

**APPLICANT: ROBERT MILDNER
APPLICATION NUMBER: ZB09/33
BLOCK: 245
LOTS: 33-34 & 63-64
ADDRESS: 615 HIGHWAY 35
PROJECT NAME: N/A
ATTORNEY FOR APPLICANT: MARK STEINBERG, ESQ.
RESOLUTION NUMBER: ZB10/14**



**RESOLUTION OF THE NEPTUNE TOWNSHIP ZONING
BOARD OF ADJUSTMENT**

**RESOLUTION OF THE ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF NEPTUNE,
COUNTY OF MONMOUTH, STATE OF NEW JERSEY
GRANTING BULK VARIANCE AND USE VARIANCE
APPROVAL AND ASSOCIATED WAIVERS TO
ROBERT MILDNER FOR PROPERTY LOCATED AT
615 HIGHWAY 35, ALSO KNOWN AS BLOCK 245,
LOTS 33, 34, 63 AND 64 AS SHOWN ON THE TAX MAP
OF THE TOWNSHIP OF NEPTUNE**

WHEREAS, Robert Mildner (the “applicant”) has made application to the Neptune Township Zoning Board of Adjustment (the “Board”) seeking bulk variance, d(1) and d(2) use variance approval and associated waivers to permit retail business as well as a lawn mower repair shop; and

WHEREAS, the Board conducted a public hearing on said application on March 31, 2010; and

WHEREAS, the applicant has satisfied the notice requirements of the New Jersey Municipal Land Use Law and has provided proof of same to the Board; and

WHEREAS, the Board, having reviewed the application, documents, plans and exhibits as submitted and having listened to the applicant and its professionals and after having received information from its professional staff, the Board does hereby make the following findings of fact and law:

- A. The subject property is located at 615 Highway 35, in the C-4 zone. The subject of the application is Block 245, Lots 33, 34, 63 and 64. The property is currently the site of the applicant’s lawn mowers repairs and lawn mower sales business.

B. The applicant is seeking use variance approval to permit a retail business as well as a lawn mower repair shop.

C. In support of the application, the applicant submitted the following documents:

1. Architectural Design from Mark Pavliv, AIA marked as A-1;
2. Letter of denial from Zoning Officer, marked as A-2;
3. Use Variance Plan, marked as A-3.

D. Robert N. Mildner testified that he is the sole owner of an existing nonconforming home and garden equipment repair and maintenance business. The applicant proposes to construct a commercial addition to his existing structure as well as provide renovations. He also seeks to construct a 3,537 square foot retail sales building on the subject site. Mr. Mildner testified his existing building is 4,000 square feet. He has one full time employee and receives approximately ten (10) customers per day. He estimated 2/3 of his business is lawn equipment repair and the balance is sales of lawn mowers and snow blowers.

E. Mr. Mildner testified that the additional retail space on site will be dedicated to four (4) retail stores. There will be no residential use permitted. Mr. Mildner has owned the business since 1998 and has had too much of the lawn equipment is stored outside. The renovation will allow all equipment to be kept under one roof.

F. Charles Surmonte, P.E., provided expert testimony on behalf of the applicant. Mr. Surmonte testified that the proposed application includes proposed rectangular shaped buildings for economy of construction. The sidewalk ordinance will be complied with. The applicant requires a variance for parking since eighteen (18) parking spaces are proposed and nineteen (19) parking spaces are required. The subject property is particularly suited to accommodate the requested relief and

would require a use variance for the expansion of the current nonconforming use as well as a use variance to construct a retail sales building.

G. James Higgins, P.P. provided expert planning testimony on behalf of the applicant. Mr. Higgins testified the applicant's property is located in an area of mixed land uses (residential and commercial). He described the property as an unattractive, obsolete site. Mr. Higgins opined this application goes to the heart of the Neptune Township Redevelopment Plan.

H. Mr. Higgins further testified that none of the proposed bulk variances or waivers will have a negative impact on the community. The bulk variances and waivers being sought are as follows:

1. The ordinance requires a minimum front setback of 15 feet. The applicant proposes 10.1 feet along NJ State Highway 35 and 6.0 feet along Olden Avenue. Variances are required.

2. The Ordinance Section 412.17(D) Table 4.2 requires a minimum of nineteen (19) parking spaces where eighteen (18) parking spaces are provided. A variance is required.

3. The Ordinance Section 412.18 requires that individual parking spaces shall be prohibited in any front yard setback area. The applicant proposes parking within front setback along Bradford and Olden Avenues. A variance is required.

4. The Ordinance Section 502B(1)a(Massing) prohibits buildings to have a total measurement greater than 150 feet in length along any wall and requires a building wall offsets along walls measuring greater than 50 feet. The applicant proposes 158.5 feet of building facade with one offset in the front only. A waiver is required.

5. The Ordinance Section 503(A) Table 5.1 requires all non-residential uses provide a 10 foot buffer along adjoining property lines. The applicant proposes 8 feet along the western property line. A waiver is required.

6. The Ordinance Section 509(I) requires the perimeter of all parking lots shall be setback from all rear and side lot lines by a minimum of 10 feet. The applicant proposes 8 feet. A waiver is required.

7. The Ordinance Section 509(I)3 requires a minimum of 5% of the interior area of the parking lot shall be provided with planting islands containing a minimum of one (1) deciduous tree planted every five (5) parking spaces abutting such island. The applicant does not comply with this requirement. A waiver is required.

8. The Ordinance Section 509(I)3b requires no more than eight (8) parking spaces shall be placed in one row of parking without an intervening landscape island. The applicant does not comply with this requirement. A waiver is required.

9. The Ordinance Section 512(B)3 requires all buildings be setback from internal access driveways by 10 feet. The applicant proposes 7 feet. A waiver is required.

10. The Ordinance Section 515(A)1 requires all refuse and recyclable disposal collection area provide 10 feet of buffer area from adjacent residential uses. The applicant proposes 8 feet. A waiver is required.

11. The Ordinance Section 515(A)2 prohibits refuse and recycling areas to be located within a required principal setback area. The applicant proposes a refuse area within the rear yard setback area. A waiver is required.

12. The Ordinance Section 519(B)7 requires sidewalk to provide a 5 foot separation between the sidewalk and curb. Additionally, the ordinance requires a 6 foot wide sidewalk. The applicant does not comply with this requirement. A waiver is required.

I. No one from the public appeared and testified during the public portion of the hearing.

J. The Board in reviewing this application reached the conclusion that this application can be granted as the proposed application would advance the

purposes of zoning pursuant to the Neptune Township Zoning Code and would promote the general welfare as the site is particularly suitable for the proposed use. Further, the proposed use of this site will not result in excessive noise, odor, vibration, glare or other deleterious condition. Adequate pedestrian and vehicular access has been provided.

K. The Board assessed the negative criteria and finds that the use will not be a detriment to the public good and is consistent with the intent and purpose of the master plan and zoning ordinance. In this regard, the proposed use is very similar to uses that are expressly permitted. The Board finds that clear and convincing evidence has been presented establishing that the benefits of granting the variance are not outweighed by any detriments.

L. For these reasons, it is the determination of the Board that this application for bulk variance, use variance and associated waivers can be granted as being consistent with the existing and Master Plan of the Township of Neptune.

NOW, THEREFORE, BE IT RESOLVED by the Township of Neptune Zoning Board of Adjustment that the application described above is hereby approved; and

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded by the Secretary of the Zoning Board of Adjustment to the applicant, the Borough Clerk and the Building Department;

BE IT FURTHER RESOLVED that notification of this approval be published in an official newspaper of the Township of Neptune Zoning Board of Adjustment by the Board Secretary within 10 days of its passage.

BE IT FURTHER RESOLVED that the applicant's request is approved subject, however, to the following conditions:

A. The applicant shall comply with all of the representations, both oral and written, made before the Board of Adjustment.

B. The applicant shall comply with all of the federal, state, county and local regulations concerning the development of the subject property.

C. The applicant shall comply with all of the requirements of the Board Engineer's report dated January 6, 2010 and the Board Planner's report dated January 5, 2010.

D. Applicant agrees that there will be no storage of outside equipment on site.

E. Applicant agrees that there will be no residential use on site.

F. The applicant shall obtain preliminary and final site plan approval from the Neptune Township Zoning Board of Adjustment prior to commencing the proposed construction and improvements.

Motion to approve Use Variance was offered by : Cynthia Suarez

Moved and second by: Joe Sears

**Those who voted yes: Barbara Bascom, Roger Eichenour, James Gilligan
Thomas Healy, Joe Sears, Cynthia Suarez, Chairwoman Robin Price**

Date: May 6, 2010



**Rose C. Havey, Administrative Officer
Zoning Board of Adjustment
Township of Neptune**

**Motion to memorialize resolution for Use Variance offered by Barbara Bascom
Moved and second by Joe Sears**

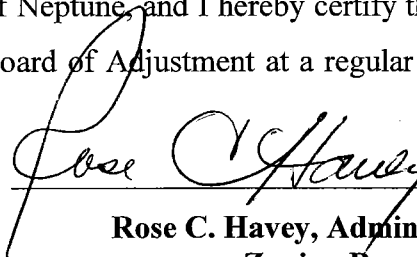
**Those who voted yes: Barbara Bascom, Thomas Healy, Joe Sears, Cynthia
Suarez, Chair Robin Price**

Absent from vote/meeting – James Gilligan, Roger Eichenour

CERTIFICATION

I hereby certify that I, the undersigned, am the Administrative Officer of the Board of Adjustment of the Township of Neptune, and I hereby certify that the foregoing Resolution was adopted by the Board of Adjustment at a regular meeting held on the 5th day of May 2010.

Date: May 6, 2010



**Rose C. Havey, Administrative Officer
Zoning Board of Adjustment
Township of Neptune**