



TOWN OF WESTFIELD ZONING BOARD OF ADJUSTMENT 2016 ANNUAL REPORT

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TABLE OF CONTENTS

INTRODUCTION..... 4

BOARD OF ADJUSTMENT AUTHORITY 4

2016 MEETING SUMMARY..... 5

2016 APPLICATION SUMMARY..... 5

 General Overview of Applications Heard 5

 Variance Application Requests - 2016..... 5

 Site Plan Review 6

 Subdivision Review..... 6

 Appeals, Interpretations, and Certificates of Non-Conformity..... 6

 C-Type Variance Application Summary..... 7

 D-Type Variance Application Summary..... 7

RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENTS OR REVISIONS 8

OTHER OBSERVATIONS 9

APPENDIX: 2016 BOARD OF ADJUSTMENT APPLICATIONS..... 11

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, 2016 through December 31, 2016. 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 Successive appeals for the same types of variance are very often an indication of an outdated ordinance provision, or a regulation which is not reflective of existing, prevailing conditions.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 (“A” Type variances)	All Reviews
Interpretations of the Zoning Ordinance (“B” Type variances)	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

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

2016 MEETING SUMMARY

The Board of Adjustment met a total of 12 times between January 11, 2016 and December 12, 2016, and rendered a decision on a total of 65 applications, 8 more than in the previous year. There were no special meetings of the Board held in 2016.

At the end of the calendar year, there was only one pending complete application carried to 2017, which was carried at the request of the applicant. This is an indicator that the Board was readily able to review applications submitted in a timely manner, providing efficient service to applicants.

2016 APPLICATION SUMMARY

General Overview of Applications Heard

As noted earlier, the Board did hear and decide a total of 65 applications, 8 more than the preceding year. The applications included a total of 173 variance requests, comprised of 159 "c"-type or bulk variance requests, and 14 "d"-type variance requests. Sixty of the applications decided were approved, and the remaining 5 denied.

Variance Application Requests - 2016

	"A" Type Variances	"B" Type Variances	"C" Type Variances	"D" Type Variances	Total
Approved	0	0	136	14	150
Denied	0	0	23	0	23
Total	0	0	159	14	173

Sixty-one of the 65, or 94% of applications heard in 2016 involved property containing single family residential use. Of these, most involved additions to existing, single family dwellings (44 of the 65, or 68% of the applications heard in 2016). Examples of other applications involving property containing single family dwellings included three associated with the construction of new homes, and various other requests such as those related to permitted fence height. This 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 in conjunction with applications for "d"-type variances. One of the site plan applications involved a Central Business District Zone District property, where the owner proposed mixed residential and commercial use within the same building, along with residential use above the third story of the building, on the rooftop. The applicant proposed conversion of the existing building to mixed-use, by converting upper stories to residential units from office space. As part of the application, the applicant proposed recreational space on the rooftop, to be utilized by one of the residential tenants. The application was approved, with detailed conditions pertaining to the rooftop use. The Board recognized the recreational amenity that rooftop use can provide in a dense, downtown environment, but was very cautious to ensure that such a use would not negatively impact Westfield's downtown character, and any downtown residents.

The remaining site plan application reviewed was in regard to a final site plan approval request and was a relatively uncomplicated matter. The Board ensured compliance with conditions of preliminary site plan approval. The project was for a 6 unit townhouse development, within 2 separate buildings, at 112-116 Cacciola Place.

Subdivision Review

In 2016, the Board of Adjustment heard a rare application for a subdivision which included a "d" type variance request. The application involved property within the RS-12 Zone District which contains a church. More than half of the property was wooded and unused by the church. The applicant proposed subdivision of the property, and the construction on new single family detached housing on what was the wooded portion of the lot. The church building would remain. Although the newly created single-family lots proposed were all conforming, due to the subdivision the remaining lot containing the church would not meet all conditions for houses of worship within the RS-12 Zone District. The application was approved, after deliberations surrounding any difficulties that may arise if the church sat on a smaller sized lot.

Appeals, Interpretations, and Certificates of Non-Conformity

The Board did not hear any applications for appeals from the decision of the Zoning Officer in 2016, nor were any applications made requesting an interpretation of the Town's Land Use Ordinance.

The Board was asked to decide upon a singular request for a certificate of non-conformity. Involving property at 16 Byron Court, the Board was asked to provide certification that an existing doctor's office located within a single-family home within the RS-12 Zone district was in fact a legal pre-existing non-conforming use. The applicant was able to provide the Board with sufficient evidence and the Board was able to issue the certificate.

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.

Zone District	Total Applications	Number of Variance Requests							
		Front Yard	Rear Yard	Side Yard	Street Side Yard	Max. Continuous Wall Length	Permitted Number of Stories	Building Coverage	All Improvement Coverage
GB-3	1	1	0	1	0	0	0	0	0
P-1	1	0	1	0	0	0	0	0	1
RM-6	4	0	0	2	0	1	0	3	0
RS-6	17	3	4	12	6	6	1	13	0
RS-8	17	4	2	8	1	5	3	13	0
RS-10	8	3	0	1	0	1	1	4	1
RS-12	12	1	2	5	0	0	0	7	0
RS-16	1	0	0	1	0	0	1	0	0
RS-24	1	0	0	0	0	0	0	0	1
Total	62	12	9	30	7	13	6	40	3

As was seen in 2015, and as evidenced in the table above, variances were most requested from building coverage, side yard setback, front yard setback, and maximum continuous wall length provisions. 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, and bedroom additions. 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. This is evidence that there is continued desire to improve existing housing stock in Westfield, to bring it up to what are considered modern standards.

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

The Board reviewed a total of 10 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 2 were related to additions to single family dwellings. The Board's review of the applications included the potential impacts of additional building mass on adjoining property. The majority of the floor area ratio variances requested came from the RS-6 and RS-8 Zone Districts, and a parallel can be drawn to the number of bulk variance requests from those zone districts, where improvements to existing housing stock are being made.

The table above shows that a single "use" variance was requested. This application was for use of a rooftop within the CBD Zone District for residential recreational space as described in the Site Plan Review section of this report. Although residential use is a permitted use on the second and third floors of a building, no provision is made for residential use above these levels. It is anticipated that rooftop use for either outdoor dining or residential recreational space may become more of a desired amenity within the CBD. The Mayor's Downtown Task Force is examining the pros and cons of such usage and potential impacts on the CBD Zone District.

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 2016.

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 which would indicate a need for Land Use Ordinance amendments at this time. However, it is recommended that there be a continued monitoring of requests from building coverage, side yard setback, front yard setback, and maximum continuous wall length provisions, especially within the RS-6 and RS-8 Zone Districts.

OTHER OBSERVATIONS

The Board noted the following concerns with provisions contained within the Town Land Use Ordinance within their 2015 Annual Report.

1. The allowance of fences located within front and street side yards can have a negative aesthetic impact on the streetscape. Front and street side yard fences should be prohibited, except by way of variance, so that the Board could determine style, composition, and placement.
2. The allowance of garage parking in both principal and accessory structures on the same lot can have a negative aesthetic impact. Such a condition on property could lead to over-massing issues and negative aesthetic impacts associated with multiple parking locations on a single lot.
3. The allowance of decks within the street side yard of corner properties can have a negative aesthetic impact on the streetscape. Measures to require landscaping and/or other review to soften impact should be considered.

In early 2017, and before the completion of this report, the Board Chair and Board Attorney met with the Code Review and Town Property Committee to discuss these concerns and potential ordinance changes.

Another area of concern relates to an appeal of a Zoning Officer's decision heard in early 2017. (Although not part of the 2016 decision record it is worth mentioning immediately within this report rather than wait until completion of the calendar year and drafting of a 2017 Annual Report.) The Land Use Ordinance allows for certain encroachments into a required setback, to a certain extent. These 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, and recommended that the language in the existing ordinance be amended to clarify the intent of the ordinance. 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.

APPENDIX: 2016 BOARD OF ADJUSTMENT APPLICATIONS

Decision Date	Resolution Date	Street Address	Block	Lot	Zone	Notes	Decision		Principal Buildings						Coverage		"d" Type/Use Variances					Accessory Structures				Lot Standards			Parking Area		Other			TOTAL # VARIANCES REQUESTED		
							Approved	Denied	Certificate of Nonconformity	Subdivision	Site Plan	Front Yd	Rear Yd	Side Yd	Str Side Yd	Max Continuous Wall Length	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	Max Continuous Wall Length	Location	Size	Lot Area	Lot Width		Lot Depth	Parking or Loading
6/13/2016	7/11/2016	16 Byron Court	5004	20	RS-12	Certificate of Nonconformity	1		1																											0
7/11/2016	8/8/2016	52 Mohican Drive	1905	30	RS-12	Accessory structures	1																		1	2			1	1						8
7/11/2016	8/8/2016	906 Grandview Avenue	4809	3	RS-6	Addition to single family dwelling	1																												3	
7/11/2016	8/8/2016	1300 Overhill	101	54	RS-8	Addition to single family dwelling		1																											5	
7/11/2016	8/8/2016	475 Springfield Avenue	1904	15	RS-12	Swimming Pool and Cabana	1																												3	
7/11/2016	8/8/2016	925 Carleton Road	4801	53	RS-8	Addition to single family dwelling	1																												1	
8/8/2016	9/12/2016	26 Scudder Road	2101	52	RS-12	Addition to single family dwelling	1																												3	
8/8/2016	9/12/2016	21 Manchester Drive	5006	3	RS-12	Addition to single family dwelling	1																												1	
8/8/2016	9/12/2016	18 Moss Avenue	5509	5	RS-10	Addition to single family dwelling	1																												2	
8/8/2016	9/12/2016	717 Boulevard	4105	16	RS-10	Addition to single family dwelling	1																												1	
8/8/2016	9/12/2016	900 Columbus Avenue	4808	2	RS-6	Addition to single family dwelling	1																												6	
8/8/2016	9/12/2016	605 Girard Avenue	1304	11	RS-8	Fence height in front yard for single family lot	1																												1	
8/8/2016	9/12/2016	44 Mohican Drive	1905	28	RS-12	Fence height in street side yard for single family lot	1																												1	
8/8/2016	9/12/2016	516 Prospect Street	1002	23	RS-12	Deck addition	1																												1	
8/8/2016	9/12/2016	210 North Chestnut Street	2212	8	RS-12	Addition to single family dwelling	1																												2	
8/8/2016	9/12/2016	312 Temple Place	3004	9	RM-6	Deck addition	1																												2	
9/12/2016	10/17/2016	925 Willow Grove Road	4505	5	RS-12	Swimming Pool and Cabana	1																												1	
9/12/2016	10/17/2016	706 Westfield Avenue	4205	2	RS-6	Addition to single family dwelling	1																												3	
9/12/2016	10/17/2016	115 Effingham Place	709	14	RS-8	Addition to single family dwelling	1																												3	
9/12/2016	10/17/2016	565 First Street	2910	22	RS-6	Detached garage construction	1																													3
9/12/2016	10/17/2016	617 Lawrence Avenue	1103	16	RS-8	Addition to single family dwelling	1																													1
9/12/2016	10/17/2016	435 Sandford Avenue	5102	25	RS-10	Addition to single family dwelling	1																													1
10/17/2016	11/14/2016	318 Marlboro Street	5012	8	RS-6	New single family dwelling	1																												2	
10/17/2016	11/14/2016	650 Willow Grove Road	4601	33	RS-10	Addition to single family dwelling	1																												1	
10/17/2016	11/14/2016	529 Downer Street	2708	15	RM-6	Addition to single family dwelling	1																													2
10/17/2016	11/14/2016	126 Madison Avenue	104	5	RS-8	Addition to single family dwelling	1																													3
10/17/2016	11/14/2016	126 Ludlow Place	2503	10	RS-10	Addition to single family dwelling	1																													2
11/14/2016	12/12/2016	44 Elm Street	3106	1	CBD	Rooftop residential use and building conversion to mixed-use	1																												2	
11/14/2016	12/12/2016	945 Cleveland Avenue	703	9	RS-6	Addition to single family dwelling	1																												4	
11/14/2016	12/12/2016	238 Saint Paul Street	3113	11	P-1	Addition to office building	1																												7	

