

INTEROFFICE MEMORANDUM

TO: Mayor Di Donato
Township Council
Township Planning Board

FROM: Zoning Board of Adjustment

DATE: May 1, 2007
Amended Based on Board Discussion at April 24, 2007 Meeting

RE: 2006 Annual Report
For January – December 2006

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 2006. 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 15 public hearings, including three special meetings, and decided the following number of variance cases in 2006:

Appeal/Interpretation	(<u>N.J.S.A. 40:55D-70a & b</u>)	1
Bulks	(<u>N.J.S.A. 40:55D-70c</u>)	11
Use	(<u>N.J.S.A. 40:55D-70d</u>)	7

Of the bulk, or “c,” variances requested, four were to erect a new home (one of which was a teardown/rebuild), five were for additions or accessory buildings, and two were for fence heights. The Board approved the eleven bulk variance requests.

Analysis by Variance (N.J.S.A. 40:55D-70-)

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. These cases involved new houses as well as additions to existing homes or accessory structures (*Hajbura, Lanza, Weise/Burton, and Goldberg*). These subject properties are located in the R-2 and LR (Lakeside Residential) zoning districts.

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. With the Kramer application the applicants showed that the granting of the requested variances enabled them to demolish the existing structure and construct a new home more in keeping with the neighboring homes. In the Pasek application, the applicant successfully demonstrated the granting of the requested variances for lot coverage enabling the home to be upgraded to conform more with the neighborhood.

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 regulations with respect to use. The Board decided seven use variance applications, approving six of them. As set forth in the statute, there are six different classifications of use variances. The Board heard three that were use variances because the proposed uses were not permitted in the zone, or d(1), (*Di Bella and Appelaar for accessory structures without a principal structure on the lot, and Mulligan for residence in the LC – Lake Commercial zone.*) The fourth use variance was to install rooftop antennas for telecommunications purposes on the existing Newark Water Treatment Facility located in an R-4 zone. Our telecommunications ordinance permits rooftop structures on existing commercial buildings in commercial zones. Two other use variance applications were requests to exceed the height limitations for the expansion of existing monopoles for telecommunication facilities. One such application was denied for the height extension (666 Macopin Road), and the other was approved.

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. 40:55D-70b). The Board heard one such case (Siobhan and Donald Partington.)

Other Cases Heard

The Board also spent time in 2006 hearing other application types. The Board heard three site plan applications associated with the collocation and extension of existing telecommunication monopoles. Two other prior Board approvals were back before the Board for amendments. These applications were for amendment to a use variance granted in 1998 to permit a future subdivision of property in the NC zone to create four residential building lots. The other amendment request was to amend a final subdivision for the creation of four residential lots to reflect the separation into two separate phases, I and II, for the purposes of filing the final plat. Both of these amendments are the direct result of the Highlands Act, which the applicant needed to seek amendment in order to conform with the Highland Act regulations. The Board also heard and approved three *de minimis* applications in conjunction with bulk variance applications (Lanza, Lanza, and Hajbura.) These such requests have to do with an applicant's complying with the State's Residential Site Improvement Standards (RSIS). The *de minimis* exception allows for deviation from these standards.

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 decided in 2006. Seven of the eleven bulk variance applications fell within in the LR zone. The concentration of cases within the LR zones has occurred for years and has been reported in previous Annual Reports. NJ case law requires that the remedy for this is to revise the ordinances. Accordingly, the Board continues to recommend that the Council re-visit the bulk standards in this zone. The Board is aware that the Planning Board, in 2003 and 2004, analyzed the LR zone standards.

Further, the Board reiterates its suggestion from 2003 and 2004 that the Town Council contact the Environmental Commission to see about using open space money to purchase under-sized lots for public use, such as pocket parks, in lieu of having these lots before the Board for variance relief.

As for the "d" variances, the Board notes no special pattern occurred in 2006 that might warrant zoning changes.

Other Board Issues

The Board discussed recommendation No. 2 at their April 24, 2007 meeting. It was determined that the recommendation to purchase and convert small isolated lots to pocket parks may cause future management and maintenance problems for the Township. The Board determined the small isolated lots should be purchased and offered to adjacent property owners, presumably at a reduced price. This would achieve the Board's goal concerning undersized lots, and would potentially keep them in private ownership and on the tax rolls.

Recommendations

Based on the above, the Zoning Board of Adjustment, recommends that the Council:

1. Look at the findings of the Planning Board's 2003/2004 analysis of the LR standards to enable a dialogue in the community 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, not only fewer in number, but those situations that are truly contemplated under the MLUL, N.J.S.A. 40:55D-70c.
2. Contact the Environmental Commission to explore the feasibility of using open space money to purchase under-sized lots for sale to adjacent properties.

Robert A. Brady, Chairman
Zoning Board of Adjustment

WHD

Attachments