

INTEROFFICE MEMORANDUM

TO: Mayor Bieri
Township Council
Township Planning Board

FROM: Zoning Board of Adjustment

DATE: March 18, 2008

RE: 2007 Annual Report
For January – December 2007

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 2007. 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 cases in 2007:

Appeal/Interpretation	<u>(N.J.S.A. 40:55D-70a & b)</u>	1
Bulks	<u>(N.J.S.A. 40:55D-70c)</u>	19
Use	<u>(N.J.S.A. 40:55D-70d)</u>	4

Of the bulk, or “c,” variances requested, three were to erect a new home (two of which were a teardown/rebuild), twelve were for additions or accessory buildings, and four were for fence heights. The Board approved the nineteen 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.]

A majority of the c(1) variance cases were found to have natural hardships due to topographic conditions existing on the properties, while several others 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. The topographic features impacted the following cases; Barounis, Flores, DeNova and Kreger. These subject properties are located in the LR (Lakeside Residential) zoning district.

There were two cases that were found to have hardships due to the location of the septic systems on the property (*Schaefer and Summers*) and one for the location of the well on the property (*Trapasso*).

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 five such cases. With the Collins and Gros applications the applicants showed that the granting of the requested variances enabled them to demolish a temporary structure and construct a new permanent addition more in keeping with the neighboring homes and improving the appearance. In the Lanza application, the applicant successfully demonstrated the granting of the requested variances enabled a home to be constructed to conform more with the existing house sizes in the neighborhood and to improve drainage, reducing its impact on surrounding lots.

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 four use variance applications in the past year approving all 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, (d)1 (*Upper Greenwood Lake Property Owners Association, an accessory building without a principal building, Panariello, the use of the*

accessory structure by other than the occupant of the principal structure and Ottens, the location of a septic system on a vacant property for an existing residence situated on another lot.)

The fourth use variance (*Somerville, LLC*) was to approve a community residence at an occupancy exceeding that permitted by the Municipal Land Use Law. All four use variance requests were 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 (*James Pawol*) affirming the decision of the Zoning Officer.

Other Cases Heard

The Board also spent time in 2007 hearing other application types. A prior Board approval for a commercial site plan was back before the Board for amendments to its landscaping plan. The Board also heard and approved one *de minimis* application in conjunction with a bulk variance application (*Lanza*). 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. There were also four fence variances for fence height. Three were for six foot fences in the front yard (*Leddy, Fulton and Orzo*) and one for an eight foot fence in the side and rear yards (*Partington*) all were approved.

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 2007. Twelve of the Nineteen 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, 2004 and 2006 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 2007 that might warrant zoning changes.

At the regular meeting of March 25, 2008 the Board requested that information concerning the number and size of existing vacant lots within the Lake Residential zone be incorporated in the report. This information is provided below.

“Vacant” Properties in the LR Zone
 (Minus Community Association Properties)

Square Feet	Number
0-5000	161
5001-7500	82}
7501-10,000	71} *totaling 153
>10,000	<u>249</u>
	563

Township Owned

0-5000	23
5001-7500	18}
7501-10,000	9}
>10,000	<u>46</u>
	96

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 located within the LR zone for public space or consider for sale to adjacent properties.

Robert A. Brady, Chairman
Zoning Board of Adjustment

WHD

Attachments

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