications in connection with the use variance requests. Also, the Board heard an amended preliminary and final site plan application for a site which previously received approval for the construction of a gasoline station.

The site plan application to co-locate cellular telecommunication antennas was for property located in the LMI Limited Manufacturing and Industrial Zone. This applicant was seeking approval to co-locate three antennas near the top of the existing monopole at an elevation of 113 feet, and to locate equipment cabinets within a fenced in compound on the ground at the base of the monopole.

The site plan application for the Bible Camp property is situated on property located in the R4 Residential Zone. This request sought approval to expand an existing bible camp facility with the construction of a gymnasium and parking lot. The property did not meet the minimum lot size required in the conditional use provisions of the zone.

The third site plan application was seeking to amend a prior Board approval that was granted in 1998, but never constructed. This site was approved for a gasoline filling station and convenience store. The applicant sought and received approval for site design modifications concerning driveway access to State Highway Rt 23, parking, paving and landscape changes from the plan previously approved by the Board.

### **Analysis**

The bulk variance applications before the Board this year were all located in the LR Lakeside Residential Zone. A review of the variance requests this year

for properties in that zone do not indicate any pattern that raises concern with the zone standards. In years past, the majority of the applications heard by the Board have been for properties located in the LR Zone as well, and the Board had found certain repetitions in requests that warranted review of the zone standards for that zone. The Board again requests the consideration of its past recommendations as follows.

Look at the findings of the Planning Board's 2003/2004 analysis of the LR standards regarding the apparent problems inherent in the LR zone. From such discussions the Board hopes that the types of variance situations that it is asked to decide would be those situations that are truly contemplated under the MLUL N.J.S.A. 40:55D-70c. Also it is anticipated that the volume of variance requests would be less as well.

Address the serious matter concerning maximum building height for accessory structure in the LR Zone.

Furthermore, the Board is aware of the existence of numerous small undersized lots located throughout the LR Zones in the Township. A high concentration exists in Upper Greenwood Lake. The Board encourages the Council to investigate options to have these identified lots annexed to adjacent lots. This could have the following benefits: Help properties become more conforming, place these properties back on the tax roles in some cases, and improve neighborhood appearance by having these properties maintained.

Based upon the above, the following suggestions are listed for the Planning Board and Town Council's consideration:

1. Investigate the possibility of merging existing small vacant lots with adjacent occupied lots. This would place these small vacant parcels of land back on the tax rolls and hopefully would alleviate the need for property owners to seek variances. A suggestion is the Town acquire the vacant lots through tax foreclosure and then offer them to the adjacent property owners to be annexed to their property.
2. The Township should use open space funds to purchase small vacant lots as open space to keep them from being developed which further adversely impacts ground water capacity (new wells) and quality (septic systems).

---

Robert A. Brady, Chairman  
Zoning Board of Adjustment