



**Town of Westfield
Town Planner's Office**

Memo

TO: Westfield Planning Board
Code Review and Town Property Committee
James Gildea, Town Administrator

FROM: Donald B. Sammet, PP/AICP, Town Planner

CC:

DATE: April 9, 2019

**RE: BOARD OF ADJUSTMENT
2018 ANNUAL REPORT**

Every Zoning Board of Adjustment in New Jersey is required pursuant to Section 40:55D-70.1 of the New Jersey Municipal Land Use Law to prepare and issue an Annual Report. A Board's Annual Report is required to be distributed to both the Governing Body and Planning Board.

At its core, the Annual Report is a review of a Board of Adjustment's decisions on applications of the prior year. However, the Annual Report is not simply a summary of actions which the Board of Adjustment has taken over the past year, and a listing of the types of variances granted. It also is intended to be used as tool by the Governing Body, with assistance from the Planning Board, to help identify provisions in Westfield's Land Use Ordinance which are potentially in need of further examination, or updating. 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 Successive appeals for the same types of variance are very often an indication of an outdated ordinance provision, or a regulation which is not reflective of existing, prevailing conditions.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. The Board's 2018 Annual Report does include recommendations for some ordinance revisions.

I am happy to provide to the Governing Body and Planning Board, copies of the Westfield Board of Adjustment's 2018 Annual Report. I of course am available to answer any questions that you may have.



TOWN OF WESTFIELD ZONING BOARD OF ADJUSTMENT 2018 ANNUAL REPORT

Adopted:

April 8, 2019

Prepared by:

**Donald B. Sammet, PP/AICP, Town Planner
License No. 5758**



2019 Board of Adjustment Members

Chris Masciale, Chairman
Frank Fusaro, Vice Chairman
Robert Benacchio
Carla Bonacci
Allyson Hroblok
Eldy Pavon
Matt Sontz
Mary Doyle, Alternate #1
James Keenoy, Alternate #2

2018 Board of Adjustment Members

Chris Masciale, Chairman
Robert Benacchio, Vice Chairman
Carla Bonacci
Frank Fortino
Frank Fusaro
Eldy Pavon
Robert Whitehead
James Kelly, Alternate #1
Mary Alice Ryan, Alternate #2

Board of Adjustment Professionals

Diane Dabulas, Esq., Board Attorney 2019
Vincent K. Loughlin, Esq., Board Attorney 2018
Linda Jacus, Board Secretary
Kathleen Neville, Zoning Officer
Kathy Nemeth, Assistant Zoning Official
Donald B. Sammet, PP/AICP, Board Planner



**TOWN OF WESTFIELD
ZONING BOARD OF ADJUSTMENT
2018 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, 2018 through December 31, 2018. 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.*

2018 MEETING SUMMARY

The Board of Adjustment met a total of 15 times between January 8, 2018 and December 10, 2018. Of those 15 meetings, 3 were special meetings which were called in order to address the volume and type of applications submitted in an expeditious manner.

2018 APPLICATION SUMMARY

General Overview of Applications Heard

The Board did hear and decide a total of 57 applications in 2018. Fifty-six of the applications decided were approved, and a single application was denied. (The applicants subsequently revised their plans and returned to the Board gaining an approval.) The applications included a total of 128 variance requests, comprised of 111 "c"-type or bulk variance requests, and 17 "d"-type variance requests.

At the end of the calendar year, there were 5 pending complete and scheduled application carried to 2019. One was carried at the request of the applicant. The remaining 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 – 2018

| | “C”Type Variances | “D”Type Variances | Total |
|-----------------|------------------------------|------------------------------|--------------|
| Approved | 101 | 16 | 117 |
| Denied | 10 | 1 | 11 |
| Total | 111 | 17 | 128 |

Forty-nine of the 57, or 86% of applications heard in 2018 involved property containing single family residential use. Of these, most involved additions to existing, single family dwellings or accessory structures on lots containing them (40 of the 57, or 70% of the applications heard in 2018). Examples of other applications involving property containing single family dwellings included a single application associated with the construction of new homes, and variance requests from fence regulations. The types of improvements seen by the Board has continued over at least the past four years now, 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 6 site plan applications ancillary to “d” type variances in 2018 which are described below.

Saint Helen’s Church at Rahway Avenue continued with their facility improvement and expansion plans. The Church obtained amended site plan and variance approvals to construct various additions to buildings on the site. Modifications to previously approved plans were made by the Church, necessitating a return trip to the Board. Construction of these improvements is currently underway.

Three of the site plan applications ancillary to “d” type variances made pertained to the proposed ground floor office use of buildings within the Central Business District, in areas where ground floor office use is not permitted. All three of these applications involved the conversion of the ground floor of the building from retail use to office use. Two of these three applications were for property at 126-142 Central Avenue, a building once occupied by Coldwater Creek, a clothing retailer. This building has stood vacant for a few years, and its interior subdivision may have sparked interest in this space. The remaining site plan application involved the conversion of a retail space to a real estate office.

Another site plan application was for a 13 unit townhouse project, part of the Town's Affordable Housing Plan. The project generated an affordable housing obligation, which pursuant to settlement agreement with the developer, Fair Share Housing Center, and Town of Westfield (which settlement agreement was endorsed by the Superior Court) will be satisfied off-site on a planned future development along South Avenue near the Garwood border. The project was heard by the Board of Adjustment as the permitted density was exceeded by .39 dwelling units, which is a "d" type variance. However, it should be noted that the project was reduced in size from that of a previously approved townhouse project on the site which consisted of 16 units.

The final site plan application reviewed was also ancillary to a "d" type, density variance for the expansion of a building of the Westfield Senior Housing complex off of Boynton Avenue. The proposal included the construction of additional senior housing units and an ancillary parking area.

Subdivision Review

The Board of Adjustment did not hear any subdivision applications ancillary to "d" type variance requests in 2018.

Appeals, Interpretations, and Certificates of Non-Conformity

The Board did hear one appeal from a decision of the Zoning Officer in 2018 in regard to the installation of a structure within the rear yard which would contain a fireplace and outdoor television. The application description itself described the structure as an "outdoor fireplace", and the plan submitted labeled the structure in two ways: (1) as a "focal wall with fireplace", and (2) as a "gas feature wall". The proposed structure itself measured 2 feet deep by 15 feet long by 8 feet high.

The Zoning Officer applied the setback and height standards applicable to accessory structures (other than fences or walls) and also determined that the structure would count towards allowable coverage percentages for buildings and above grade structures. The project resulted in a variance necessity from allowable coverage percentages, necessitating a variance from the Board.

An objector to the variance application appealed the Zoning Officer's decision and argued that the proposed construction should be regulated as a freestanding wall, and not an accessory structure per provisions in the Land Use Ordinance. If regulated as a freestanding wall, the structure would have been limited to 6 feet in height, but no coverage variance would have been necessary.

The Board agreed with and upheld the decision of the Zoning Officer, finding that the provisions in the Land Use Ordinance were in fact correctly applied.

There were no requests for interpretations of the Land Use Ordinance or requests for certificates of non-conformity made in 2018.

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 |
| RA-5B | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| RM-6 | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 2 |
| RM-8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| RS-10 | 7 | 0 | 2 | 3 | 1 | 2 | 0 | 0 | 1 | 4 | 0 |
| RS-12 | 9 | 4 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 4 | 1 |
| RS-16 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| RS-6 | 11 | 5 | 2 | 7 | 2 | 5 | 1 | 1 | 1 | 7 | 1 |
| RS-8 | 6 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 9 | 0 |
| Total | 40 | 12 | 7 | 13 | 4 | 8 | 2 | 1 | 4 | 25 | 4 |

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 |
| RA-4 | 1 | 0 | 0 | 1 | 1 | 1 |
| RM-12 | 1 | 0 | 0 | 0 | 1 | 0 |
| RM-6 | 1 | 0 | 0 | 0 | 1 | 0 |
| RS-10 | 2 | 1 | 1 | 0 | 0 | 0 |
| RS-12 | 2 | 1 | 0 | 1 | 1 | 0 |
| RS-24 | 1 | 0 | 0 | 0 | 1 | 0 |
| RS-6 | 3 | 1 | 0 | 0 | 2 | 0 |
| Total | 11 | 3 | 1 | 2 | 7 | 1 |

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.

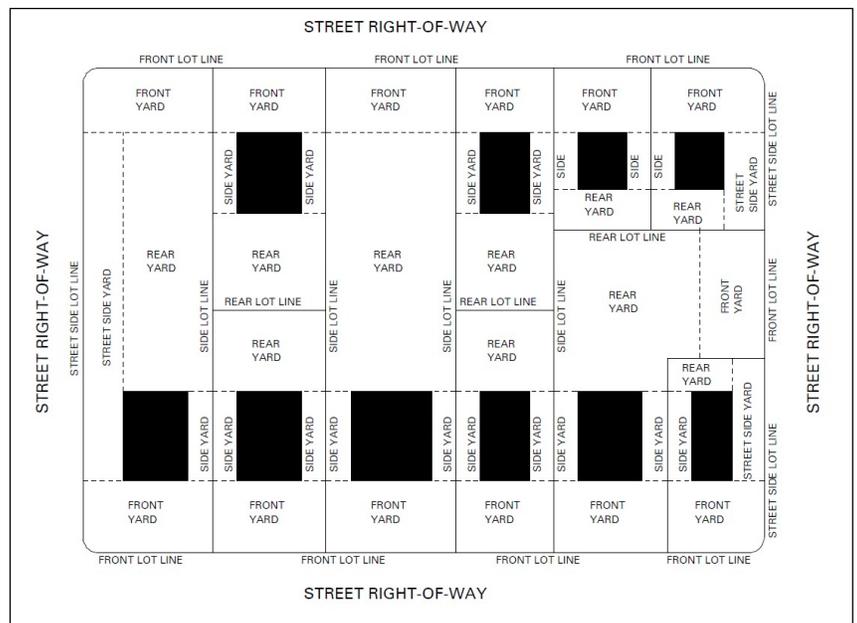
| Zone District | Total Applications | Number of Variance Requests Lot Standards and Other Variances | | | | | | |
|---------------|--------------------|--|-------|-------|--------------------|----------|---------|------------------------|
| | | Lot Standards | | | Parking or Loading | Lighting | Signage | Fences/Retaining Walls |
| | | Area | Width | Depth | | | | |
| CBD | 2 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| RA-4 | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| RA-5B | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |

| Zone District | Total Applications | Number of Variance Requests Lot Standards and Other Variances | | | | | | |
|---------------|--------------------|--|----------|----------|--------------------|----------|----------|------------------------|
| | | Lot Standards | | | Parking or Loading | Lighting | Signage | Fences/Retaining Walls |
| | | Area | Width | Depth | | | | |
| RM-6 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| RM-8 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| RS-12 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| RS-24 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| RS-6 | 4 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| RS-8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Total | 13 | 1 | 0 | 0 | 7 | 0 | 0 | 7 |

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 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.

The Board of Adjustment heard six, separate requests for variances from Town fencing regulations. Three of these involved allowing for six-foot tall fencing in street side yard areas, where only four-foot tall fencing is permitted. These requests surrounded increased usability of backyard areas, including buffering them from heavily trafficked roadways and pedestrian walks. Two of the



The above graphic shows what are considered front, rear, and side yards on corner, interior, and through lots.

requests involved through lots, where both ends of the lots had street frontages. These applicants desired six-foot tall fencing at the streetline adjacent to their rear yards to provide for increased privacy. Although six-foot tall fencing is permitted within rear yards on through lots, they are limited to four-feet in height at the streetline. Finally, the Board heard one variance request from a provision in the Land Use Ordinance which requires that pools be surrounded by a six-foot tall solid fence. The Board reviewed the application to see if other features, such as buildings, topography, or existing and proposed landscaping would provide the desired screening of the pool area from adjoining property owners.

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 |
| RA-4 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| RA-5B | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| RM-8 | 1 | 0 | 0 | 0 | 1 | 0 | 1 |
| RS-10 | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| RS-12 | 2 | 0 | 0 | 0 | 2 | 0 | 0 |
| RS-24 | 1 | 0 | 0 | 1 | 0 | 0 | 0 |
| RS-6 | 5 | 0 | 3 | 0 | 2 | 0 | 0 |
| RS-8 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Total | 15 | 3 | 3 | 1 | 7 | 2 | 1 |

The Board reviewed a total of 7 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 3 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. 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, less surface area being occupied by paving for vehicles, and to address issues of overmassing on a lot.

The table above shows that a total of 3 “use” variances were requested. All involved property within the Central Business District Zone District where the applicant proposed office use on the ground floor where it was not permitted. All were approved after careful consideration, with the characteristics of both the building and office tenant type being important factors. The changing nature of the retail environment continues to be a factor in the evolution of downtown Westfield, as two of the three spaces where a use variance was granted to allow for office use on the ground floor where not permitted, were once occupied by retail use.

Both density type “d” variances were related in some way to affordable housing production. One provided for additional affordable senior housing, which is considered an inherently beneficial use under New Jersey case law; and the second involved development of a site identified in the Town’s Housing Plan which generated a 3 affordable unit obligation which will be constructed off-site.

The single “d” type variance related to a conditional use involved the facility improvement and expansion plans at Saint Helen’s Church. The only condition of the ordinance which could not be met was for lot frontage for a house of worship where 225 feet is required and 162 feet exists. This was an existing condition which was not seen to impact appropriate development of the site, nor result in a negative impact on surrounding properties.

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 2018.

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 2018 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 recommends that the Mayor and Council consider re-classifying an optometrist's office from a medical office to a retail sales type of use. Currently, establishments which offer sales of eyewear and include the services of an optometrist in the same space are considered medical offices. Today, optometrist offices have a majority of their space occupied by display areas for eyewear, and are primarily retail in nature. In 2018, the Board reviewed the application for Warby Parker, an eyewear retailer and had to consider the use as a medical office despite the majority of the tenant space being occupied by eyewear displays.

Continuing Recommendations from the 2017 Annual Report

The Board is recommending that the language in the existing ordinance pertaining to permitted encroachments 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.

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 heard an application and appeal in 2018 which involved the installation of an outdoor television in a single-family home's backyard. As their installation becomes more common, the Town may run into instances where their operation becomes a nuisance to adjoining property owners. The Town may wish to examine potential strategies to mitigate any negative impact on adjacent properties.

APPENDIX: 2018 BOARD OF ADJUSTMENT APPLICATIONS

