

**TOWNSHIP OF WEST MILFORD
INTEROFFICE MEMO**

TO: Mayor Bieri
Township Council
Township Planning Board

FROM: Zoning Board of Adjustment

DATE: April 21, 2010
Amended Based on Board Discussion

RE: 2009 Annual Report
For January – December 2009

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 2009. 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 twelve public hearings and decided the following number of variance application cases in 2009:

Appeal/Interpretation	(N.J.S.A.40:55D-70a&b)	1
Bulks	(N.J.S.A.40:55D-70c)	10
Use	(N.J.S.A.40:55D-70d)	3
Private Road		0

In addition the Board heard and acted upon the following requests in 2009:

Minor Site Plan in conjunction with Pre-existing non-conforming use	1
Request for change in conditions on prior approvals	2
Time Extensions	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 Requests	7	2	6	1
Variances Approved	7	2	6	1
Variances Denied	0	0	0	0

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

New homes	1
Residential additions	5
Above Ground Pool	2
Fence Height	1
Front Porch	1

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.]

Seven of the variance applications that were approved by the Board were based upon the c(1) criteria. Two of the c(1) findings were based upon unique features of the site (through lots); two for the exceptional shape of the subject properties (Leonescu and Carr) and the other for unique topographic reasons (DeRobertis). The other two variance applications heard and approved under this criteria were due to corner lot and inadequate lot depth.

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 four 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. One of these applications requested a lot coverage variance, and the impact of the additional coverage was mitigated by the property being surrounded by Newark Watershed lands.

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
LR	4	1	3	0	1	1	1	1
R-1	0	0	1	0	0	0	0	0
R-2	1	1	1	0	1	0	0	1
R-3	0	0	0	0	0	0	0	0
R-4	1	0	0	0	0	0	0	0
HC	1	0	1	1	1	0	0	0

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 three use variance applications in the past year. Two requests were for two principal uses on the same property. One application was for the location of two principal uses within one building (Vreeland Store), the second was to permit an accessory apartment separate from the residential house on the property. The Board also approved a deviation from the conditional use provisions to permit an auto sales use within the HC zone.

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 interpretation was filed and heard by the Board. The Board determined that the applicant was not required to seek Board approval to install telecommunication antennae on previously approved sites where the approval was for additional antennae at some future time. The applicant is able to obtain the necessary permits without seeking use variance approval.

Other Cases Heard

The Board heard one time extension request for a previously approved development application for a church related recreation building. The Board granted the requested extension. There was a minor site plan application for the improvement and re-striping of a parking lot on an existing mixed-use property. Because the residential apartments are not permitted within the CC zone the matter fell under this Board's jurisdiction. This site plan along with a deminimus exception from the RSIS standards concerning the residential uses was granted by the Board.

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 pocket 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 2009 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 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.
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. In the review of these properties the following should be determined:
 - a. Location of properties and whether they are land locked.
 - b. Evaluate the viability of being able to sell or annex these properties to the adjoining property owners. These properties should remain or be put back onto the tax roles where possible and, therefore, Green Acre funds should not be used in these cases. This would also result in less applications being made to the Board of Adjustment for undersized lots, reduce additional wells from being drilled and septic systems from being installed. Furthermore this supports watershed planning to reduce ground water impacts.

4. The Board recommends that the Town Ordinances be amended to require that an as-built survey be submitted after completion of the building foundation on an addition and prior to the issuance of a framing permit. The Town Council should direct the Department Head of the Planning and Building Department to initiate the necessary steps to implement that practice for all building permits issued by the Township Building Department.

Robert A. Brady, Chairman
Zoning Board of Adjustment

WHD