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Attorney for Plaintiffs, STUART SCHNITZER and CHARLENE SCHNITZER

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STUART SCHNITZER and CHARLENE  
SCHNITZER, Plaintiffs

vs.

TOWN OF WESTFIELD PLANNING  
BOARD and TOWN OF WESTFIELD,  
Defendants

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: Superior Court of New Jersey  
Law Division  
: Civil Action

: Docket No.:

: COMPLAINT IN LIEU OF  
PREROGATIVE WRITS  
:

Plaintiffs STUART SCHNITZER and CHARLENE SCHNITZER ("Plaintiffs"),  
having a property address of 885 New England Drive, Westfield, New Jersey 07090,  
hereby allege by way of Complaint In Lieu Of Prerogative Writs pursuant to R.4:69,  
as follows:

### **THE PARTIES**

1. Plaintiffs are the owners of property located at 885 New England  
Drive, Westfield, New Jersey 07090.

2. Defendant, Town of Westfield ("The Town") is a municipal body having  
been incorporated under the laws of the State of New Jersey on March 4, 1903.

3. Defendant Town of Westfield Planning Board ("The Board") is a municipal board created pursuant to the Ordinances of the Town of Westfield and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (hereinafter "MLUL") with the authority to hear and decide land use applications.

4. The Board has a business address of 959 North Avenue West, Westfield, New Jersey 07090.

5. The Town has a business address of 425 E. Broad Street, Westfield, New Jersey 07090.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the above-captioned matter because all parties reside and/or conduct business in the County of Union, State of New Jersey, the real property from which the dispute forming the basis for this lawsuit arises is located in the County of Union, State of New Jersey, and all of the material facts alleged herein occurred in the County of Union, State of New Jersey.

7. Venue is proper in this Court pursuant to R. 4:3-2(a) and (c), respectively because Union County is the county in which the affected real property which is the underlying subject of this lawsuit arises and is situated and that Town of Westfield is in the county in which the cause of action arises.

### **FACTUAL BACKGROUND**

8. Plaintiffs are the owners of real property located at 885 New England Drive, Lot 16, Block 5301 on the Tax Map of the Town of Westfield ("the Property").

9. The owners of the property granted D. Villane Construction, LLC, (the "Applicant"), the rights to apply for a subdivision of their property as described

herein on their behalf.

10. The parcel in question, at the time that the application was heard, was a lot within the RS-12 zone as described in the Town Zoning Ordinance upon which currently sits one single family home.

11. The Applicant proposed to demolish the existing structure and subdivide the lot into two nearly equal conforming lots as they relate to size and dimension and thereafter construct two new homes that would likewise conform to the Town of Westfield Zoning and Building Codes and the New Jersey Municipal Land Use Law in all regard.

12. The application for subdivision as proposed completely conformed with the minimum requirements of the RS-12 zone and no variances were required.

13. The proposal was conforming in all regard to the objective bulk requirements of the zone.

14. At the hearings before the Planning Board, the Applicants' witnesses included the applicant, an arborist (tree expert), a civil engineer and a professional planner all who participated in the presentation of this conforming subdivision application.

15. The Applicant's presentation provided analysis of the site including the location of the existing structure, the locations of proposed structures and the location of trees and other topographical features of the lot.

16. The applicant provided further evidence as to sound land use planning principals that supported the analysis and conclusion that the application was

conforming to the zones bulk requirements in all regard.

17. The exhibits and testimony presented by the Applicant objectively proved that the proposed subdivision conformed in all regard with the bulk requirements of the RS-12 zone and that no variances were requested or required.

## **COUNT I**

### **ACTION IN LIEU OF PREROGATIVE WRITS – Conforming subdivision**

18. The Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein, and incorporate the same herein by reference.

19. Applicant's presentation of evidence objectively proved that the application was conforming to the zone bulk requirements which was ignored, overlooked and/or not properly reviewed and analyzed by the Board.

20. Based upon the foregoing, the actions of the Board in the denial of the conforming subdivision Application were arbitrary and capricious and should be overturned.

**WHEREFORE**, STUART SCHNITZER and CHARLENE SCHNITZER request that the Court enter an Order against Defendant, Town of Westfield Planning Board overturning its denial of the Plaintiffs' conforming subdivision application and awarding Plaintiffs the relief requested in their Application along with attorney fees, costs of suit and such other relief that the Court deems equitable and just.

## **COUNT II**

### **ACTION IN LIEU OF PREROGATIVE WRITS – Ultra Vires Action**

21. The Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein, and incorporate the same herein by reference.

22. Applicant's presentation of evidence objective proved that the application was conforming to the zone bulk requirements which evidence was ignored, overlooked and/or not properly reviewed and analyzed by the Board.

23. The Board and/or Town knew or should have known that the Land Use Ordinance of the Town of Westfield and/or portions thereof was in conflict with New Jersey Municipal Land Use law yet failed to take action to correct such inconsistencies.

24. Based upon the foregoing, the actions of the Board in applying certain sections of the Town zoning ordinance acted ultra vires in relying upon such illegal, unconstitutional and/or improper sections of the ordinance which were known to be in direct conflict with New Jersey law.

**WHEREFORE**, STUART SCHNITZER and CHARLENE SCHNITZER request that the Court enter an Order against Defendant, Town of Westfield Planning Board overturning its denial of the Plaintiffs' conforming subdivision application and awarding Plaintiffs the relief requested in their Application along with attorney fees, costs of suit and such other relief that the Court deems equitable and just.

### **COUNT III**

#### **ACTION IN LIEU OF PREROGATIVE WRITS – Ultra Vires Action - Damages**

25. The Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein, and incorporate the same herein by reference.

26. Applicant's presentation of evidence objectively proved that the application was conforming to the zone bulk requirements which evidence was ignored, overlooked and/or not properly reviewed and analyzed by the Board.

27. The Board and/or Town knew or should have known that the Land Use Ordinance of the Town of Westfield and/or portions thereof was in conflict with New Jersey Municipal Land Use law yet failed to take action to correct such inconsistencies and/or direct the Board to act within the scope of the law.

28. Based upon the foregoing, the actions of the Town and resulted in the plaintiffs being improperly denied their conforming subdivision application thus sustaining damages.

**WHEREFORE**, STUART SCHNITZER and CHARLENE SCHNITZER demand judgment against the defendant(s) and or each of them, for such sum as will reasonably and properly compensate them in accordance with the laws of the State of New Jersey together with interest and cost of suit.

## COUNT IV

### **DECLARATORY JUDGMENT ACTION Zoning Ordinance Contrary to State Law**

29. The Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein, and incorporate the same herein by reference.

30. Westfield zoning law is codified by the Defendant, Town of Westfield as “The Land Use Ordinance of the Town of Westfield.”

31. The Westfield zoning ordinance is unconstitutional and/or violates New Jersey law in that it does not evince a legislative design to require consistency, uniformity and predictability in the subdivision approval process.

32. Based upon the foregoing, the zoning ordinance (and or portions thereof) is contrary to State Law and should be declared illegal, unconstitutional and/or contrary to the New Jersey Municipal Land Use law either codified by the New Jersey legislature or by way of interpretative case law of the Courts of the State of New Jersey.

**WHEREFORE,** STUART SCHNITZER and CHARLENE SCHNITZER request that the Court enter an Order against Defendant, Town of Westfield, declaring that the “The Land Use Ordinance of the Town of Westfield” and/or portions thereof, be declared unconstitutional, illegal and/or contrary to law and therefore striking the zoning ordinance in total or such portions thereof that are contrary to law.

**COUNT V**

**THE BOARD RESOLUTION IS IMPROPER AND SHOULD BE OVERTURNED**

33. The Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein, and incorporate the same herein by reference.

34. The Resolution adopted by the Board on January 7, 2019 although lengthy, fails to comply with the requirements for a proper Resolution. The Resolution contains general findings of facts but fails to include any conclusions of law, citations of case law or statutory references justifying the denial of plaintiff's conforming subdivision application.

35. Based upon the foregoing, the Resolution of the Board should be overturned.

**WHEREFORE,** STUART SCHNITZER and CHARLENE SCHNITZER requests that the Court enter an Order against Defendant, Town of Westfield Planning Board reversing the Board's denial of the Plaintiffs' confirming subdivision application and awarding Plaintiffs the relief requested in their Application along with attorney fees, costs of suit and such other relief that the Court deems equitable and just.

SPECTOR FOERST & ASSOCIATES  
Attorneys for Plaintiffs



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**JAMES M. FOERST, ESQ.**



### DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Plaintiff hereby designates James M. Foerst, Esq. as trial counsel in this matter.

SPECTOR FOERST & ASSOCIATES  
Attorneys for Plaintiffs



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**JAMES M. FOERST, ESQ.**

### CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies that the matter in controversy is not the subject of any other action presently pending in any Court or of any pending arbitration proceedings.

The undersigned further certifies that there are no other parties of which he is presently aware that should be joined in this action.

SPECTOR FOERST & ASSOCIATES  
Attorneys for Plaintiff



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**JAMES M. FOERST, ESQ.**

**CERTIFICATION PURSUANT TO R. 4:69-4**

Pursuant to R. 4:69-4, I hereby certify that all necessary transcripts of local agency proceedings in the case have been ordered.

**SPECTOR FOERST & ASSOCIATES**  
Attorneys for Plaintiff



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**JAMES M. FOERST, ESQ.**

Dated: February 20, 2019