

2019 Year End Report
Board of Adjustment
West Milford Township



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 in calendar year 2019. 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 Summary

The Board held public hearings and decided the following number of variance application cases in 2019:

Bulk	11	(N.J.S.A.40:55D-70c)
Use	9	(N.J.S.A.40:55D-70d)
Interpretations	0	(N.J.S.A. 40:55D-70b)
Appeals from Zoning Officer	1	(N.J.S.A. 40:55D-70a)

The Board completed the review of a number of “d” variance requests, including;

- Denied a variance for residential use in the CC commercial zone on Union Valley Rd.
- Approved a retail and recycling use in the CC commercial zone on Marshall Hill Rd.
- Approved a variance request for a swimming pool in the front yard in the LR zone on Lakeshore Dr.
- Approved a food service use in the R-4 zone on Route 23.
- Approved a garage and storage use in the CC zone for an expansion of a pre-existing non-conforming use on Union Valley Rd.
- Approved a retail use in the LMI zone on Greenwood Lake Tpke.
- Approved an accessory use without a principal use in the LR zone on Laramie Trail
- Denied an accessory use without a principal use in the R-2 zone on Fox Island.

One major variance application entailed a proposed organic recycling facility in the LMI zone on Burnt Meadow Rd. The proposal included the expansion of a pre-existing non-conforming use as well as a conditional use variance. Special hearings were conducted at the high school auditorium and after a year in review the applicant withdrew the application due to issues the applicant had with the property owner.

In another case, the Board granted a use variance to a merchant who had acquired a “hot dog” vendor’s business on Route 23 but did not realize that the pre-existing use status had been “abandoned”. The Board worked with the applicant to restore the non-conforming use status at this location.

The Board reviewed and approved a recycling center and retail nursery use on Marshall Hill Rd. and Lycosky Drive which involved a portion of the Township’s landfill site. The issues of proper landfill closure and access as well as the reuse of an old industrial building resulted from the application approval.

The Board decided a case involving the appeal of the zoning officer's decision that a variance and site plan were required for a marina and commercial use on Greenwood Lake. The Board worked with the applicant so that improvements were made to the site and parking area which obviated the need for the use variance.

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

	Front Yard	Side Yard	Rear Yard	Coverage	Acc. Bldgs.	Fences
Variations	2	3	2	5	2	1

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

Zone	Front yard	side yard	rear yard	lot coverage	accessory bldgs.	Fences
LR	1	3	1	4	1	1
R-1				1	1	
R-2						
R-4	1		1			
CC						

Planning and Zoning Issues Discussed During the Year

Residential Uses and the Commercial zones

The Board of Adjustment denied an application for residential use this year on Union Valley Rd. Although the application did have some merit the Board determined that the intensity of the proposed use and the affect it would have on the zone plan were significant and that the use variance criteria were not satisfied. In addition, a discussion of residential uses in the commercial zones took place in the context of whether the applicant should have sought a zoning amendment rather that a use variance. Therefore, the Board of Adjustment recommends that the Planning Board and Governing Body consider whether exclusive residential use in the commercial zones are desirable. The applicant stressed that there was no market for commercial or office uses and with the advent of the pandemic (not a factor in the application) as well as the lingering effect of the Highlands restrictions, the question remains if the extent of the commercial districts are still valid and appropriate.

Composting / Recycling Facilities

Composting facilities are conditional uses in the LMI zones with a number of specific requirements related to the use. One of the composting applications entailed approximately 5 acres; the other approximately 50 acres. The 50 acre application was significant and involved 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, not as a 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. It was evident that the public was not in favor of major recycling/composting facilities in the Township. The Governing Body should consider making this use a permitted use with special design regulations. As an alternative, a repeal of the existing composting

ordinance would establish the legislative intent that the use is not desirable or permitted and would allow the Board of Adjustment to carry out the use variance process rather than a permitted conditional use process where a minor non-conformance from the ordinance conditions is being applied for.

Bulk Zoning Criteria in the Lake Residential (LR) zone

Most of the bulk variance applications are for properties within the Lake Residential zones. When these criteria were established, it was well known that many of the lots in the lake communities did not meet the lot requirements. But this was done to encourage the merging of smaller lots and also allow the lake community neighborhoods to become part of the planning process. This is done through the variance applications that provide public notice to the lake community property owners so that they can provide comment and input on the development of smaller lots.

This process has proven to be invaluable as the Board has conducted many hearings on these smaller properties where the opportunity for the public to provide information to the Board and comment on the variance applications has resulted in lake development that is consistent with the pattern of each individual neighborhood but also encouraged the expansion of homes and improvement to property values of the entire area.

Of the number of applications for bulk variances in the Lake Residential zone, 9 applications were heard by the Board and all were approved, some with modifications after review and public comment. In addition, the Board of Adjustment has been able to impose conditions and controls on approvals that help to mitigate the impacts of the variance requests. Of the nine applications, seven were in the Upper Greenwood Lake LR zone. This shows that the process is working effectively and that residential construction and improvements are being encouraged in conformance with neighborhood patterns while preserving the open space and overall environment of the lake communities.

The Board does recommend that the governing body consider specific zoning regulations concerning accessory garages to eliminate the possibility for apartments on the second floor of these structures and more specific zoning regulations concerning decks concerning coverage and setback requirements in the LR zones.

Date: March 24, 2021


Robert A. Brady, Chairman
Zoning Board of Adjustment