

**WESTFIELD ZONING BOARD OF ADJUSTMENT
2010 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 decision 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.

and the site plan applications were subsequently approved by the Board. The minor subdivision application was approved to subdivide a lot with three existing single-family houses to create three separate lots for each of the houses. Finally, five time extension requests were heard and approved by the Board.

The Board heard and considered an appeal of the Zoning Officer's decision filed on behalf of the Stop and Shop Supermarket, which facility is located along Elm Street in the GB-1 District. The applicant submitted floor plans and a concept plan showing an intended building expansion, and sought determination by the Board that "c" variance relief was necessary as opposed to "d" variance relief, as had been determined by the Zoning Officer.

The overwhelming majority of the "c" and "d" variance applications, 60 of 77, or about 78%, involved properties in the RS Single Family Residential Zones. The remaining 17 applications were spread about with five in the RM-6 Zone, four in the CBD, two in the GB-2 Zone, one each in the RM-8, RA-3, P-1, O-1 GB-1 and GB-3 Zones.

A.1. RS Single-Family Zone Applications

A breakdown on all applications (including site plan and minor subdivision) for the RS Single Family Zones appears in Table 2, below. Most prevalent among them are applications involving additions to existing single-family homes (63%). Listed separately are: new or expanded porches (8%), new or expanded garages and sheds (8%), and various accessory structures including decks, fences, patios, and pergolas (21%). There were three variance applications to construct new houses that involved demolitions of existing structures. The focus on expansion of

Table 3- Multi-Family and Commercial Applications

Zone District	Total	Approved (Denied)	New House	Additions	Signs	Garage/ Shed	Other
RM-8	1	(1)		1			
RM-6	5	4(1)	0	3		1	1 FAR
RA-3	1	1	1				
O-1	2*	2		2			1 Use of Basement
CBD	5	5			4		1 Certification Pre-Existing Use
GB-1	2	1(1)					1 Appeal
GB-2	2	1(1)					Site Plan
GB-3	1	1					1 Site Plan (cell antennas)
P1	1	1				1	1 Accessory Structure in Front Yard
TOTALS	20	16(4)	1	6	4	1	

* One application was a bifurcated site plan.

B. 2010 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.

After discounting for the Charles Street property, the most variance requests approved were for 23 Side Yard variances and 11 for Maximum Building Covering. There were 10 Front Yard variances approved. It is interesting to note that the side yard setback requirement in the RS-12 Zone had been reduced in December 2009 from a minimum setback of 15 feet to 12 and one-half feet. With that reduced side yard, the Board still granted 7 side yard setback variances for that zone. (In 2007 there were 8 side yard setback variance applications.)

In December 2009, numerous amendments to the Zoning Ordinance were implemented. These amendments were adopted to stem the tide of overdeveloping single-family lots, and to put into place particular controls affecting side wall length, FAR, building height and the conversion of garages into living space. These new regulations are listed in Table 5 below, with the number of variances approved by the Board for the listed residential zones.

Table 5- Variance Approval/Denial From Newly Implemented Zoning Amendments

Zone Districts	Bldg Mass Side Yard	Garage Offset	Garage	# of Stories	Max Eave Height	Bldg Height	FAR
RS 6	3	0		0	0	(1)	
RS 8	1(2)	1		2	0		2
RS 10	1	0	1	2	1		
RS 12	1	1	1	0	0		1
RS 16	1	0		0	1		
RS 24	0	0		0	0		
RM 6	1	0		1	1	1	(1)
RA 3	0	0	0	0	0	0	2
Totals	8(2)	2	2	5	3	1(1)	5(1)

The above table is a compilation of all variance requests (“c” and “d”) from the newly enacted Zoning Ordinance amendments. Also, the Board’s denials are in brackets. There were a total of 30 variance requests from these new standards. The Board granted 26 requests, while denying 4.

3. A monument sign.
4. The outdoor display of merchandise without outdoor sales does not require a variance.
5. That shopping cart corrals located in the parking lot did not require a variance.

The Board reviewed the relevant sections of the Westfield Land Use Ordinance pertaining to the subject matter, more specifically outlined in the Board's Resolution adopted August 9, 2010. They further reviewed the language of the Municipal Land Use Law pertaining to 40:55D-70(c) and (d1). It was specifically noted by the Board that Section 40:55D-70(d1) provides that a "d" variance is required to permit a use or principle structure in the district restricted against such use or principle structure. The Board found that the legislature expressly qualified the word "structure" with the word "principle" and did not make the same distinction with respect to uses and that accordingly, principle or accessory use that is prohibited by ordinance would require a "d" variance. The Board also considered the following statement found in William M. Cox, New Jersey Zoning and Land Use Administration, (Gann 2010) at Section 10-5: Accessory structures may generally be permitted by a variance pursuant to NJS 40:55D-70(c), but this general rule would not apply where the proposed accessory structure results in expansion of a nonconforming use, or where the specific accessory *use* involved with the structure is not permitted by ordinance. Accessory *uses* which are either not permitted by ordinance, or which are accessory to a nonconforming principle use, can be allowed by way of variance only pursuant to NJS 40:55D-70(d). This distinction arises from the wording in the Land Use Law authorizing the Board of Adjustment to grant a variance for "A use or *principle structure* in a district restricted against such use or principle structure," together with the provision of the Land Use Law providing that: "If the application for development requests one or more variances, but not a variance for a

These are very important distinctions made by the Board of Adjustment, and provide certain clarifications for the Zoning Office in future determinations.

C.1. Board's Findings

The review of the Board's activity for 2010 does not reveal any trends or particular patterns of variance relief requested. It is interesting to note that there was only one d-1 use variance application requesting a use not permitted in the zone, which would imply that the zone plan is current with the market demands.

Going forward, the Board should continue to monitor variance requests from the zoning amendments that were enacted in December 2009 to ensure that the intended goals are being accomplished.

C.2. Other Observations

The Board may wish to alert the Code Review and Town Property Committee of the Town Council of the following potential concerns:

1. Restrictions on front yard fencing for corner lots and a requirement that fencing on a property be uniform.
2. Decks and side yards for corner lots. Consider measures to require landscaping and/or other review to "soften impact."
3. Excessive height of stairs and unattractive appearance created by same (i.e. 500-502 Summit Avenue to illustrate point).