

2006 ANNUAL REPORT

of the

MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT

This Annual Report covers the Board's actions from January 1, 2006 through December 31, 2006. During this time span, the Millstone Township Zoning Board of Adjustment (Zoning Board) conducted ten (10) regular meetings.

The Zoning Board rendered decisions on a total of twelve (12) applications. This represents an decrease of four (4) applications from 2005. Many applications included more than one variance requests as reflected below in Tables 1 and 2. The Zoning Board approved nine (9) applications (75%), and denied two (2) applications (16.6%). One (1) application was dismissed without prejudice. Tables 1 and 2 illustrate variance and application request information by respective zoning districts and type of variance requested. A summary of each application is also attached.

The Zoning Board reviews applications with an eye toward reducing the intensity and quantity of variances by working with applicants to develop improved designs. Through this process, the number of variances that are initially requested is often reduced.

TABLE 1: VARIANCES & APPLICATIONS APPROVED-2006

TYPE →	Lot area/ shape/depth /width	Use Variance	Site Plan	Setback Principal Structure	Setback Accessory Structure	Signs	Extension of Time	Totals
ZONE ↓								
HC-1	1	2		1		1		5
R-80	7	0		1				8
BP		1	1					2
RU-P							2	2
R-130								0
Totals	8	3	1	2	0	1	2	17

TABLE 2: VARIANCES & APPLICATIONS DENIED-2006

TYPE →	Lot area/ shape/depth	Use Variance	Site Plan	Setback Principal Structure	Setback Accessory Structure	Signs	Extension of Time	Totals
ZONE ↓								
R-130		1						1
BP		1						1
R-80		1						1
Totals	0	3	0	0	0	0	0	3

2006 SUMMARY

BULK VARIANCES

Bulk Variances were the most frequently requested relief from the Zoning Board in 2006. Applicants requested twelve (10) bulk variances which can be broken down into the following categories:

1. Principal Setback: Two (2) Variances Requested (Lux & Treasure Island); Two (2) Variances Approved; Zero (0) Variances Denied.
2. Lot Area: Three (3) Variances Requested (Lux, Fisher & Trippiedi); Three (3) Variances Approved; zero (0) Variances Denied.
3. Lot Depth: one (1) Variance Requested (Dunkin Donuts); one (1) Variance Approved; zero (0) Variances Denied.
4. Four (4) Variances were also granted for Usable Development Area, Lot Shape, and Accessory Structures. All these variances were approved.

USE VARIANCES

Applicants requested seven (7) use variances. Three (3) were granted (Dunkin Donuts, Treasure Island & MECCA), three (3) were denied (Gaboff, Norieka & DJ Capital), and one (1) was dismissed without prejudice.

The Zoning Board considers each variance request carefully by meticulously analyzing the context-sensitive fashion of each request while remaining cognizant of the overall neighborhood impact. The Zoning Board also weighs the impact any variance may have on the Master Plan when reviewing the merits of any variance request to ensure the development will not have a substantial negative impact on its purpose or intent.

VARIANCE REQUESTS BY ZONING DISTRICT

R-80 Zone

Eight (8) Bulk Variance applications were approved in the R-80 Zone. Three variances (3) were for minimum lot area (Lux, Fisher & Trippiedi); two (2) were for accessory structures (Bailey & Fisher); one (1) was for minimum front set back (Lux); one (1) was for useable development area (Fisher); and, one (1) was for minimum lot area shape (Fisher).

The Zoning Board only considered one (1) application for a Use Variance (Noreika) in the R-80 Zone. That application was for an Expansion of Pre-existing Non-Conforming Use which was denied. Noreika instituted suite against the Zoning Board challenging the denial.

This zoning district had the highest number of approved variances (8), which were all bulk variances. In reviewing the bulk variance applications, the Zoning Board

requested changes in the applicant's site plans, when appropriate, to minimize the impacts on neighboring properties and improve safety. For example, the Board Engineer recommended changes to the septic plan for the Fisher Application to preserve the sight triangle at the intersection of Agress Road and Rising Sun Tavern Road thus improving safety at a dangerous intersection.

HC-1 Zone

In the HC-1 Zone, the Zoning Board approved one (1) Bulk Variance for side-yard setback (Treasure Island); one (1) Bulk Variance for minimum lot depth (Dunkin Donuts); two (2) Use Variance (Treasure Island & Dunkin Donuts); and, one (1) Sign Façade Variance (Treasure Island).

The Zoning Board dismissed an application without prejudice for a Use Variance in the HC-1 Zone which had been withdrawn by the applicant. (Wawa)

BP Zone

The Zoning Board considered two (2) Use Variances in the BP Zone. The Zoning Board granted one (1) Use Variance in the BP Zone to allow a Montessori School and denied the other for Commercial Recreation (DJ's Capital Enterprises).

RU-P Zone

The Zoning Board granted two (2) Extensions of Time in the RU-P Zone to extend variance approval beyond the nine (9) month period permitted by Ordinance.

In both cases, the extension of time was needed due to items required by the Board as conditions of approval not being completed in a timely manner. The Board questioned the applicants to determine the cause of the delays and found that the applicants had diligently pursued items needed from government agencies outside Millstone, but were delayed by those agencies.

R-130 Zone

The Zoning Board denied one (1) Use Variance (Gaboff) in the R-130 Zone.

RECOMMENDATIONS

Changes to Variance Expiration Ordinance. The board recommends that the Township adjust the language in Section 3-29 of the Land Use Ordinances of the Township of Millstone which expires variances granted by the Zoning Board if construction does not begin within 9 months of approval to remove any ambiguity that the limitation applies not only to use variances but also bulk variances granted by the Zoning Board. Additionally, to be consistent with the MLUL, the board recommends that the timeframe for enabling the applicant to file an appeal be clarified.

The general rule is that variances, once granted, run with the land in perpetuity. Stop & Shop v. Bd. of Adjustment, 162 N.J. 418 (2000). At present, the Township of Millstone has an Ordinance which provides for the expiration of variances in nine (9) months. However, the language is ambiguous as to whether it applies only to use variances or also to bulk variances granted by the Zoning Board. The zoning board interprets the ordinance as applying to both use and bulk variances. However, the lack of clarity in the ordinance may enable a developer to successfully challenge the board's interpretation on appeal resulting in the board granting bulk variances that never expire.

Additionally, if the developer does not begin construction within nine (9) months of approval, the developer may file a request for an extension to 15 months, but if no request is filed, the variance expires. The Ordinance further states that if the request is not filed within the first nine (9) months, then the applicant can not file for the 15 month extensions. To be consistent with other provisions of the MLUL, this section of the ordinance should be modified to provide that the applicant can file for the extension anytime within 15 months of the approval by the Board.

Therefore, the Board of Adjustment recommends that the Township Committee modify Section 3-29 of the Ordinances to clarify that both use and bulk variances granted by the Zoning Board expire within nine (9) months and that developers can file for an extension within 15 months of approval, but the extension of the variance can be no more than 15 months from the approval date.

Establish Township Architectural Standards

As a result of several applications that came before the Board of Adjustment that required the Board to review architectural drawings, the Board discussed the need for an architectural standard in the Township. Benefits of an architectural standard include:

- Preserving the rural look currently inherent in Millstone's existing buildings.
- Providing consistency between multiple projects developed within the same area of the Township.
- Promoting consistency between architectural plans approved by the Planning Board and Zoning Board.
- Providing a common reference for both the Zoning Board and Planning Board which can provide guidance to applicants prior to them submitting architectural plans to the Boards.

Chairman Novellino contacted Planning Board Chairman Newman to discuss a combined effort to work on a standard that could be used by both Boards. Based on positive feedback from the Planning Board regarding the need for an architectural standard, the Board of Adjustment recommends that Richard Coppola, Township Planner, work on a proposed standard that can be recommended to the Township Committee for adoption via an ordinance.

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List of Applications**

Z05-01 TREASURE ISLAND - Block 56, Lots 5, 6, 7, and 8.01. Located at Route 537 (also known as Monmouth Road), Millstone Township. HC-1 Zone. Applicant received use variance approval on 9/28/05, Memorialized on 10/26/05, to construct an 8-building self-storage facility consisting of 131,754 sq. ft. Site Plan Approved 1/25/06.

Z05-13 BAILEY – Block 50, Lot 29.05 – Located at 16 Fillmore Drive, Clarksburg. 18.731 acres in the R-80 zone. Applicant seeks to construct an in-ground swimming pool and seeks relief from 4-9.4 , no accessory buildings allowed in a front yard. Approved on 2/22/06.

Z05-12 GABOFF -,Block 62, Lot 17.02, located at 532 Ely Harmony Road. Applicant seeks to construct a 7,057 sq. ft. building for use as an animal shelter (care and rehabilitation) and residence. Bulk and use variance. Application Denied 2/22/06.

P05-15 LUX, GARY AND SUZANNE – Block 47.02, Lot 3. 18 East Pine Branch Drive. Located in the R-80 Home. Applicant proposes to construct a 1,743 sq. foot addition and a 2-car garage to their existing single-family dwelling. Approved 3/22/06.

Z05-16 – FISHER, PETER – Block 31, Lot 30.01. 72 Rising Sun Tavern Road. Located in the R-80 zone consisting of .89 acres. Applicant seeks approval to demolish existing 1 ½ story dwelling and construct a new 2-story dwelling. Approved 3/22/06.

Z06-03 MECCA INVESTORS – Block 16, Lot 10.05. Located at 200 Meca Drive. Property consists of 130,266.99 s.f. in the BP Zone. Applicant seeks to modify the existing building to function as a Montessori School. Amended Preliminary and Final Site Plan approved 6/28/06.

P05-14 DJ’S CAPITAL ENTERPRISES (SAVOIA) – Block 16.01, Lot 2. 600 Rike Drive. 3.26 acres located in the BP Zone. Present use office and warehouse (under construction). Applicant proposed to utilize 21,000 s.f. for office, warehouse, commercial recreation (Batting cages). Application denied 7/27/06.

Z05-08 DUNKIN DONUTS – Block 56, Lots 12.01 and 13. Located on County 537. 4.16 Acres located in the HC-1 Zone. Application Deemed Complete 7/15/05. Applicant seeks approval of a Dunkin Donuts Facility with a drive-thru window. Application Approved 4/26/06.

Z06-01 WAWA – **Block 56, Lots 3 and 4.** Located at CR 537 and Pine Drive. 5.57 Acres located in the HC-1 Zone. Applicant’s present use: Food Mart and Gasoline Station. Applicant seeks building and parking addition to the present use. Preliminary

and Final Site Plan. Applicant requests matter be Dismissed Without Prejudice. Board dismissed without prejudice. 9/27/06.

Z06-04 COTTRELL, RICHARD (John Trippiedi- Owner) – Block 37.07, Lot 29.06. Vacant property located on Clarksburg Road consisting of 40,000 s.f. acres in the R-80 Zone. Applicant seeks approval to construct a 3,300 s.f. single-family dwelling. Variance needed for lot area. Approval granted 9/27/06.

Z05-09 PARAMOUNT PROPERTIES - Block 54, Lot 1. Applicant received variance approval to construct a single family dwelling in Resolution memorialized on October 28, 2005. Applicant returning to the Board for an Extension of Time. Extension granted on 9/27/06 for extension through January 2007. Applicant returned in November seeking relief from Conditions 9 and 11 of the Resolution of Approval. Relief granted 11/29/06.

Z06-06 ARTHUR ENG – Block 23, Lot 25.02. Located on Conover Road. .97 acres in the RU-P Zone. Applicant received approval 10/25/06 to construct a single- family dwelling on vacant land. Applicant returning to the Board for reinstatement of the bulk variance and an interpretation of the Ordinance. Board granted extension from nine months to fifteen months.

RECOMMENDATIONS:

As a result applications that came before the Board of Adjustment, the Board discussed the need for an architectural standard in the Township. The Board requested that their Planner, Richard Coppola, work on a standard. Chairman Novellino contacted Planning Board Chairman Newman in a combined effort to work on a standard.

PENDING:

Z06-02 MILLSTONE ACQUISITION – Block 20, Lot 3.14. Located at Route 33 and Dugan’s Grove Road. 6.41 acres located in the HC Zone. Applicant seeks a minor subdivision to keep the existing uses with new lot for a proposed day care center. Proposed new building consisting of 7,500 s.f. with one-story.

P06-12 DITCH WITCH – Block 16, 10.06. 200 Meco Drive. 3.01 Acres located in the BP zone. Vacant lot in industrial park. Office/Warehouse. 7,125 s.f.; two-story office 4,500 s.f. Manufacture and distribute specialty excavation equipment. 7,125 s.f.; two-story office 4,500 s.f. Use Variance.