

INTEROFFICE MEMORANDUM

TO: Mayor Bieri
Township Council
Township Planning Board

FROM: Zoning Board of Adjustment

DATE: May 26, 2009
Amended Based on Board Discussion at the April 28, 2009 Meeting

RE: 2008 Annual Report
For January – December 2008

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 2008. 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 12 Regular Meetings and decided the following number of variance application cases in 2008:

Appeal/Interpretation	(N.J.S.A.40:55D-70a&b)	3
Bulks	(N.J.S.A.40:55D-70c)	18
Use	(N.J.S.A.40:55D-70d)	4
Private Road		1

Below is the type of bulk, or “c” variances requested and the action taken by the Board:

	Front Yard	Side Yard	Rear Yard	Coverage
Variance Request	8	13	3	6
Variance Approve	6	13	2	6
Variance Denied	2	0	1	0

In addition, the board granted variances for lot area, width, frontage and depth in connection with an application request to tear down and rebuild a single family house on a lot not conforming to the standards of the LR Zone.

The “c” variance applications heard by the Board were for the following improvements:

New homes	3
Residential additions	11
Accessory structures	2
Fence Height	2

Analysis by Variance

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.]

Only three of the variance applications that were approved by the Board were based upon the c (1) criteria. Two of the three c (1) findings were based upon unique features of the site; one for significant wetlands (Shoebox Storage) and the other for unique topographic reasons (Malko). The third variance heard and approved under these criteria exhibited an irregular shape to the property.

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 decided eleven such cases. In the majority of these cases, the Board found that the granting of the requested variances enabled the applicants to make improvements to the houses that brought them up to the standard of the neighborhood in which the property was located. A number of these applications requested lot coverage variances, and the impact of the additional coverage was mitigated by the Board conditioning their approval upon the removal of existing accessory structures.

The types of variances requested and the zone in which the properties are located is outlined below.

Zone	Front yard	Side yard	Rear yard	Lot Coverage	Lot Area	Lot Width	Lot Frontage	Lot Depth	Totals
LR	1	4	2	2	1	1	1	1	13
R-1	1	3	0	3	0	0	0	0	7
R-2	1	1	0	1	0	0	0	0	3
R-3	0	0	0	0	0	0	0	0	0
R-4	5	3	1	0	0	0	0	0	9
LC	0	2	0	0	0	0	0	0	2

As noted earlier, the Board denied requests for front yard and side yard variances in conjunction with an application to construct a single-family house. This resulted in the denial of an application for a single-family house on Lakeside Drive.

The statute also provides Boards of Adjustment 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 four use variance applications in the past year. Three requests were for uses not permitted in the zone. One application was for the location of a new house partially within the CC Community Commercial Zone, the second was to amend a prior use variance approval to permit cluster residential lots serviced by on-site septic systems, and the Board approved a request to permit a change of use in a pre-existing non conforming business use in the R-4 zone. The fourth use variance was to permit site improvements (parking lot re striping) to a preexisting non-conforming use (the Planning Board had determined it did not have jurisdiction in the matter).

Another provision in the statute provides boards with the power to hear and decide appeals (N.J.S.A. 40:55D-70b) and to interpret the Zoning Ordinance. One appeal was filed and heard by the board. The Board upheld the appeal request thereby overturning the Zoning Officer's determination that the applicant was requesting the expansion of a pre-existing non-conforming use. The applicant was able to obtain a building permit without seeking use variance approval (Mountain Lakes Car Wash). The Board also heard and decided a request for interpretation of the zoning ordinance. This request involved interpretation of the permitted use list for the Historic Preservation overlay zone. Applicant was seeking to have two principal uses within one retail space, and the Board determined that was not in conformance with the provisions of the zoning ordinance.

Other Cases Heard

The Board heard two time extension requests for two previously approved development applications. One request was for a previously approved major subdivision, and the other was for a preliminary and final site plan. Both applications were in conjunction with use

variances. The Board granted the requested extensions. There were two height variances for fences in the front yard, and both were granted a 6-foot height.

The Board also re-heard a case previously heard and approved by the Board for setback variances relating to improvements to a single-family house. The re hearing was necessitated due to the approved addition not being built in accordance with the approved plan. In this instance, the Board granted a Building setback of 10 feet, but the addition was built closer than 10 feet to the property line. The Board believes that if the Township Ordinances required as-built foundation plans to be submitted and approved prior to the framing of the structure, situations such as this could be avoided or corrected in the field before the structure is completed. It is also recommended that at the same time that an elevation be shot of the top of the foundation block to avoid potential violation of building height regulations.

Analysis

Once again the majority of the variances heard by the Board are for properties located within the LR Lakeside Residential zones situated throughout the Township. A review of prior Board Yearly Reports reveals these same findings, and repeated recommendations have been made to the Planning Board and Town Council with specific recommendations to help mitigate the situation. 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 the five prior Year End reports that the Town Council contact the Environmental Commission to investigate using open space money to purchase under-sized lots for public use, such as pocked parks, in lieu of having these lots before the Board in applications for variance relief.

As for the “d” variances, the Board notes no special pattern occurred in 2008 that might warrant zoning changes.

Other Board Concerns

The Zoning Ordinance does not have specific provisions controlling the height and size for accessory structures in the LR Zone. This must be rectified immediately.

Recommendations

Based on the above, the Zoning Board of Adjustment recommends that the Township 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 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.
2. Address the serious matter concerning accessory structure standards in the LR Zone.
3. 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.
4. That the General Ordinances of the Township be amended to require that as-built foundation survey and finished elevation of the top of foundation wall be provided before any further permits are issued for the construction of the subject building.

Robert A. Brady, Chairman
Zoning Board of Adjustment

WHD