

# **2010 ANNUAL REPORT**

of the

## **MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT**

This Annual Report covers the Board’s actions from January 1, 2010 through December 31, 2010. During this time span, the Millstone Township Zoning Board of Adjustment (Zoning Board) conducted ten (10) regular meetings.

The Zoning Board rendered decisions on the merits on eight (8) applications in 2010. This is a decrease in 3 applications from 2009.

Many applications included more than one variance request. The Zoning Board approved five (5) applications (62.5%), and denied three (3) applications (37.5%). Of the five applications approved, three contained bulk variance requests and two were site plan related approvals. The three denied applications were for Use variances. 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-2010**

<b>TYPE →</b>	Lot area/ shape/depth/ setbacks	Use Variance	Lot Coverage	Waiver Site Plan	Size of Accessory Structure	Size of Sign	<b>Totals</b>
<b>ZONE ↓</b>							
BP				1			<b>1</b>
HC						1	<b>1</b>
R-130	4				1		<b>5</b>
<b>Totals</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>		<b>7</b>

**TABLE 2: VARIANCES & APPLICATIONS DENIED-2010**

<b>TYPE →</b>	Lot area/ shape/depth	Use Variance	Major Site Plan	Soil Removal	Extension of Time	<b>Totals</b>
<b>ZONE ↓</b>						
NC		2				<b>2</b>
HC-1		1				<b>1</b>
<b>Totals</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>

## **2010 SUMMARY**

### **BULK VARIANCES**

Bulk Variances were the most frequently requested relief from the Zoning Board in 2010. Applicants requested bulk variances which can be broken down into the following categories:

1. Lot Area:
  - Width: One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variance Denied.
  - Area: One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied
2. Setbacks:
  - Front Yard: One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied.
  - Side Yard: One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied.
3. Waiving of Site Plan:
  - One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied.
4. Size of Sign:
  - One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied.
5. Size of Accessory Structure:
  - One (1) Variance Requested; One (1) Variance Approved; Zero (0) Variances Denied.

### **APPROVAL OF USE VARIANCES**

The Zoning Board did not approve any use variances in 2010.

### **DENIAL OF USE VARIANCES**

The Zoning Board denied Use Variance application of 353 Sweetman's Lane, L.L.C., 232 Millstone Road, L.L.C. and Seasonal World which also included numerous bulk variance requests. Since the Zoning Board did not grant the Use Variance, the Board did not make any findings as to the Bulk Variance requests. The Variance requests are not considered approved or denied by the Zoning Board.

### **“D” VARIANCES**

Applicants requested three (3) D Variances from the Zoning Board in 2010. All three of the Use Variances were denied.

## **VARIANCE REQUESTS BY ZONING DISTRICT**

### **HC Zone (RGM Real Estate, L.L.C.)**

One (1) bulk variance was approved in the HC Zone. The Bulk Variance was for the size of the free standing sign.

### **R-130 Zone (Massenzio and Edward V. Vetter Applications)**

Five (5) Bulk Variances were granted in the R-130 Zone. On the Massenzio Application, one (1) bulk variance was granted for front yard setback and the other was for side yard setback. On the Edward V. Vetter application, Three (3) bulk variances were granted. One (1) bulk variance for minimum lot area an existing condition, one (1) variance for lot width an existing condition and another variance for size of accessory structure.

## **RECOMMENDATIONS**

The State of New Jersey has recently adopted legislation to eliminate the “Time of Decision Rule” for land use applications. This longstanding rule required planning or zoning boards to base their decisions on ordinances that were in effect at the time the board makes its decision. After the new legislation takes effect in May 2011, planning and zoning boards will need to base their decisions on the ordinances in place at the “Time of Submission” of the application. Thus, this legislation eliminates a vital protection previously granted to Municipalities which was the ability to change existing land use ordinances after an application for development to the planning or zoning board was made and have those new ordinances apply when the board makes a decision on that application.

For example, this new legislation prevents the Township from changing existing ordinances to prevent a land use that has been inadvertently permitted by the existing ordinances to be non-permitted after an application has been submitted. Previously, if an application was submitted for a land use that the ordinances permitted and the township deemed that the use was not in alignment with the Master Plan, the ordinances could be changed before the application was heard to make the use non-permitted and force the application to be heard by the Zoning Board. With this new legislation in effect, the Township will no longer have this option once an application has been submitted.

Given the potential impacts of this new legislation on the town’s ability to protect the Township against development which may not be in alignment with the Master Plan, the Zoning Board recommends that the Township Committee consider taking a pro-active approach to this issue. We suggest that the township planner and attorney determine the best way to protect the intent of the Master Plan given this new legislation, particularly regarding clarifications and additions to the definitions and procedural provisions of the Township’s ordinances related to an “Application for Development”. If the Township Committee decides to pursue this analysis, we would further recommend that the Board Attorney, Greg Vella, be consulted to offer his legal opinion on the effectiveness of any proposed ordinance or administrative procedure changes.

One approach suggested by Mr. Vella, is to review all permitted uses in each of the current zones, with the intent of specifically eliminating any uses that are presently permitted by ordinance that should not have been permitted. Since the current land use ordinances state that any uses not expressly permitted by the ordinances are not permitted, this approach will provide strong protection to the township.

The Zoning Board also recommends that the Township review the existing sign ordinances. During 2010, the Board reviewed an application for an expansion of a pre-existing non-conforming sign.. In reviewing the ordinance and applying it to the application, there was some ambiguity as to whether the frame structure should be included in the maximum permitted signage area.

The exclusion of the frame structure area from the size calculations may permit a sign that could visually, appear greater than the size specified by the ordinance. Since there is technically no “signage” on the frame structure, applicants can argue that the size of the frame should not be included in the size calculations, However, not including the frame structure in the size calculations may creates a visually larger sign that exceeds the size envisioned by the Township...

Thus, the Zoning Board suggests that the Township review the signage ordinance to clarify how the size of the structure area should relate to the maximum permitted signage area. The goal would be to remove any ambiguity in the sign ordinance in order to aid township professionals and boards in applying the sign ordinance to applications in a consistent manner.

**2010 BOARD OF ADJUSTMENT RESOLUTIONS INDEX**

<b><u>App#</u></b>	<b><u>Application</u></b>	<b><u>Zone</u></b>	<b><u>Variance</u></b>	<b><u>Date</u></b>
<b><u>Mem</u></b>				
<b>Z08-05</b>	<b>Falk Building, LLC</b> Block 60.02, Lot 1Property located at 15 Carrs Tavern Road consisting of 3.666 acres located in the R-80 rural residential zone. Applicant sought minor subdivision to create two lots; one for existing professional building and one for single family dwelling. Use variance needed for existing non-conforming use for proposed Lot 1.02. Bulk variances required. Approvals granted 11-30-09. Extension of time to Memorialize the Resolution was granted through 1-31-10. Memorialized 1-27-10	<b>R-80</b>	<b>Use &amp; Bulk</b>	<b>01-27-11</b>
<b>Z09-01</b>	<b>Shelly Liebowitz (School for Dogs)</b> Block 57, Lot 33 – Located at Burnt Tavern Road consisting of 56.47 Acres in the BP Zone. Applicant received use variance approval to	<b>BP</b>	<b>Use</b>	<b>1/27/12</b>

	construct a 25,471, one-story building to operate a facility to include boarding for dogs and cats, pet training school, pet grooming school and pet grooming in Resolution Memorialized on 6-24-09. Applicant received Preliminary Site Plan approval that was granted and memorialized in Resolution dated 8-26-09. Applicant received Final Site Plan approval on 1-27-10.			
<b>Z09-05</b>	<b>Massenzio</b> Block 46, Lot 15.01 – 35 Back Bone Hill Road – 3.63 acres located in the R-130 Rural Residential Zone. Applicant seeks approval to construct a 865 s.f. addition to the first floor and porch of the existing home. Bulk variance relief for front yard setback is sought where 75 ft. is required and 52.34 ft. is provided and side yard setback where 40 feet is required and 28.60 is provided. Deemed Complete 4-13-10. Date of Action 8-11-10. Noticing Required. Memorialized on 5-26-10	<b>R-130</b>	<b>Bulk</b>	<b>5/26/11</b>
<b>Z07-06</b>	<b>353 SWEETMANS LANE, LLC</b> – Block 39.01, Lots 2.01 & 7. 1.88 acres located in the NC Zone at 353 Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a one-story, 4,000 s.f. retail building with an existing 6,750 s.f. multi-use building. “D” variance is required for Block 39.01, Lot 7 (for proposed stormwater management) which is located in the RU-P Zone. Bulk variances needed. Deemed Complete 6-16-09. Heard in part on 10-28-09; 1-27-10; 2-24-10; 3-24-10. Approval Denied.	<b>NC</b>	<b>USE</b>	<b>6-23-10</b>
<b>Z07-07</b>	<b>232 MILLSTONE ROAD, LLC</b> – Block 39.01, Lots 2.02 & 7– 4.33 Acres located in the NC Zone located on Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a 7,700 s.f. retail building, 1,000 s.f. office space on the second-floor with adjoining 4,000 s.f. bank. “D” variance needed for Lot 7 (proposed stormwater management area) which is located in the RU-P Zone. “D” variance needed for Tower peak and cupola peak. Deemed Complete 6-16-09. Heard in part on 10-28-09; 1-27-10; 2-24-10; 3-24-10. Approval Denied.	<b>NC</b>	<b>USE</b>	<b>6-23-10</b>

<b>Z10-01</b>	<b>SEASONAL WORLD</b> – Block 57.01, Lot 21.01. 2.91 Acres located in the HC-1 Zone know as 532 Monmouth Road. Applicant seeks amended major site plan approval and use variance to add a canopy around the perimeter of the existing building (increasing the building by 2,280 s.f.) add three additional parking spaces; modify prior approval conditions to allow the approved two (2) storage trailers to stay on site for a longer period of time. Deemed Complete 3-4-10. Date of Action: 7-1-10. Carried from 4-28-10. Application Denied.	<b>HC-1</b>	<b>USE</b>	<b>6-23-10</b>
<b>Z10-02</b>	<b>VETTER, EDWARD V.</b> - Block 64, Lot 2.02. Located at 42 Charleston Spring Road consisting of 83,145 s.f. in the R-130 zone. Applicant sought bulk variance relief (pre-existing for minimum lot area and lot width/frontage) to construct a detached 40' ft. x 80' garage consisting of 3,200 s.f. and 19'3" in height. Approval granted on 6-23-10. Resolution Memorialized.	<b>R-130</b>	<b>BULK</b>	<b>7-28-10</b>
<b>Z10-03</b>	<b>RGM REAL ESTATE, LLC.</b> – Block 20, Lot 3.14. Located at 530 State Route 33 West consisting of 6.42 acres in the Highway (HC) Zone. Applicant sought variance relief to construct a freestanding sign for his restaurant where 96 s.f. are permitted, the proposed sign measures 274 s.f. Approval granted.	<b>HC</b>	<b>Bulk</b>	<b>9-29-10</b>
<b>Z09-01</b>	<b>SHELLY'S SCHOOL FOR DOGS</b> - Block 57, Lot 33 – Located at Burnt Tavern Road consisting of 56.47 Acres in the BP Zone. Applicant received Final site plan approval to construct a 25,471, one-story building to operate a facility to include boarding for dogs and cats, pet training school, pet grooming school and pet grooming. Applicant seeks to downsize the building square footage and seeks a waiver from Site Plan approval.	<b>BP</b>	<b>Waiver (Site Plan)</b>	