

**INTEROFFICE MEMORANDUM**

**TO:** Mayor Di Donato  
Township Council  
Township Planning Board

**FROM:** Zoning Board of Adjustment

**DATE:** January 25, 2005

**RE:** Annual Report  
For January – December 2004

In accordance with NJSA 40:55D-70.1, the Board of Adjustment hereby submits its Annual Report on variances that were heard and decided in 2004. The Municipal Land Use Law 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 18 public hearings, including five special meetings, and decided the following number of variance cases in 2004:

Appeals	( <u>NJSA</u> 40:55D-70a)	0
Interpretations	( <u>NJSA</u> 40:55D-70b)	0
Bulks	( <u>NJSA</u> 40:55D-70c)	17
Use	( <u>NJSA</u> 40:55D-70d)	2

Of the bulk, or “c,” variances requested, seven were to erect new homes and ten were for additions or accessory buildings. The Board approved 16 of the bulk variance requests and denied one.

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].

Some of the c(1) variance cases were found to have land use hardships due to exceptional narrowness, shallowness, or shape of the properties in question, which could also include the properties’ small sizes. One of these cases involved a new home (*Zupp*) and four involved additions to existing homes (*Topczij, Huebner, Yuhas* and *Sabo*). These subject properties are located in the R-1, R-2, R-3 and LR (Lakeside Residential) zoning districts.

Four c(1) variance cases were found to have a land use hardship due to extraordinary and exceptional situations uniquely affecting the specific property. In one case (*Ryan*) the subject property is landlocked. In the other cases, the properties are corner lots, which means that the properties have two front yards pursuant to the definitions in the Zoning Ordinance.

Some of the c(1) bulk cases before the Board needed variances for a combination of factors. The properties for two new homes (*Zanado* and *Cefes/Magnolia*) and one addition (*Cornelissen*) exhibit undersized lots with severe topographic conditions. Two cases (*Turton* and *Cefes/Apple Tree*) involved properties with both exceptional shapes as well as prohibitive topographic conditions. Two of these subject lots fall in the LR zone and the others fall in the R-1 and R-4 zones.

Another category of “c” variances is the c(2) variance. The statute allows a variance to be granted when the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance and the benefits of the deviation would substantially outweigh any detriment. In one of these cases (*Vittor*), the applicants showed that the granting of the variances made for a more pleasing aesthetic design of the

outside of the home so as to fit in better with the character of the neighborhood. In the other (*Castagna*), the applicant showed that, in addition to the small size and physical constraints of the property, the addition was necessary in order to accommodate the applicant's disability. Both of these applicants also showed c(1) hardships.

The one "c" variance case denial involved an addition (*Post, Carolyn*). The applicant was not able to prove her hardship for excessive coverage.

The Board decided two use, or "d," variance applications, approving one of them. As set forth in the statute, there are six different classifications of use variances. The Board heard one that was a use variance because the proposed use is not permitted in the zone, or d(1), (*Renzland*) and one that is an expansion of pre-existing, non-conforming use, or d(2), (*Aphawa Land Co.*). The *Renzland* case was denied because the applicant did not show special reasons to prove his case pursuant to the Municipal Land Use Law and pertinent case law.

The Board also spent considerable time in 2004 hearing other application types. The Board heard four site plan applications, with one being associated with a use variance application that was proceeding simultaneously. One of them was not associated with a current use variance application, but the Board retained jurisdiction of the site from previous use variance decision. One was a request for amended preliminary and final site plan approval, having to do with landscaping, on the Car Wash site that was approved in 2003. The other was the "Laundromat" case (*1855 GLT, LLC*). The Board's time was again occupied in 2004 with Court remands. In one of these cases (*Cefes/Magnolia*) the applicant was able to prove his case and the Board overturned its prior denial. In the other (*High Crest Lake Lodge, Inc.*) an objector tried to convince the Board to overturn its prior approval. He did not, however, provide the Board with sufficient information that would cause the Board to change its decision. The Board heard five *de minimis* exception requests in conjunction with other applications, four of which were granted.

The Board heard a request for a determination of a pre-existing, non-conforming use pursuant to the Municipal Land Use Law, NJSA 40:55D-68 (*Mountainside Inn*). In such a request, the Municipal Land Use Law provides to the applicant a means of obtaining from the Board of Adjustment a certification that the use existed before the adoption of the ordinance that rendered the use nonconforming. In this case, the applicant showed that the properties in question have been used in the same manner since 1959 and that the uses were never discontinued.

### **Analysis**

An analysis of the “c” variance cases heard last year shows that many of the cases were located in LR zones throughout the Township. Attached is a two-page map that locates the properties for which variance applications were made in 2004. Eight of the 17 bulk variance applications were in the LR zone. The concentration of cases within the LR zones has occurred in the past. Accordingly, the Board recommends that the Council re-visit the bulk standards in this zone. Further, the Board reiterates its suggestion from 2003 that the Open Space Fund be used to purchase undersized lots for public use.

As for the “d” variances, the Board notes no special pattern occurred in 2004 that might warrant zoning changes.

### **Other Board Issues**

Like it did in 2003, the Board held five special meetings to accommodate citizens. In 2004, several night’s worth of meetings were usurped by Court remands, which were very time-consuming. Further, the Board spent a considerable amount of time between March and December hearing the “Laundromat Case” (*1855 GLT, LLC*) only to have the applicant withdraw the application at the December meeting. Both of these situations caused many ensuing applicants to be carried to subsequent meetings when there was not time in the evening to hear their cases.

While no applicants were close to receiving default approvals, the Board held special meetings nevertheless. Unfortunately, the Board found that the work production (*i.e.*, the number of applications completed) at some of these meetings did not offset the burden on the volunteer members, as well as the Board's staff, to convene for a second evening in the month. For example, in one case, a special meeting was held (August) when both listed applicants asked for continuances. One of those applicants (*Post, David*) withdrew his application at the following month's meeting.

Another problem facing the Board this year was applicants continually asking that their applications be carried to future meetings. In one situation, an attorney representing two cases (*Strengthen Our Sisters* use variance and *Strengthen Our Sisters* interpretation request) in June specifically asked for the July meeting in which to be heard, then sent a faxed letter on the day of the July meeting, asking for another carry owing to his unavailability because he is Counsel for another town. The Board felt he should have known his schedule at the time he requested the specific July date and it responded by dismissing the application without prejudice. Another case (*Apshawa Land Co.*) involved an attorney who sent a fax to the Board's staff on the day of a meeting, asking for a carry because he thought that his case would not be reached that evening. It turned out that the Board would have reached his case, so the Board dismissed the application without prejudice as well. The Board's response to these requests for carries is to now require that applicants appear before the Board to explain the reason for the request. The Board feels that the frivolous requests for continuances or applicants not ready to proceed cause scheduling problems for the rest of the agenda calendar, the cure for which is not necessarily another special meeting, which, in 2004, cost the Township an extra \$500 just for the Board Attorney's fee.

One last item the Board learned in 2004 was that it needs to strictly enforce its own by-laws. The *High Crest Lake Lodge, Inc.* case was remanded by the Court because a meeting at which the case was heard was extended beyond the hour established in the by-laws when the by-

laws do not provide for such an extension. An objector claimed he was barred from being heard when he left the meeting because he thought “the time was up” and no more testimony would be taken. The Court agreed and remanded the case to allow that objector the opportunity to testify.

### **Recommendations**

The Zoning Board of Adjustment, therefore, recommends that the Council and Planning Board: (1) re-examine the standards of the LR zone; (2) examine the use of the Open Space Fund to purchase undersized lots for public use.

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**Robert Brady, Chairman**  
**Zoning Board of Adjustment**

### Attachments