

2018 Year End Report
 Board of Adjustment
 October 22, 2019

In accordance with N.J.S.A. 40:55D-70.1 the Board of Adjustment hereby submits its annual report on variances that were heard and decided in 2018. The Municipal Land Use Law requires that the Board of Adjustment review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions that were the subject of variance requests. Furthermore, the Board is to provide its recommendations for zoning ordinance amendments or revisions, if any. The MLUL requires that the report be forwarded to the Governing Body and to the Planning Board.

Application Synopsis and Summary

The Board held public hearings and decided the following number of variance application cases in 2017:

Bulk	7	(N.J.S.A.40:55D-70c)
Use	5	(N.J.S.A.40:55D-70d)
Interpretations		(N.J.S.A. 40:55D-70b)
Appeals from Zoning Officer		(N.J.S.A. 40:55D-70a)

The Board completed two “d” variance requests which included requests for outdoor storage in conjunction with a new “Tractor Supply” retail store (approved) and a residential development in the VC zone (denied). The Board also started review of two major composting/commercial applications that continue into 2019.

Below are the type of bulk, or “c” variances requested during the year:

	Front Yard	Side Yard	Rear Yard	Coverage	Acc. Bldgs.	Decks	Signs
Variences	1			1	4		

The types of “c” variances requested and the zone in which the properties are located is outlined below.

				lot			
Zone	Front yard	side yard	rear yard	coverage	accessory bldgs.	decks	signs
LR		2		1	1		
R-1					1		
R-2							
R-4	1				2		
CC							

Planning and Zoning Issues Discussed During the Year

Accessory Buildings

This section is a repeat from the 2017 annual report and is still applicable to the 2018 applications reviewed by the Board of Adjustment this year. The bulk variances in 2018 were concentrated in the area of accessory buildings. Most of the variances concerned the setback requirements or distance between buildings. There is currently no height restriction on accessory buildings therefore, accessory building height was not addressed by the Board except when discussing other variances. The majority of the accessory building variances occurred in the LR zone this past year. The height issue also results

in a discussion of the second story use on the proposed accessory garages. The Board is concerned about the conversion of these spaces to residential use, particularly in the lake areas.

There is a continuing discussion concerning accessory buildings and their location on smaller lots in the LR and R-1 (central sewer and water) zones. The current side and rear setback requirement in both zones is 10 feet. The requirement for 15 feet between buildings does appear to be acceptable.

The issue of accessory building height has not been addressed by the governing body and should be discussed. The height of accessory garages in the LR district where the accessory buildings are in the front yard needs to be assessed. This also occurs in the lake communities where the location of the accessory garage necessitates its location in the front of the property. This, however, does lead to issues of acceptable building height, separation from adjacent residential structures and changing the character of the neighborhood.

The Board could consider, for example, reducing the setback requirements for the smaller lots and requiring setback distances equal to the height of the accessory structures in the larger lot zones of the R-1 and R-2 districts. Of course, height restrictions would be desirable to avoid overdevelopment, particularly in the smaller lot zones (LR and R-1). In the lake communities, accessory buildings in the front yard and the effect they have on the streetscape and the appearance of neighborhoods should also be analyzed.

Decks

The zoning ordinance does not have specific regulations concerning decks. Decks are not included in the list of accessory uses in the residential section of the zoning ordinance. There are no specific criteria for regulating decks such as the percentage of the lot that can be used for decks and setback requirements for side or rear separation from adjacent properties. Never the less, no specific problems have been associated with this lack of regulation. The Board recommends that specific requirements for the placement of decks is not required at this time.

Horses and Residential Uses

The zoning ordinance allows the keeping of horses in residential zones if it meets certain criteria concerning lot size and regulates the number of horses that can be kept. Where the keeping of horses has been proposed on smaller lots of one acre and adjacent residential uses are on smaller lots, this has raised a potential issue of the proximity of the uses. It would seem that a greater separation or buffer areas may be required to mitigate any potential impact of the horse corral areas and stables from single family areas. Since it is desirable to encourage the keeping of horses, the relationship of horse keeping and adjacent small residential lots should be studied.

Composting

Two composting applications were submitted in 2018. Composting facilities are conditional uses in the LMI zones with a number of specific requirements related to the use. One of the composting applications entails approximately 5 acres; the other approximately 50 acres. The 50 acre application is significant and involves the discussion of environmental, traffic and land use issues that imply that this type and scale of application should be discussed by the Planning Board as a permitted use application or conditional use where non-compliance with the conditions force the application to the Board of Adjustment. This method of regulating composting activities allows the applicant to “Board Shop” by creating minor non-conformities that direct the application to the Board of Adjustment. We are not sure this was the intent of the composting regulations.

Rental Apartments in Commercial Zones

The commercial districts in the Township allow residential apartments above commercial uses. However, very few new rental apartments have been constructed. The intent of the permitting rental apartments was to provide housing for a unique set of population while supporting economic development. Placing residential use within close proximity to commercial and retail services also supports sustainable growth. With the Highlands designation in place, the Township should consider how much retail space is necessary to support the limited population growth and where that growth should be.

Application Process

The Board has discussed the variance and site plan application process with the objective of trying to make the process easier and faster for the public. As is stated often, the Board of Adjustment is a quasi-judicial body and conducts itself somewhat similar to the court. Therefore, applications for use variances must produce witnesses to testify on their particular expertise and those witnesses are subject to questioning by the Board and particularly by the public. In addition, a record of the application must be made and must be thorough in the event a decision of the Board is appealed to the Courts.

However, several practices can be implemented to make the process easier and more efficient. These include:

- 1) Review the application forms to ensure they request as much information as possible.
- 2) Reduce the time of the completeness reviews for non-use variance applications, which must be currently within a 30 day period.
- 3) Place the residential "c" variances that are simple and uncontested on the agenda first to avoid the homeowner waiting the entire meeting to be heard or adjourned to the next meeting. Hold the larger or more contested applications to later.
- 4) Have a procedure to allow all the applicant's experts to testify one after the other and hold questioning by the public until this is completed. This will expedite the application without sacrificing the public's right to question and comment on each application. It will also eliminate asking the same question to each of the applicant's witnesses.
- 5) As a policy of the Board, allow the Board's experts to meet with the applicant's experts to discuss and make revisions to the site plans and reports submitted to the Board. This will not allow the Board's experts to discuss the merits of the variance issues, but only to streamline the plan revision process to ensure that the plan in front of the Board is acceptable to the Board's experts **if the Board deems the application approvable**. The applicant must agree to the process since there are costs associated with plan and report revisions without the guarantee that the Board will judge the application favorably.
- 6) Additional office staff would permit greater efficiency in processing applications, getting complete applications on the agenda and finalizing applications after decisions.

Date: October 22, 2019

Robert A. Brady, Chairman
Zoning Board of Adjustment