



TOWN OF WESTFIELD ZONING BOARD OF ADJUSTMENT 2017 ANNUAL REPORT

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INTRODUCTION

This report was prepared in accordance with the requirements outlined in the New Jersey Municipal Land Use Law, section 40:55D-70.1, which states that:

“The board of adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The board of adjustment shall send copies of the report and resolution to the governing body and planning board.”

This report summarizes the activity of the Westfield Board of Adjustment from January 1, 2017 through December 31, 2017. Included is a summary of applications and appeals from land use ordinance provisions. Also included is a series of recommended amendments to the Town’s Land Use Ordinance, based upon the observations of the Board during its course of business throughout the year.

The Board of Adjustment is uniquely situated to bring to the attention of the Mayor and Council, and Planning Board, land use ordinance provisions which have resulted in numerous variance requests. Successive appeals for the same types of variance are very often an indication of an outdated ordinance provision, or a regulation which is not reflective of existing, prevailing conditions. This information helps to enable the Town to keep its land use regulations in step with the needs of the community.

BOARD OF ADJUSTMENT AUTHORITY

Pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., a Board of Adjustment has the authority to hear applications for various matters as outlined in the table below.

Type of Application	Zoning Board Jurisdiction
Appeals from decision of Zoning Officer	All Reviews
Interpretations of the Zoning Ordinance	All Reviews
Conditional Use Permits	Ancillary to “D” Type Variances
“C” Type Variances	Not if site plan or subdivision or conditional use is involved; also, ancillary to “D” Type Variances
“D” Type Variances	All Reviews
Permit for structure within public area or street; permit for structure on a lot with no street frontage	Not if site plan or subdivision or conditional use is involved; also, ancillary to “D” Type Variances

Type of Application	Zoning Board Jurisdiction
Subdivision Applications and Related Code Exceptions	Ancillary to "D" Type Variances
Site Plan Applications and Related Code Exceptions	Ancillary to "D" Type Variances
Certification of Legal Non-Conforming Use	All Reviews

As indicated in the table above, the New Jersey Municipal Land Use Law requires that all "d" type variances be heard by the Board of Adjustment. There are six categories of "d" type variances identified in the New Jersey Municipal Land Use Law, which are listed below. Any approval of a "d" type variance requires five affirmative votes from the Board of Adjustment.

- (1) a use or principal structure in a district restricted against such use or principal structure,*
- (2) an expansion of a nonconforming use,*
- (3) deviation from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a conditional use,*
- (4) an increase in the permitted floor area ratio as defined in section 3.1. of P.L.1975, c.291 (C.40:55D-4),*
- (5) an increase in the permitted density as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots either an isolated undersized lot or lots resulting from a minor subdivision or*
- (6) a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.*

2017 MEETING SUMMARY

The Board of Adjustment met a total of 16 times between January 9, 2017 and December 11, 2017. Of those 16 meetings, 4 were special meetings which were called in order to address the volume and type of applications submitted in an expeditious manner.

2017 APPLICATION SUMMARY

General Overview of Applications Heard

The Board did hear and decide a total of 61 applications in 2017. Fifty-three of the applications decided were approved, and the remaining 8 denied. The applications included a total of 151 variance requests, comprised of 125 "c"-type or bulk variance requests, and 26 "d"-type variance requests.

At the end of the calendar year, there were 4 pending complete and scheduled application carried to 2018. One was carried at the request of the applicant and another due to the applicant's lack of legal representation at the hearing as required by law. The remaining 2 applications were carried due to meeting time constraints, however more than enough time was still available for the Board to render a decision in accordance with deadlines contained within the Municipal Land Use Law.

Variance Application Requests – 2017

	“C”Type Variances	“D”Type Variances	Total
Approved	99	17	116
Denied	26	9	35
Total	125	26	151

Fifty-one of the 61, or 84% of applications heard in 2017 involved property containing single family residential use. Of these, most involved additions to existing, single family dwellings or accessory structures on lots containing them (46 of the 61, or 75% of the applications heard in 2017). Examples of other applications involving property containing single family dwellings included four associated with the construction of new homes, and various other requests such as those related to fence style surrounding swimming pools, or parking area locations. The types of improvements seen by the Board has continued over at least the past three years, and is a clear indicator of a continued, substantial investment in the Town's existing housing stock and properties occupied by it.

Site Plan Review

The Board considered a total of 8 site plan applications in 2017. The most significant are described below.

One was a request for preliminary and final site plan approval, and variance approvals, in connection with the proposed construction of six attached dwelling units on a single lot located at 1481 East Broad Street and within the RS-12 Single Family Residence District where only detached single family dwellings are permitted. The six dwelling units would have been located within two separate buildings on the site, each of which would have contained three dwelling units. A total of 11 variances were requested as part of the application; including those from height, floor area ratio, number of buildings on the lot, and coverage requirements. Although located in proximity to other multi-family and attached housing units, the Board found that the applicant did not meet the required proofs in order for them to grant the variances requested or to grant site plan approval. The applicant also faced significant public opposition to their proposal.

Two of the site plan applications made pertained to the proposed ground floor office use and building addition at 177 East Broad Street within the Central Business District. The application involved the conversion of the ground floor of the building from retail use to

office use with the proposed tenant being a real estate developer. (At this location within the CBD Zone District office use is only permitted on upper stories.) The Board first granted preliminary site plan and use variance approval; and, subsequently the applicant returned to the Board for final site plan approval, which is the reason for the two site plan approval applications. As part of final site plan approval the applicant needed to prove compliance with the conditions of the preliminary site plan approval. The applicant successfully argued that the characteristics of the building and its location, the type of office use proposed, and proposed floor plan were grounds for an approval.

The remaining site plan applications were related to renovations of existing building spaces with minor or few site improvements necessary.

Subdivision Review

The Board of Adjustment did not hear any subdivision applications ancillary to “d” type variance requests in 2017.

Appeals, Interpretations, and Certificates of Non-Conformity

The Board did hear one appeal from a decision of the Zoning Officer in 2017 in regard to permitted yard encroachments. The Land Use Ordinance does allow for certain encroachments into a required setback, but only to a certain extent. Allowable encroachments include chimneys, certain window types, and other “architectural devices”. The intent of the ordinance is that only a certain amount of square footage of these encroachments be permitted.

The appeal of the Zoning Officer’s decision was in regard to the interpretation of this provision. In short, the Zoning Officer viewed the permitted encroachments to total no more than the permitted square footage specified in the ordinance. The appellant believed that the square footage permitted pertained to each, separate proposed encroachment. The Board of Adjustment upheld the Zoning Officer’s decision. However, to avoid any confusion in the future, the Board is recommending that the language in the existing ordinance be amended to clarify the intent of the ordinance. Suggested language for the amendment is included within the “Recommendations for Zoning Ordinance Amendments or Revisions” section of this report.

There were no requests for interpretations of the Land Use Ordinance or requests for certificates of non-conformity made in 2017.

C-Type Variance Application Summary

An analysis of the types of variance requests by zone district could reveal outdated sections of the Land Use Ordinance, or sections of the Ordinance which are not in-line with prevailing conditions. Since the majority of applications reviewed by the Board involved additions to single family dwellings, a careful review of the types of variances requested in the single family zone districts is warranted. Looking for patterns in the

record of variance requests, such as, repeated requests for variances from the same ordinance section may be indicative of a need for revision.

The following table summarizes bulk type variance requests from the Land Use Ordinance for principal buildings and structures.

Zone District	Total Applications	Number of Variance Requests Principal Buildings and Structures									
		Front Yard	Rear Yard	Side Yard	Street Side Yard	Max. Continuous Wall Length	Eave Height	Principal Building Height	Permitted Number of Stories	Building Coverage	All Improvement Coverage
CBD	4	0	1	1	0	0	0	0	0	0	0
RM-6	6	2	0	4	0	2	0	0	0	6	1
RS-10	7	1	0	3	0	1	1	1	0	3	0
RS-12	3	3	1	0	0	0	0	1	1	2	1
RS-16	1	1	0	0	0	0	0	0	0	0	0
RS-6	14	4	2	9	0	4	0	0	2	13	2
RS-8	16	3	3	3	1	1	0	0	0	12	2
Total	56	14	7	20	1	8	1	2	3	36	6

The following table summarizes bulk type variance requests from the Land Use Ordinance for accessory buildings and structures.

Zone District	Total Applications	Number of Variance Requests Accessory Buildings and Structures				
		Side Yard	Rear Yard	Height	Location	Size
RM-6	2	1	0	0	1	1
RS-10	3	0	0	1	2	0
RS-12	3	1	1	1	0	2
RS-6	2	1	0	0	1	2
Total	10	3	1	2	4	5

The following table summarizes other “c”-type variance requests from the Land Use Ordinance for other provisions not captured in the preceding tables within this section.

Zone District	Total Applications	Number of Variance Requests Lot Standards and Other Variances						
		Lot Standards			Parking Area	Lighting	Signage	Fences
		Area	Width	Depth				
CBD	3	0	0	0	2	0	1	0
P-1	1	0	0	0	1	0	0	0
RM-6	1	2	2	0	0	0	0	0
RS-40	1	0	0	0	0	0	0	1
RS-6	2	0	0	0	1	0	0	1
RS-8	2	0	0	0	1	0	0	1
Total	10	2	2	0	2	0	1	3

As evidenced in the tables above, variances were most requested from building coverage, side yard setback, and front yard setback. This is due to the nature of existing construction and proposed modifications to existing single family dwellings to bring them up to modern standards. Such modifications typically include larger family rooms, larger kitchens, open floor plans, and bedroom additions. These variance requests are

evidence that there is continued desire to improve existing housing stock in Westfield, to bring it up to what are considered modern standards.

As seen in the table above, applicants from the RS-6 and RS-8 zone, where properties are typically in the 6,000 to 8,000 square foot range, have requested the greatest number of variances from building coverage requirements. Many of these coverage variances were necessary as the lots on which the homes stand, were nonconforming in area by not meeting the minimum lot sizes required in the zone district. The Board is careful to analyze the size of any proposed construction as compared to other properties in the immediate area, to determine if the proposed coverage is comparable to the character of the neighborhood or would be similar in scale and massing to other buildings in the neighborhood.

D-Type Variance Application Summary

As with c-type variance requests, an analysis of the types of variance requests by zone district could reveal outdated sections of the Land Use Ordinance, or sections of the Ordinance which are not in-line with prevailing conditions. Important when reviewing the number of requests for d-type variances that were before the Board, is noting that a d-type variance does not only involve requests for uses which are not permitted. Many d-type variance requests are as a result of other factors, such as not meeting a conditional use standard, or exceeding permitted floor area ratio. Of note is that an expansion of a dwelling without a required garage space is qualifies as an expansion of a nonconforming use.

Zone District	Total Applications	Number of Variance Requests					
		Use	Expansion of Non-Conforming Use	Conditional Use	FAR	Density	Principal Building Height
CBD	3	3	0	0	0	0	0
GB-1	1	1	0	0	0	0	0
GB-3	1	2	0	0	0	0	0
P-1	1	1	0				
RM-6	3	0	3	0	1	0	0
RS-10	4	1	2	0	1	0	0
RS-12	2	2	0	0	2	1	0
RS-16	1	0	1	0	0	0	0
RS-6	3	0	1	0	2	0	0
RS-8	2	0	0	0	2	0	0
Total	21	10	7	0	8	1	0

The Board reviewed a total of 8 d-type variance requests from floor area ratio requirements. Floor area ratio requirements are on a sliding scale, based upon lot sizes and not zone district classification. Therefore, it is the size of an individual property and not the zone district in which it lies which specifies the allowable floor area ratio. The variance requests that the Board heard from floor area ratio requirements were de minimis in nature and all but 1 were for single family dwellings. The Board's review of the applications included the potential impacts of additional building mass on adjoining

property. No apparent pattern has appeared and too few variances have been requested from floor area ratio requirements to draw any significant conclusions.

All 7 of the variances requested for an “expansion of a non-conforming use” were as a result of a lack of the required garage parking spaces. While two of these were denied, one of those denied returned to the Board with revised plans and ultimately obtained an approval. The Board’s review of applications where the required garage parking space is not available includes the availability of parking both on the site and off-site, and the ability to construct a garage on the property in the future without the need for any additional variances. The garage requirement continues to remain valid, as providing a garage on-site allows for interior storage of vehicles and less surface area being occupied by paving for vehicles.

The table above shows that a total of 10 “use” variances were requested. One of these was for property located on South Avenue within the Central Business District Zone District where the applicant proposed office use on the ground floor where it was not permitted. Notably, this variance request, along with many other factors, influenced the ultimate recommendation contained within the Mayor’s Downtown Task Force Report that ground floor office use be permitted on any floor of a building located in property with a frontage on North Avenue or South Avenue. The South Avenue property’s building design made its use as a “cash register” types of retail impractical. The building was set back from the street, and the ground floor was elevated above street level. In addition, the building did not have the typical “retail storefront” characterized by large windows.

Another 2 use variances related to the ground floor use of property within the Central Business District for office use although not along North or South Avenue. Both were approved after careful consideration, with the characteristics of both the building and office tenant type being important factors. One of these was for property at 177 East Broad Street described earlier in this report, and the second involved the Greater Westfield Area Chamber of Commerce who sought to relocate their office to the ground floor of a building located at 212 Lenox Avenue.

The Board also heard 2 separate variance applications to allow for basement use for purposes other than support functions, both of which were approved. Subsequent to these applications, the Land Use Ordinance was amended in 2017 to allow for usage of basement spaces as part of the primary use of a building. These variance requests influenced the Mayor and Council’s ultimate decision to amend the Land Use Ordinance to allow for greater flexibility in the use of tenant spaces.

The application for the construction of townhouse units within the RS-12 Single Family Residence District at 1481 East Broad Street, required a total of 4 “d” type variances. Two of these were of the “use” type and the remaining were from floor area ratio and density. As described in the “Site Plan Review” section of this report, the application was ultimately denied.

Remaining “use” type variances were for recreational use in a detached garage on residential property, and finally the establishment of a greater percentage of gross floor area for residential use in a mixed-use building than is permitted.

At this time, there is no particular pattern is evident that would suggest ordinance changes are necessary as a result of the d-type variances requested in 2017.

RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENTS OR REVISIONS

The Board of Adjustment is responsible for reporting on instances where it has found existing zoning provisions to be lacking in clarity, obsolete, inapplicable, or simply in error. To do so, it is useful to look for patterns in the record of variances granted over the year. Repeated requests for relief from the same provision, for very similar and valid reasons, may be indicative of a provision that is simply untenable due to prevailing conditions, or modern standards of living. In that case, a land use ordinance amendment would be more appropriate than continually granting relief by way of variances. The amendment would not only save time, effort, and expense on behalf of applicants (and Board members), it would further the Town’s best interest in that it would establish land use regulations by ordinance, rather than by variance approvals.

As noted in the body of this report, there are no clear patterns evident from the variances requested throughout 2017 from bulk standards which would indicate a need for amendments contained within the Land Use Ordinance at this time. However, there are other provisions for which the Board does make recommendations.

The Board is recommending that the language in the existing ordinance pertaining to permitted encroachments be amended to clarify the intent of the ordinance. Reasoning is described in the “Appeals, Interpretations, and Certificates of Non-Conformity” section of this report. Following is suggested language for the amendment:

§12.03.B.4. Ground-supported chimneys, chimney box structures, and flues, stacks and vents attached to the side of a building may encroach up to two and one-half (2½) feet into any required yard or court; provided, however, that the area of such encroachment projected to ground level shall not exceed twelve (12) square feet in the aggregate.

§12.03.B.5. Oriels, bay windows, bow windows, window greenhouses, and similar architectural devices, may encroach up to three (3) feet into any required yard or court; provided however, that the area of such encroachment projected to ground level shall not exceed fifteen (15) square feet in the aggregate and

further provided that such encroachment is limited to structures on the ground floor of the building.

Finally, the Mayor and Council may wish to consider allowing for ground floor office use for certain properties along Lenox Avenue within the CBD Zone District. These properties are:

Street Address	Block	Lot
204 Lenox Avenue	3114	2
208 Lenox Avenue	3114	3
212 Lenox Avenue	3114	4

Two of these properties (204 Lenox Avenue and 212 Lenox Avenue) have already obtained variances over the years to allow for ground floor office use.

OTHER OBSERVATIONS

The Board is concerned about the use of detached garages for recreational space. This recreational use generates more activity in structures originally designed for use as automobile storage, lawn and garden tool storage, etc. As accessory structures, detached garages are located closer to property lines than a dwelling on a lot. A more intensive use such as recreational uses including game rooms, home gyms and “rec rooms” can potentially have a negative impact on adjoining property owners due to increased activity, noise, and lights in a structure close to adjoining property. In addition, these uses often have bathrooms and/or kitchen or food preparation areas associated with them. These spaces could easily be converted to illegal dwelling units. Therefore, the Town should continue to require variances for such proposed recreational uses in accessory structures.

APPENDIX: 2017 BOARD OF ADJUSTMENT APPLICATIONS

