

MEMORANDUM

Planning Office Town of Westfield



To: Chairman Heinbokel & Members
Zoning Board of Adjustment

From: Judy Thornton, PP, AICP, Town Planner *JT*

Date: August 14, 2007

Re: 2006 Annual Report

Cc: Ken Marsh, PE, Town Engineer
Kathy Nemeth, Board Secretary

Please find attached a revised copy of the "Westfield Zoning Board of Adjustment 2006 Annual Report." This version incorporates all of the revisions requested during the Board's work session on August 13, 2007. The Report should be ready for adoption at the Board's meeting of September 10, 2007. A revised resolution for that purpose is attached for your convenience.

Please do not hesitate to contact me in the Planning Office (ext. 624) should you have questions or require further information regarding this matter.

ZONING BOARD OF ADJUSTMENT
Town of Westfield
Union County, New Jersey

Agenda Item No. _____

September 10, 2007

**RESOLUTION OF ADOPTION OF
2006 ANNUAL REPORT**

WHEREAS, the Zoning Board of Adjustment of the Town of Westfield is required pursuant to Section 40:55D-70.1 of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq) to prepare and issue an Annual Report reviewing its decisions on applications of the prior year and providing its recommendations, if any, on the zoning ordinance provisions which were the subject of the various appeals for variance relief; and

WHEREAS, the Zoning Board of Adjustment of the Town of Westfield has reviewed the cases it decided during the 2006 calendar year for purposes of providing such Annual Report; and

WHEREAS, the Town Planner, Judith Thornton, PP, AICP, has prepared a document entitled, "Westfield Zoning Board of Adjustment 2006 Annual Report" which sets forth the findings and recommendations of the Zoning Board of Adjustment pertinent to its review of such appeals and decisions, a copy of which is attached hereto;

NOW THEREFORE BE IT RESOLVED, that the "Westfield Zoning Board of Adjustment 2006 Annual Report" be and is herewith adopted by the Zoning Board of Adjustment of the Town of Westfield in accordance with N.J.S.A. 40:55D-70.1; and

BE IT FURTHER RESOLVED that the Board Secretary is herewith instructed to forward copies of this Resolution and the "Westfield Zoning Board of Adjustment 2006 Annual Report" to both the Planning Board and the Governing Body of the Town of Westfield.

Motion:

Second:

Ayes:

Nays:

Dated:

William Heinbokel, Chairman

Kathleen A. Nemeth, Secretary

Town of Westfield
Union County, New Jersey

**WESTFIELD ZONING BOARD OF ADJUSTMENT
2006 ANNUAL REPORT**

ADOPTED
September 10, 2007



WESTFIELD ZONING BOARD OF ADJUSTMENT

William Heinbokel, Chairman
Chris Masciale, Vice Chairman
John Ryan
Brian Power
Robert Burslem
Mark Doherty
Mary Alice Ryan
William West
Ken Soriero

Vincent K. Loughlin, Esq.
Board Attorney

Prepared by:
Judith A. Thornton, P.P., AICP, License No. 5555
Town Planner

Data Collection by:
Stephanie Majeski, Technical Assistant

WESTFIELD ZONING BOARD OF ADJUSTMENT 2006 ANNUAL REPORT

Introduction

The Westfield Zoning Board of Adjustment provides this report in accordance with Section 40:55D-70.1 of the New Jersey Municipal Land Use Law (MLUL), which states the following:

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.

The purpose for such reporting is to keep the Planning Board and the Council up to date on variance applications in the Town and on the important decisions made by the Zoning Board of Adjustment regarding them. Because the Board reviews a steady stream of applications seeking approval for deviations from the Zoning Ordinance, it is uniquely positioned to identify instances in which the municipality might be better served by simply amending the Land Use Ordinance. The Zoning Board of Adjustment provides this information to the Planning Board and the Governing Body in order that appropriate action may be taken to keep the Master Plan and the Zoning Ordinance in step with the needs of the community.

A. 2006 Application Summary

The Zoning Board of Adjustment held 12 regular meetings in 2006 (one per month) during the course of which it decided a total of 101 applications. The applications included: one (1) appeal of a zoning officer decision (pursuant to N.J.S.A. 40:55D-70(a)); eighty-seven (87) "c" or bulk variance applications (pursuant to N.J.S.A. 40:55D-70(c)), and thirteen (13) "d" variance requests (pursuant to N.J.S.A. 40:55D-70(d)) as indicated in the chart below. Of the total applications, 93 were approved while 8 were denied.

Table 1. 2006 Applications

	A-Variances	B-Variances	C-Variances	D-Variances	Total
Approved	1	0	80	12	93
Denied	0	0	7	1	8
Total	1	0	87	13	101

The bulk of the applications (87 of 101, or 86%) involved properties in the RS Single Family Residential Zones. The remaining 14 were split evenly between properties in the

RM-6 and RM-8 zones (7 applications) and various commercial (CBD, GB-3, P-1) zones (7 applications).

A.1. RS Single-Family Zone Applications

A breakdown on applications for the RS Single Family Zones appears in Table 2, below. Most prevalent among them, are applications involving additions to existing single-family homes (67%). Listed separately are: new or expanded porches (16%), new or expanded garages and sheds (10%), and various accessory structures including decks, fences, patios, and condenser units (10%). (These percentages do not add to 100% due to applications that included more than one improvement. In addition, note that one RS application involved the appeal of a zoning officer decision.) Only one RS application involved a new home: a case of non-conforming front yard setback. The focus on expansion of existing single family-homes reflects an active real estate market and represents a substantial investment in the Town's existing housing stock.

Table 2. RS Applications: Number and Type

Zone District	Total	Total (%)	Approved (Denied)	Addition	Porch	Garage Shed	Accessory Structure
RS-6	35	40%	32 (3)	21 (1)	5	2	3 (2)
RS-8	12	14%	11 (1)	8	1	1	0 (1)
RS-10	16	18%	16	12	3	3	2
RS-12	14	16%	13 (1)	8 (1)	4	2	1
RS-16	4	5%	3 (1)	2 (1)	0	0	0
RS-24	6	7%	5 (1)	4	1	0	0 (1)
Total	87	100%	80 (7)	55 (3)	14	8	6 (4)

A.2. RM & Commercial Zone Applications

Information on applications in the RM and commercial zones appears in Table 3. The applications again most frequently involve proposed additions to existing buildings (57%). In addition to patios and decks, accessory structures in these cases also include such items as signs, parking lots, and one wireless communications antenna.

Table 3. RM, CBD, GB, P Applications: Number and Type

Zone District	Total	Approved (Denied)	Addition	Porch	Garage/Shed	Accessory Structure
RM-6	5	5	4	1	0	2
RM-8	1	1	1	0	0	0
RM-6D	1	1	1	0	0	0
CBD	2	2	0	0	0	2
GB-3	3	3	1	1	0	2
P-1	2	1 (1)	1 (1)	0	0	1
Total	14	13 (1)	8 (1)	2	0	6

B. 2006 Variances

In considering whether the Board should recommend any changes to the Zoning Ordinance, the Board should report on instances wherein it found existing zoning provisions to be lacking in clarity, obsolete, inapplicable, or simply in error. It is also 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. In that case, a zoning 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 zoning regulations by ordinance, rather than by variance approvals.

Toward seeking out the errors or omissions and any hidden patterns, the data must be examined by type of variance, applicable zoning district, project proposal, and the specific deviation(s) at issue.

B.1. A-Variances

The single "a"-variance appeal of the decision of the Zoning Officer involved the installation of a 4-foot high retaining wall on a property located on Minisink Way. The appeal was filed by neighboring property owners who felt that the retaining wall, in conjunction with changes made to the grading of the property, created an unsafe condition. The Board granted the appeal, but the decision was ultimately overturned in Superior Court.

Recommendations

Based on the particulars surrounding the Minisink Way case, the Board recommends review of the provisions of the Land Use Ordinance pertaining to grading and retaining walls. Specifically, the Board is concerned that where steep slopes lie adjacent to a retaining wall (whether above or below the wall), it may be appropriate to require protective fencing in addition to the retaining wall. It may also be helpful to require a property line setback for all retaining walls equal to at least the height of the wall. The Board recommends review by the Engineering and Planning Departments to determine whether revisions to the code may be necessary to ensure safe and appropriate wall/slope combinations and setbacks.

B.2. B-Variances

During 2006 there were no requests for interpretation of the Zoning Code or Zoning Map, nor any other special questions filed for Zoning Board of Adjustment adjudication. Such cases fall under the jurisdiction of the Board of Adjustment pursuant to N.J.S.A. 40:55D-70(b).

Recommendations

None.

B.3. C-Variances

While the total number of “c” or bulk variance *applications* in 2006 was 87, many of these sought relief for more than one specific deviation. Several d-variance applicants also requested bulk variance relief. In sum, 163 specific bulk variances were requested, 152 of which were approved. Tables 4 and 5 below, provide the breakdown on bulk variance relief that was granted, by category, for each of the applicable zone districts.

Table 4. Bulk Variances Granted 2006 (Principal Buildings/Coverage)

Zone District	Principal Building					Total Bldg Coverage	Total Lot Coverage	Total
	Front Yard	Rear Yard	1 Side Yard	2 nd Side Yard	Street Side Yard			
CBD, GB, P	0	0	1	0	0	0	1	2
RM-6, -6D, -8	4	3	5	1	0	3	3	19
RS-6	9	5	21	4	3	6	1	49
RS-8	3	2	6	0	0	2	3	16
RS-10	2	3	7	0	0	4	1	17
RS-12	4	2	7	2	0	2	5	22
RS-16	0	0	2	0	0	0	1	3
RS-24	1	0	1	0	0	1	1	4
Total	23	15	50	7	3	18	16	132

Table 5. Bulk Variances Granted 2006 (Accessory Buildings/Structures)

Zone District	Accessory Building			Accessory Structure					Total
	Side Yard	Rear Yard	Height	Side Yard	Rear Yard	Separation Distance	Signs	Parking Spaces	
CBD, GB, P	0	0	0	0	0	0	3	1	4
RM-6, -6D, -8	0	0	0	0	0	1	0	0	1
RS-6	1	1	0	4	2	0	0	0	8
RS-8	0	0	1	2	0	0	0	0	3
RS-10	1	1	0	1	1	0	0	0	4
RS-12	0	0	0	0	0	0	0	0	0
RS-16	0	0	0	0	0	0	0	0	0
RS-24	0	0	0	0	0	0	0	0	0
Total	2	2	1	7	3	1	3	1	20

The data immediately reveal a striking pattern of variance relief relating to the RS-6 Zone District. Applications for properties located in the RS-6 Zone comprise 40% of all of the 2006 variance applications (35 of 87, per Table 2, above). Not surprisingly, the district is

also represented in the greatest number of variances granted for the year, a tally that equates to 38% of the total. Bulk variance relief for properties in the district is tilted heavily toward principal building requirements, with overwhelming emphasis on the required principal building side yard setback.

A closer look at the subject RS-6 applications indicates that while a number involved undersized lots, irregularly shaped lots, or corner lots having insufficient lot width, the majority were for home additions on conforming lots, many of which actually exceed the 6,000 square foot minimum lot size. The overriding problem appears to lie with the difficulty inherent in developing a typical 50-foot wide lot in conformance with the 10-foot minimum side yard setback standard.

A similar pattern emerges in review of applications for principal building side yard setbacks in the other RS districts, as well. For quite a number of lots in the RS-8, -10, and -12 zones, the properties in question were undersized and/or of insufficient width – many having widths in the 50- to 60-foot range. In certain cases, such lot configurations appear to dominate significant block areas. Once required side yard setbacks are deducted, the width of the permitted building envelope contracts to about 30 feet. In the RS-12 zone, the 15-foot setback requirement reduces the building envelope width on a 50-foot wide lot to just 20 feet. Building and total lot coverage problems go hand in hand with undersized lots and appear frequently along with lot width deficiencies.

On an added note, review of permitted building envelope widths for the RS districts reveals that the width allowance for the RS-12 zone is actually less (at 45 feet) than that provided for the RS-10 district (50 feet).

As to the remaining bulk variance relief, the applications entailed a variety of different circumstances in divergent locations with no identifiable pattern or trend. Applications involved existing conditions, lot configurations, and reasons that differed widely across the board. A number were for irregular and/or non-conforming lots, while others involved corner lot situations, de minimus new encroachments, extensions of existing encroachments, or improvements to older homes that were likely made non-conforming at the inception of the very first Town zoning ordinance.

Recommendations

In light of the findings above, the Board offers the following recommendations for review and possible revision of certain provisions of the Land Use Ordinance:

1. Review the zoning designations of properties throughout the Town Westfield, to ensure that to the extent feasible, lots are located within appropriate zone districts. Areas having large concentrations of 5,000 to 7,000 square foot lots with 50- to 60-foot lot widths, for instance, should be designated as RS-6 zones.
2. Adjust the setback requirements for the RS-12 zone district to permit a building envelope width of at least 50 feet.

B.4. D-Variances

As noted previously, the Board heard thirteen (13) applications for “d”-variance relief during the 2006 calendar year. Twelve (12) were approved and one (1) was denied. The breakdown appears in Table 6, below.

Table 6. D-Variances 2006 Approved/(Denied)

	CBD	GB-3	P-1	RM-8	RM-6	RS-6	RS-8	RS-10	RS-12
Use	0	2	0	1	1	0	0	0	0
Expansion Non-Conforming Use	0	0	0 (1)	0	0	0	0	0	0
Conditional Use	0	0	0	0	0	0	0	0	0
Floor Area Ratio	0	0	0	0	0	2	1	3	1
Density	0	0	0	0	0	0	0	0	0
Height	1	0	0	0	0	0	0	0	0
Total	1	2	0 (1)	1	1	2	1	3	1

The most frequently occurring d-variance was that for floor area ratio (FAR). Each of the seven (7) FAR variances pertains to an addition to a single-family home approved in one of the RS zones. No apparent pattern appears, however, and too few are at issue to draw any significant conclusions in any event.

As to the use variances, the two approved in the GB-3 zone are of interest in that each sought permission to operate an educational use. One involved a center offering tutoring sessions by 3-4 teachers in a classroom setting, while the other proposed a studio-style cooking school along with peripheral retail sales. The educational use appears fitting and appropriate for the GB-3 zone district, within some reasonable limitations, but is not listed amongst the permitted uses.

The other use variances pertain to: a) temporary sales/construction trailers in the RM-6 zone; and b) a mixed residential/retail use in the RM-8 zone. The single height variance was granted for extension of permitted building height in order to accommodate installation of a wireless telecommunications antenna on a property located in the CBD. The only d-variance denial, meanwhile, pertained to a proposed expansion of a non-conforming apartment in the P-1 zone. None of these cases suggests need for changes to the permitted uses listed for the applicable zone districts.

Recommendations

Based on the preceding findings, the Board recommends only that consideration be given to inclusion of an educational use in the GB zones. In addition to traditional classroom based educational uses, the classification could include such businesses as dance, art, cooking and/or exercise studios. This type of use would appear consistent with a retail service category, however the ordinance includes only *personal* retail services amongst the permitted retail service uses, which would include for example, beauty salons and barbershops.

B.5. Other Recommendations

Various other issues have come to the Board's attention during the previous year, which lead to the following additional recommendations concerning the Land Use Ordinance and Town Code:

1. Application fees and escrow requirements for land use applications are clearly outdated and must be updated to reflect current administrative costs and increased legal and professional review fees.
2. Portable storage units must be regulated under the Town Code, either by zoning or other regulations. Use and popularity of the units ("POD's") has increased exponentially, with many owners retaining them on their properties for extended periods in obtrusive and inappropriate locations. They detract from neighborhood aesthetics and negatively affect property values.
3. The Board has reviewed a number of cases where applicants choose to eliminate existing garages in order to increase the permitted building coverage and/or floor area for habitable space within their homes. The trend is unfortunate insofar as residents are left without adequate storage space for motor vehicles and other items such lawn equipment, which then must be stored in the open or under tarps in a side or rear yard. In many cases, future homeowners will only return to the Board seeking variance approval to reconstruct a much-needed garage. The Board recommends that garages be made a requirement in connection with single family homes; minimum 1-car in the RS-6, RS-8 and RS-10 zone districts and 2-car in all other districts.
4. The Board is concerned that in certain cases, applicants may be taking advantage of the additional allowances set aside for porches, to enable additional habitable area beyond that intended by the ordinance. The Board recommends review of the ordinance and amendment as needed, to eliminate any loopholes that come to light.
5. The Board has reviewed a number of cases where homeowners seek variance approval to permit open-style fences surrounding swimming pools, rather than the required solid fencing, such as a "board-on-board." The Board recognizes the need to protect the public safety while at the same time, providing for screening of swimming pools from view of neighboring properties. In many cases, applicants have demonstrated that safety may actually be best served by open fencing, which allows for full view of rear yard swimming pools from view of the home itself, or from a rear deck or patio. In addition, the Board notes that fencing such as wrought-iron-look, cast aluminum fencing makes for a better aesthetic fit in certain instances, such as in cases of historic homes. The Board also finds that screening can be achieved by other means such as planting of evergreen shrubs and/or trees and that the requirement should pertain only to screening pools from view of neighboring properties. In light of these findings, the Board recommends that the requirement for swimming pool fencing be amended to: a) delete the requirement

for solid fencing, and b) include a requirement for visual screening of pools from view of neighboring properties, by either solid fencing or planting of minimum 6-foot high evergreen landscape plantings. The Board recommends retention of the 6-foot fence height requirement and full compliance with all applicable construction codes as to maximum dimensions of openings, etc.