

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
MINUTES
November 3, 2008**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with or local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: William Martin, Chairman
Raymond Arroyo
Dan Koch
Joseph Frasco, Vice-Chairman
Eric Oakes
William Vietheer
Christopher Owens (Alt #1)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Maser Consulting, PA
Board Engineer
Steve Lydon, Burgis Associates
Borough Planner

ABSENT: Guy Hartman (excused absence)
Michael Bieri (Alt#2) (excused absence)

The Chairman announced that William Vietheer was absent at last meeting and did not listen to the tape. Therefore there were only six (6) qualified members available for a use variance application.

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4. MINUTES - The Minutes of 10/6/08 were carried to the next meeting.

5. CORRESPONDENCE: As listed on Agenda and read:

1. Letter dated 10/14/08 from Nancy E. Saccente, Esq. RE: Uniq Surfaces;

2. Letter dated 10/20/08 from Burgis Associates RE: F & A Woodland Associates;

3. Letter dated 10/22/08 from Maser Consultants RE: Palisades Land & management;

4. Letter dated 10/22/08 from Burgis Associates RE: Lebanon Baptist Church;

5. Letter from Scott Berkoben, Esq. RE: 47 Park Avenue requesting adjournment - The letter was premature, as the application was not received. A motion to have applicant renote if application comes in and to carry same until 12/1/08 was made by Eric Oakes, seconded by Dan Koch and carried unanimously.

6. Letter dated 11/3/08 from L. Scott Berkoben, Esq. RE: Harmony Tea Room;

7. Memo dated 10/31/08 from Burgis Associates RE: Albert's Westwood Cycle;

6. VOUCHERS: A motion to approve Vouchers totaling \$5,408.75 was made by William Vietheer, seconded by Joseph Frasco and carried unanimously.

7. RESOLUTIONS:

1. Schreyer (Denney), 40 Lester Avenue Section 68 application - Carried to 12/1/08 and to be done with use variance application;

2. Paragon Federal Credit Union, Washington Avenue, Block 805, Lots 2 & 3 - Board Attorney Rutherford gave an overview of the Resolution of Approval. A motion for approval of the Resolution was made by Mr. Arroyo and seconded by Mr. Koch. There were no further questions, comments or discussions. On

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roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Oakes, and Mr. Martin voted yes.

3. Vaccaro, 100 Fourth Avenue - Garage expansion - Board Attorney Rutherford gave an overview of the Resolution of Approval. A motion for approval of the Resolution was made by Mr. Arroyo and seconded by Mr. Koch. There were no further questions, comments or discussions. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

4. Richard Schmidt, 201 third Avenue, Block 916, Lot 16 - Reconstruction - Mixed Use Building

8. PENDING NEW BUSINESS:

1. Harmony Tea Room, 7 Bergen Street - Application for use variance - Scheduled for 12/1/08;

9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in

1. Phil Petrina, 118 3rd Avenue - Proposed Sunroom addition and Section 68 Certificate - William Petrina, Esq. represented the applicant. Mr. Martin explained the house is a two-family house, which is not permitted in the zone, so there is another issue. Philip Petrina, owner and applicant, was sworn in and testified he owned the property for 15 years, having purchased it as a two-family. The architect, Mr. Moletto, would testify as to same.

Frank D. Mileto, 14 Beaver Brook Drive, Long Valley, NJ, Registered Architect and Professional Planner in NJ, was sworn in, qualified and accepted. Mr. Mileto reviewed the application and all documentation and testified the application was for an expansion of a two-family dwelling, which is pre-existing, non-conforming. They have not been able to find evidence or proof through the Tax Office, other than it has been purchased as such by his client and has been used as such since that time. They do not have a C/O for a two-family. Mr. Martin stated the first part of the application is for the Section 68 Certificate, and they would need proof prior to moving on to the rest of the

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application. He asked for the tax records, but they did not have same. Mr. Martin informed them they should obtain reasonable documentation of whether the house was a two-family house back from the Spring of 1967, which is when the zoning changed to not allow two-family houses. There would need to be a continuous reference to two-family status from 1967 on. Mr. Mileto stated he did not know about this and had neighbors present. Mr. Martin stated it would have to be continued to the next meeting, before continuing with the merits of the variances, to allow Mr. Petrino time to gather this information. Further, the plans submitted were not prepared by Mr. Mileto, but he was going to testify to them. The last date was 3/19/08. Mr. Frasco asked for interior and exterior photos of the house. Mr. Lydon also noted certain items outlined in his 5/22/08 Memo were not complied with. Mr. Raimondi's report of 2/12/08 was also received by him. The matter was carried to 12/1/08.

2. Dennehy, 40 Lester Avenue - Addition/Front Porch & Hearing on Appeal - Carried to 12/1/08

3. F&A Woodland Associates, 309 Kinderkamack Road - Use Variance - Paul Giblin, Esq. represented the applicant, noting the letter "F" in the name stands for Frank Miele and the "A" is for Alfred Barino. Maria Petrou, Professional Planner, and Mr. Barino were sworn in. Ms. Petrou testified the property is 6,111 sq. ft. The area of the unit is 1,150 sq. ft. The plans were submitted on 9/4/08. The Board did not have the plans with them. Mr. Martin stated the Board did not have a chance to look at them, but asked if they had any extra copies. Mr. Giblin distributed copies of the floor plans dated 6/6/08, marked Exhibit A4, which was a one page plan of the first floor. Ms. Petrou stated she was never inside the building. She was testifying off the plan. Mr. Martin stated they should have the architect present to testify as to the plan. Also, there are inconsistencies in the plans, and he questioned which plan is correct. It was unclear as to the use. It was an office. Mr. Barino gave the history of the site. They went to the Building Dept. for an office rental, and Mr. Melfi denied them for parking and would only permit residential use. They need to rent for a while before they make parking. They wish to rent it out as living space. Mr. Martin explained they cannot combine living space and office space. The legal status of the property did not change, since no approvals were received. He asked for photos. Mr. Giblin would have them at the next meeting.

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Applicant testified there is a basement. Mr. Martin stated they need that documentation as well and whether the door is there or not. He asked for dimensions of the building. There were two tenants. Mr. Giblin explained the matter was previously in court, and is presently occupied. They made no changes.

Ms. Petrou continued with her planning testimony for a D1 use variance which required in the O zone to turn the office space into a dwelling unit. She discussed permitted uses in the zone. Proofs required are that the property is particularly suited and that the use is not a detriment to the Master Plan. She also reviewed the parking spaces required. The use is consistent with Master Plan goals. There is no substantial detriment to the public good or zone plan. It is better suited to residential than commercial use. Ms. Petrou's planning testimony was complete, followed by questions from Board Members. Mr. Arroyo asked about Goal 6. She indicated it refers to single family residential premises. The impact would not be substantial. Mr. Oakes asked about the Land Use Exhibit on Page 4 of her document. They are all single family, but the existing use of this site is two-family. Mr. Martin stated Goal 6 does not refer to single families, but rather discourages two-families. This represents a significant hurdle in her planning comments, and is a detriment to Goal 6. Mr. Lydon questioned Ms. Petrou in detail regarding the Master Plan's goals and objectives and parking. Mr. Arroyo questioned if the office use was the current use. Ms. Petrou responded the office was an accessory use to whoever lived in the house.

There were no further questions and none from the public. Mr. Martin announced the matter was carried to 12/1/08 with time extension granted. The architect, Mr. Canzari would appear and testify at that time. The planner was complete and would not have to return. The Zoning Officer would also appear at that time.

The Board took a recess from 10:55 p.m. to 11:04 p.m.

4. Uniq Surfaces, 701 Broadway, Block 701, Lot 7 - Variance - Withdrawn by applicant;

5. Albert's Westwood Cycle, 182 Third Avenue - Variance approval; (Dan Koch and Eric Oakes recused) Mr. Koch and Mr. Oakes recused themselves and stepped down from the dais. There

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was a quorum. Mr. Vietheer was absent at the last meeting, but the matter was not heard then. Mr. Nemcik reviewed from the prior hearing. They had revised plans and received correspondence from Mr. Raimondi and Mr. Lydon. They may or may not need more testimony from Mr. Albert. Mr. Benanti was present to answer questions. Mr. Martin asked him to first explain his plan. Mr. Nemcik stated the difference was the elimination of outdoor storage and addition of a one story addition to the rear of the premises. Mr. Benanti explained they added a one story addition to give square footage that is taken away by a storage container and trailer. There is a concrete pad for repair of bikes and to store them while they waited for repairs. His plans would have to replace with new ones per code. They will also have to add girders to floor joists to Code and a new staircase to Code down to the lower level, eliminating a staircase. The increase in lot coverage is due to the addition of the concrete pad. There will be additional evergreens and a berm for screening as well as a new fence. There is a second means of egress from the lower level for safety purposes. From the first floor there is also a door. Mr. Benanti's testimony was complete.

Questions by Board Members followed. Mr. Arroyo commented on the planting. Mr. Raimondi asked about the evergreens. They will screen the neighbor of Lot 7, proposing two or three more evergreens. Mr. Martin commented they testified that the trailer and storage container would be removed. He did not see any substantial improvements. There did not have to be an expansion. The building could go back to the way it was without expanding a non-conforming use. They are not offering anything. Mr. Martin asked about the easement and if it would constant an access easement. Mr. Nemcik said it was for anything Mr. Albert would receive for the property. Mr. Martin asked for the information to be provided at the next hearing. They are asking the Board for an addition, but they do not have access to the rear of the property. Mr. Nemcik stated they had a door from the inside to the rear. Mr. Martin suggested a more attractive store front to help his planning argument for expanding a non-conforming use. Mr. Albert stated the pad would make it easier for him to rotate the bicycles and for inventory. They would not be stored outside. Their boxes are not that large, and they always come in the front. Mr. Benanti stated the amount of square footage does not necessitate justification. Mr. Martin suggested removing the trailer and storage container and

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cleaning up the property. He was looking for the mitigation for the non-conforming use, and asked if they would be bringing a planner. Mr. Nemcik responded he would not be presenting planning testimony, because the issue is straight forward and did not justify the expenditure. Mr. Arroyo commented he thought they would be coming back with a shed structure rather than an expansion. Mr. Nemcik said they did mention that, but he did not believe outdoor storage is not permitted. Mr. Martin commented they did not provide planning testimony. Mr. Nemcik thought they would rely on the Board professionals' reports. Mr. Rutherford advised the Board can decide if the applicant has provided the positive and negative criteria and required proofs. You don't necessarily have to have a planner, but it is up to you. The question is whether the Board is convinced with your testimony. The Board should really consider what impact the construction of the one-story addition will have on the nature and intensity of the use.

The matter was opened to the public. Karel Doell, 511 Fourth Avenue was sworn in. She lives next to the church building on Lot 9. She testified she sees an improvement with this plan and makes it more aesthetically pleasing and does not bring down the value of their homes. There were other neighbors in favor of this as well. Mr. Martin asked if the property were cleaned up, it would be an improvement, and she responded yes. Mr. Nemcik asked her if they removed the canopy and had just one building there with the addition would that be better. She indicated if they did this and removed the abandoned cars, it would be an improvement. Mr. Albert had one car back there, and it was his. There were no further questions.

Mr. Martin asked if they would prefer to carry or proceed to a vote. Mr. Rutherford advised applicant could carry the matter to have the benefit of a full Board. Applicant requested to carry, and the matter was carried to 12/1/08 with time extension granted.

Mr. Oakes and Mr. Koch returned to the dais.

6. Mark Salerno, 175 Third Avenue - Storage - Incomplete notice and in error;

7. Lynch, 117 Beech Street - Application for "C" variance Carried to 12/1/08;

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8. Lebanon Baptist Church, 20 High Street - Site Plan & Use Variance for Non-conforming use - Carried to 12/1/08;

11. DISCUSSIONS: None

12. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:00 p.m.

Respectfully submitted,

**MARY R. VERDUCCI, Paralegal
Planning Board Secretary**