

## INTEROFFICE MEMORANDUM

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

**FROM:**    Zoning Board of Adjustment

**DATE:**     February 28, 2006

**RE:**       **Annual Report**  
**For January – December 2005**

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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 2005. 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 14 public hearings, including two special meetings, and decided the following number of variance cases in 2005:

Appeal/Interpretation	( <u>N.J.S.A.</u> 40:55D-70a & b)	1
Bulks	( <u>N.J.S.A.</u> 40:55D-70c)	14
Use	( <u>N.J.S.A.</u> 40:55D-70d)	6

Of the bulk, or “c,” variances requested, one was to erect a new home and 13 were for additions or accessory buildings. The Board approved 12 of the bulk variance requests and denied two.

### **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 additions to existing homes or accessory structures (*Sherry, Smith, Ryan, Guarino, Bryan, Stephens, Kuhl, Montlabano, Bell and Wright*). These subject properties are located in the R-2, R-4 and LR (Lakeside Residential) zoning districts.

One of the c(1) bulk cases before the Board needed variances for a combination of factors. The property for a new home (*Mazzocchi*) exhibits an irregularly-shaped lot with severe physical constraints. This Subject Property falls in the LR zone.

One applicant who applied for c(1) variance failed to meet his burden of proof for any category of the “c” variances and so was denied, as would be required by the law and case law (*Thomases*).

Another “c” variance case denial involved an accessory structure in a front yard (*Donadio*). The request was to convert an existing home into an accessory structure, thereby resulting in an accessory structure in a front yard.

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 one such case (*Ennis*), where the applicants showed that the granting of the lot coverage variance enabled them to accommodate elderly parents in their expanded home.

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 six use variance applications, approving five 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), (*New Heaven Mission, Panariello and Seven 2000*), one that was an expansion of a non-conforming use (*Shiloh Bible Camp*), or d(2), and one that was a request to exceed the maximum height limitation (*New Cingular Wireless PCS d/b/a AT&T Wireless*). The sixth use variance case was a re-approval of a use variance for an off-site directional sign for the Van Dyk Assisted Living at Bald Eagle Commons. The applicant had received use variance approval in 1995 conditioned on a five-year period for the sign. The applicant received a five-year re-approval in 2000 and received another five-year extension in 2005.

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 where the application applied for both types of rulings simultaneously (*West Milford Auto Recyclers*).

## **Other Cases Heard**

The Board also spent time in 2005 hearing other application types. The Board heard two site plan applications, both of which were associated with a use variance application that proceeded simultaneously (*Shiloh Bible Camp* and *New Cingular Wireless PCS d/b/a AT&T Wireless*). The Board approved one final subdivision application (*Aikey*). The Board also heard and approved one *de minimis* exception request in conjunction with a bulk variance application (*Mazzocchi*). This has to do with an application’s complying with the State’s Residential Site Improvement Standards (RSIS). The *de minimis* exception allows him to vary from those standards.

Another applicant for a use variance that the Board has spent considerable time with over the last two years attempted to proceed, however; the applicant found that it was not ready to prosecute its own case (*Strengthen*

*Our Sisters*). The applicant temporarily resolved its chronic unpreparedness by withdrawing the application. It advised it would return to the Board when it is ready to present its case.

## **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 2005. Seven of the 14 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 2005 that might warrant zoning changes.

## **Other Board Issues**

In 2005, several night’s worth of meetings were usurped by cases that were very time-consuming owing to circumstances beyond the Board’s control (*Donadio* and *Panariello*, for example). Under the law, applicants and objectors alike must be given the time they need to present their case. Similarly, the Strengthen Our Sisters case took the Board’s time only to be withdrawn. These types of situations caused many ensuing applicants to be carried to subsequent meetings when there was not time in the evening to hear their cases. While the raw number of case heard and decided may statistically appear as though it is fewer than the number decided in past years, to properly vet the Board’s work for 2005, one must consider the amount of time that was

needed for these special circumstances. As it did last year, the Board held two special meetings to accommodate citizens who fell behind these time-consuming cases. The Board scheduled these meetings judiciously, however, because of the lessons it learned in 2004. Recall that the Board found that the work production at some of these special meetings did not offset the burden on the volunteer members to convene for a special meeting. This came to light when special meetings were held and both listed applicants asked for continuances.

## **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 public use, such as pocket parks.

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Robert A. Brady, Chairman  
Zoning Board of Adjustment

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Attachments