



TOWN OF WESTFIELD ZONING BOARD OF ADJUSTMENT 2020 ANNUAL REPORT

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2020 Board of Adjustment Members

Chris Masciale, Chairman
Frank Fusaro, Vice Chairman
Carla Bonacci
Michael Cohen
Allyson Hroblak
Eldy Pavon
Matt Sontz
Mary Doyle, Alternate #1
Samuel Reisen, Alternate #2

2021 Board of Adjustment Members

Chris Masciale, Chairman
Frank Fusaro, Vice Chairman
Carla Bonacci
Michael Cohen
Allyson Hroblak
Eldy Pavon
Matt Sontz
Charles Gelinas, Alternate #1
Samuel Reisen, Alternate #2

Board of Adjustment Professionals

Diane Dabulas, Esq., Board Attorney
Linda Jacus, Board Secretary
Lyndsay Knight, PP/AICP, Zoning Officer
Kathy Nemeth, Assistant Zoning Official
Donald B. Sammet, PP/AICP, Board Planner



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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, 2020 through December 31, 2020. 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 Successive appeals for the same types of variance are very often an indication of an outdated ordinance provision, or a regulation which is not reflective of existing, prevailing conditions.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
Subdivision Applications and Related Code Exceptions	Ancillary to “D” Type Variances

Type of Application	Zoning Board Jurisdiction
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.*

2020 MEETING SUMMARY

The Board of Adjustment met a total of 13 times between January 13, 2020 and December 14, 2020. Of those 13 meetings, 1 was a special meeting held to accommodate more complex applications which required a greater amount of time to be heard. By doing so, this enabled the Board to address the volume of applications submitted in an expeditious manner.

2020 APPLICATION SUMMARY

General Overview of Applications Heard

The Board did hear and decide a total of 40 applications in 2020. Thirty-nine of the applications decided were approved, and 1 application was denied. The applications included a total of 106 variance requests, comprised of 97 “c”-type or bulk variance requests, and 10 “d”-type variance requests.

At the end of the calendar year, there were 6 pending complete and scheduled applications carried to 2020.

Variance Application Requests – 2020

	“C” Type Variances	“D” Type Variances	Total
Approved	96	10	106
Denied	1	0	1
Total	97	10	107

Thirty-eight of the 40, or 95% of applications heard in 2020 involved property containing single family residential use. Of these, most involved additions to existing, single family dwellings or accessory structures on lots containing them (23 of the 40, or 57.5% of the applications heard in 2020). This is consistent with the types of applications reviewed by the Board in prior years.

Examples of other applications involving property containing single family dwellings:

- A single application for a six-foot fence in the side yard;
- A single application to construct a shed in the side yard setback;
- A single application requesting to construct a shed that necessitated a variance from building and above grade structure coverage;
- Two applications requesting to construct a shed in the street side yard;
- Two applications requesting to construct a garage with a roof height greater than permitted;
- A total of 4 applications made that involved the installation of a swimming pool and necessitated a variance from allowable all improvement coverage.

The types of improvements seen by the Board has continued from prior 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 2 site plan applications ancillary to “d” type variances in 2020 which are described below.

One of the two applications was for the Greek Orthodox Community of the Holy Trinity located at 250 Gallows Hill Road. The applicant required “d” variance approval to allow for the removal of an existing 86 square foot shed and construct a larger 360 square foot accessory structure for storage. The property is located within the RS-16 Residential Single Family Zone District and a house of worship is a permitted use in this zone. The applicant first appeared before the Board of Adjustment on September 13, 1999 requesting permission to erect a second-floor addition to the existing building contrary to the requirements of Section 18.08D and 17.02C of the Land Use Ordinance. The applicant request variance relief from the maximum coverage of all proposed

improvements of 50% whereas 54.2% was proposed. At the September 13th meeting, the Board of Adjustment raised concerns surrounding the air condition units being proposed, the applicant did not submit specific plans for the proposed air conditioning and HVAC systems. As a result of these comments, the applicant requested an adjournment so that they could revise their plans to address certain comments they heard from the Board, specifically for the air conditioning and HVAC system. The applicant returned to the Board with revised plans which included details regarding the air conditioning and HVAC system that would be replacing the existing system. This revised application was approved by the Board.

The Echo Lake Country Club brought forward an application to allow for an installation of two 1,000-gallon double wall above ground fuel storage tanks outside the existing maintenance building contrary to the Land Use Ordinance Section 13.05 which prohibits aboveground storage tanks. The previous tanks had been removed after being in use for 30 years, the applicant was concerned about the condition and possible leakage. Soil samples were submitted to the NJDEP and it was determined there were no issues and the case was closed. The applicant proposed the aboveground storage tanks as a directive from the NJDEP. The public questioning related to the location and the concrete base for the tanks. The Board of Adjustments raised concerns surrounding the grading and possible spill. The Board determined there is no negative effect on the neighborhood and the applicant had demonstrated a magnitude of positive benefits which supported the granting of the variance.

Subdivision Review

The Board of Adjustment did not hear any subdivision applications ancillary to “d” type variance requests in 2020.

Appeals, Interpretations, and Certificates of Non-Conformity

The Board did not hear any applications for appeals from the decision of the Zoning Officer in 2020, nor were there any requests for interpretations of the Land Use Ordinance or requests for certificates of non-conformity made in 2020.

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 Requesting Relief	Number of Variance Requests Principal Buildings and Structures										
		Front Yard	Rear Yard	Side Yard	Street Side Yard	Max. Continuous Wall Length	Accessory Structure Size	Eave Height	Principal Building Height	Permitted Number of Stories	Building Coverage	All Improvement Coverage
RS-24	3	0	0	0	0	0	0	0	0	0	1	3
RS-16	4	1	0	2	0	2	0	0	0	0	4	1
RS-12	5	1	2	2	0	0	0	0	0	0	3	1
RS-10	2	1	0	0	0	0	0	0	0	0	2	1
RS-8	5	2	1	2	0	1	0	2	1	1	6	1
RS-6	13	2	0	6	2	2	0	0	0	1	9	0
RM-6	1	0	0	1	0	0	0	0	1	1	0	0
Total	33	7	3	13	2	5	0	2	2	3	25	7

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

Zone District	Total Applications Requesting Relief	Number of Variance Requests Accessory Buildings and Structures				
		Side Yard	Rear Yard	Height	Location	Size
RS-24	2	0	0	0	4	0
RS-16	1	0	0	0	0	1
RS-12	1	0	1	1	0	0
RS-10	1	0	0	0	1	0
RS-6	1	0	0	0	1	0
RM-12	1	1	0	0	0	1
Total	7	1	1	1	6	2

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 Requesting Relief	Number of Variance Requests Lot Standards and Other Variances						
		Lot Standards			Parking or Loading	Lighting	Signage	Fences/Retaining Walls
		Area	Width	Depth				
RS-24	2	0	0	0	0	0	0	3
RS-12	3	0	0	0	3	0	0	0
RS-10	1	0	0	0	1	0	0	0
RS-8	1	0	0	0	0	0	0	1
RS-6	2	0	0	0	1	0	0	1
RM-6	1	1	2	0	1	0	0	0
Total	0	1	2	0	6	0	0	5

As in prior years, and 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 (most often the pre-existing nonconforming setbacks of an existing dwelling on a lot) 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.

Again, as in prior years, as seen in the table above, applicants from the RS-6 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.

Zone District	Total Applications Requesting Relief	Number of Variance Requests					
		Use	Expansion of Non-Conforming Use	Conditional Use	FAR	Density	Principal Building Height
RS-6	3	1	0	0	2	0	0
RS-8	3	0	0	0	3	0	0
RS-16	1	0	0	0	1	0	0
RS-24	1	0	0	0	1	0	0
RS-40	1	1	0	0	0	0	0
RM-6	1	0	0	0	1	0	0
Total	10	2	0	0	8	0	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 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.

The table above shows that a total of 2 "use" variances were requested. One of these requests was by the Echo Lake Country Club who brought forward an application to install two fuel storage tanks within the RS-40 Single-Family Residence District. This is the same application described under the site plan section of this report. Use variance approval was required in that the RS-40 Zone District does not allow for fuel storage tanks. This application was approved by the Board.

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 2020.

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.

SOLAR PANELS

The Board recommends that the Mayor and Council consider revising the solar panel ordinance to determine a measurement that may be beneficial to the applicant and still promoting an aesthetically pleasing project. At this time there is no guidance to the amount of power(wattage) an applicant can request which translates to the number of solar panels requested.

FENCING

The Board hears requests for variances for the fencing requirements for pools often. In Westfield, private swimming pools are required to have a 6-foot solid board on board fence. The board recommends the Mayor and Council revise the fencing requirement to permit open fencing where privacy is not a concern.

BUILDING COVERAGE AND FAR

The Board hears a significant number of cases each year in the RS-6 and RS-8 zones for setbacks. A reduction in the setbacks for pre-existing homes in these zones would reduce the number of cases the board hears each year.

OTHER OBSERVATIONS

The Board often works with residents/applicants to reduce the number and scope of variances requested to be more in compliance with town ordinances. The study should include in addition to the number of applications approved, the number of applications where variances were reduced.

APPENDIX: 2020 BOARD OF ADJUSTMENT APPLICATIONS

2020 ZONING BOARD OF ADJUSTMENT ANNUAL REPORT

A "VARIANCES" (APPEALS)					
Date	Street Address	Block	Lot	Decision Appealed	Board Decision

B "VARIANCES" (INTERPRETATIONS)					
Date	Street Address	Block	Lot	Interpretation Requested	Board Decision

C + D VARIANCES

Decision Date	Resolution Date	Street Address	Block	Lot	Zone	Notes	Decision		Certificate of Nonconformity	Subdivision	Conditional Use	Site Plan	Principal Buildings					Coverage		"d" Type/Use Variances					Accessory Structures				Lot Standards		Parking Area		Other		TOTAL # VARIANCES REQUESTED			
							Approved	Denied					Front Yd	Rear Yd	Side Yd	Str Side Yd	Max Continuous Wall Length	Eave Height	Principal Building Height	Permitted Number of Stories	Bldg Covg	All Improvement Covg	Use	Expansion NC Use	Conditional Use	FAR	Density	Principal Bldg Height	Side Yd	Rear Yd	Height	Location	Size	Lot Area		Lot Width	Lot Depth	Parking or Loading
1/13/2020	2/10/2020	1036 Columbus Avenue	4807	10	RS-6	6 foot fence in the street side yard	1																													1	1	
2/10/2020	3/9/2020	1420 Boulevard	5012	5	RS-6	Addition to single family dwelling	1																															2
1/13/2020	2/10/2020	618 Tremont Avenue	3301	14	RS-12	Construction of a garage	1																															2
3/9/2020	4/13/2020	2165 Bayberry Lane	5304	1	RS-24	Garage and shed in street side yard	1																															2
2/10/2020	3/9/2020	722 Castleman Drive	3411	35	RS-6	Addition to single family dwelling	1																															5
2/10/2020	3/9/2020	509 Boulevard Unit A	3007	21	RM-12	New shed in side yard setback	1																															2
2/10/2020	3/9/2020	545 Boulevard	3007	16	RS-10	Addition to single family dwelling, covered porch and widen driveway	1																															4
2/10/2020	3/9/2020	1420 Boulevard	5012	5	RS-6	Addition to single family dwelling	1																															2
2/10/2020	3/9/2020	Greek Orthodox Community of the Holy Trinity Westfield, 250 Gallows Hill Road	3601	4	RS-16	New shed	1																															4
3/9/2020	4/13/2020	1140 Wychwood Road	1401	3	RS-12	Addition to single family dwelling	1																															4
5/11/2020	6/8/2020	816 Lenape Trail	605	1	RS-24	Swimming pool and fence	1																															5
5/11/2020	6/8/2020	40 Sunnywood Drive	205	1	RS-16	Front porch on single family dwelling	1																															1
5/11/2020	6/8/2020	824 Embree Crescent	707	14	RS-8	Construction of a private home office and closet in existing garage	1																															1
5/11/2020	6/8/2020	108 Florence Avenue	2816	31	RS-6	Addition to single family dwelling and one car garage	1																															3
6/8/2020	7/13/2020	466 West Broad Street	2512	33	RM-6	Amended site plan previously approved by the BOA	1																															8
6/8/2020	7/13/2020	809 Central Avenue	701	37	RS-6	Addition to single family dwelling	1																															2
7/13/2020	8/10/2020	825 Standish Avenue	509	15	RS-12	Addition of a rear covered porch and at-grade patio	1																															4
7/13/2020	8/10/2020	1032 Rahway Avenue	4603	5	RS-12	In ground pool, patio and pool house and reconstruct existing driveway	1																															1
8/10/2020	9/14/2020	745 Highland Avenue	501	22	RS-24	Renovate entryway, stoop and basement entry. Add paving stones and patio and construct a pool house, inground pool, fencing and patio.	1																															4
9/14/2020	10/14/2020	26 Fairhill Road	203	5	RS-16	New single family dwelling		1																														4
10/14/2020	11/9/2020	415 East Dudley	1105	30	RS-8	Addition to single family dwelling	1																															7
10/14/2020	11/9/2020	935 New England Drive	5302	15	RS-16	Addition to single family dwelling	1																															3
10/14/2020	11/9/2020	106 Marion Avenue	2817	2	RS-6	Addition to single family dwelling; not enough garage parking	1																															3
10/14/2020	11/9/2020	821 Bradford Avenue	503	31	RS-8	Addition to single family dwelling	1																															2
10/14/2020	11/9/2020	519 Mountain Avenue	1110	15	RS-8	Addition to single family dwelling	1																															5
10/29/2020	12/14/2020	723 Clark Street	707	38	RS-6	Addition to single family dwelling	1																															3

