

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
MINUTES  
October 19, 2015**

**APPROVED 11/9/15**

**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 **SPECIAL Meeting** of the Westwood Zoning Board of Adjustment.

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

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL:**

**PRESENT:** William Martin, Chairman  
Eric Oakes, Vice Chairman  
Guy Hartman  
Matthew Ceplo  
Marc Truscio  
George James  
Cynthia Waneck (Alt #1)  
Michael Klein (Alt #2)

**ALSO PRESENT:** David Rutherford, Esq., Board Attorney  
Louis A. Raimondi, Board Engineer  
Steve Lydon, Burgis Associates, Board Planner by Ed Collin who appeared for Kathryn Gregory, Substitute Board Planner for the Westgate Application

**ABSENT:** H. Wayne Harper (excused absence)

**4. MINUTES:** A motion to approve the Minutes of the 10/5/15 Meeting was made by Guy Hartman, seconded by Eric Oakes, and carried unanimously by those eligible to vote.

**5. CORRESPONDENCE: None**

6. **VOUCHERS: None**

7. **RESOLUTIONS:**

1. **Resolution Appointing Kathryn Gregory as Planner for the Westgate Application** - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by George James. There were no further questions, comments or discussion. On roll call vote, all members voted yes.

8. **PENDING NEW BUSINESS: None**

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

**SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS**

**The Board Professionals were sworn in.**

1. **Westgate - WW Madison Realty, LLC, and 11 Madison Realty, LLC, 11 Madison Avenue, Block 806, Lot 4, and 37 Irvington Street, Block 806, Lot 2 - Amended Site Plan and Application for Amended Approval** - Mr. Lydon recused himself and departed. Kathryn Gregory appeared as Substitute Board Planner for this application. John J. Lamb, Esq. represented the applicant in a continued hearing. Carmine R. Alampi, Esq. represented an interested party/objector.

Mr. Alampi submitted a sent letter concerning court reporter providing transcript for the previous three meetings. There has been correspondence regarding same, he noted, and the transcripts should be provided to him in a timely manner. Mr. Alampi commented it has been the custom to provide a copy of the transcript to the other party. It is only fair that he be able to review the transcript. Mr. Lamb acknowledged the request; however, he said he asked his client for authorization, and the client has refused. Transcripts cost money. Mr. Alampi is free to get his own court reporter or pay for a transcript. Mr. Lamb stated that is his opinion, and his client has not provided authorization. Mr. Alampi commented it is professional courtesy, as he has done all last year in the 40 Kinderkamack Road application. In all his years of land use practice, the rules are set up in the beginning. Mr. Lamb in correspondence stated he would provide a transcript of one of the special meetings to Mr. Alampi. It is not a proper way to say to the objector that it is not appropriate to provide it free of charge. Mr. Lamb

indicated he would've provided a transcript for a special meeting if Mr. Alampi could not attend. Chairman Martin deferred to Mr. Rutherford, who advised he believed Mr. Alampi has been here for all the meetings. He did not recall an obligation on behalf of the applicant to provide transcripts. If there is a miscommunication or misunderstanding between counsel, it should be worked out between themselves. Mr. Alampi commented it is not a miscommunication, and the Board should rule on it. Should there be any action on this Mr. Martin asked, and Mr. Rutherford advised no, not unless there were any comments from Board Members. There were none. Mr. Alampi's comments were noted.

Moving on, Mr. Lamb's witnesses were introduced. Karl A. Pehnke, NJ Registered Professional Engineer, Langan Engineering and Environmental Services, of 989 Lennox Drive, Laurenceville, NJ was sworn in. Mr. Lamb questioned his witness. The plans were just submitted. Mr. Pehnke gave his qualifications, experience and education and was accepted. The Traffic Impact Study prepared by Langan Engineering was marked Exhibit A25. Mr. Pehnke reviewed the study, revised to 9/9/15. He used the ITE (Institute of Transportation Engineers) Manual, and the trip generation studies and handbooks. Their opinion was that the proposed development would not significantly impact traffic operations during peak traffic hours, and that the proposed driveways will operate safely and efficiently. The proposed use is ideal given the low traffic volume generation from the site and the limited access opportunities to the property from Madison Avenue and Irvington Street. It is a retail zone, CBD, and there is already traffic from patrons and pedestrians in the downtown area, who are already in parking spaces. The self-storage facility requires 22 parking spaces. By nature they are low intensity traffic generators. People are generally not there a majority of the time. They can essentially operate with ten parking spaces. They are providing 13 spaces. It will have no impact on street parking.

Mr. Alampi cross-examined Mr. Pehnke. He asked Mr. Pehnke if he was aware he is providing half of the required parking overall and added two units, without any traffic impact. Mr. Pehnke responded he was extremely satisfied the parking provided will be sufficient and adequate to support the needs of the residents and users of the building. Mr. Alampi inquired, and Mr. Pehnke responded he did not report any of the particular data from the ITE or trip generation studies. Mr. Lamb objected, stating the approvals and various

tandem spaces were already approved by the Board. Mr. Alampi stated this is a new application. Two apartments have been added. The objection was noted. Mr. Alampi continued. Mr. Alampi referred to a prior case with Wachovia Bank for a permitted use by design and layout on this site. He asked if the witness was familiar with it. Mr. Lamb objected. The Chairman did not see the relevance. It was denied, went to court, remanded, approved, and then abandoned. Mr. Alampi continued. He introduced exhibits from 7/31/14 and questioned the witness about turning movements. Was an ITE review made for each of the parking spaces, he asked. It was not, Mr. Pehnke responded. Further, he did not analyze the former car dealership on the site. Mr. Alampi had no further questions.

Questions by Board Members and Professionals followed. Mr. Raimondi asked Mr. Pehnke to review the traffic figures he testified to earlier. In the morning, 24 arriving and 25 leaving; on Saturday 34 and 35. Is there any differentiation made for tenants going into the self-storage from Madison. Mr. Pehnke said operations would give instructions. Mr. Raimondi asked if any guests of the apartments could park over night in the self-storage lot. Mr. Pehnke had no knowledge. Mr. Lamb advised it is two separate applicants and ownership groups. He feels it would not be a possibility. Mr. Raimondi said there was a relationship by way of the underground basement previously. Mr. Lamb said that should be deleted. Ms. Waneck asked about overnight parking and guest parking and how many spaces were designated for guests. Mr. Pehnke responded half of a parking space per unit was figured. It is very hard to predict. Ms. Waneck noted there is an issue with overnight parking in the Borough. Mr. Pehnke said it would probably be addressed in the lease. Ms. Waneck asked if he was using the higher Saturday numbers. Mr. Pehnke said there was no peak Saturday hours; it is just in and out all day. Mr. Oakes noted there are parking issues, with just enough spaces for tenants and not guests. Mr. Oakes asked what percentage of the parking spaces now are used, and the response was about 50-60%. Is there any other parking on Madison that could handle the parking. Mr. Pehnke outlined some of metered spaces available in the two blocks. Ms. Waneck asked if he took into consideration the buses that use the spaces for queuing. He was not aware of the buses using them, but they were taken into consideration. Mr. Martin asked if the parking spaces extending from Irvington were taken into consideration, and Mr. Pehnke responded they were. There were no questions from the public. Mr. Lamb had one additional question as to whether they could put a 10,000 sf

building on the site, and the response was yes. Mr. Pehnke's testimony was complete, and he departed.

The Board took a recess from 9:25 to 9:35 pm.

The next witness was an environmental specialist. Peter Sorge, CHMM, LSRP, 15 Hillcrest Avenue, Gladstone, NJ was sworn in, qualified and accepted. Mr. Lamb distributed Exhibit A26, Mr. Sorge's resume. He consults on assessment, investigations, remediation, and compliance issues. Mr. Sorge testified. As to the subject site, there were several environmental conditions. They did an analysis and took soil samples and found urban historic fill. The contaminants slightly exceeded the standards. The seller was the responsible party. He worked with the seller's consultants. He was aware in the prior application there was an underground cellar that has been eliminated. There is no longer any storage or mixed use thereunder. There was a delay in clean up. Mr. Alampi objected saying it was irrelevant. The Chairman inquired and Mr. Lamb said it would become relevant. Mr. Alampi objected saying it was not relevant as it was going into costs. The objection was noted. Mr. Lamb asked for the approximate cost. Mr. Sorge stated \$1,900,000. The seller negotiated with the buyer. The cost became \$1,100,000. Chairman Martin deferred to Mr. Rutherford. Mr. Lamb referenced a certain case that allows a Board to consider remediation as a benefit and a factor. Mr. Alampi had no doubt remediation is a plus, but the testimony of the cost pollutes the record. Mr. Rutherford advised he would look at Mr. Lamb's case and hear more of the applicant's position, but as a general rule, and this Board knows, applications are not decided on economic factors. Mr. Sorge stated it was fair to say there is less than 10,000 c.yds. of contaminated fill stated.

Mr. Alampi cross-examined Mr. Sorge. He began working on the project in early 2014. The amount of the fill changed, but the analysis did not. Mr. Alampi continued. Ms. Waneck asked what the positives were for the contamination issues. Mr. Sorge said the site will be protected. Mr. Oakes asked if there was a hot spot. Mr. Sorge replied there is no hot spot. It spreads across the entire property. Mr. Oakes asked if it would be capped. The areas of non-disturbance will be capped. The cap will meet all the requirements. It will not seep into the water supply. There is currently ground water contaminations relating to the prior owner of the property. Mr. Oakes asked if there were any steps necessary to be taken

prior to construction. Mr. Sorge stated no. Mr. James asked if there is remediation left to be done. Mr. Sorge said it is planned to be coordinated with the redevelopment of the property. Mr. Raimondi stated they were told they cannot use any seepage pits because of the contamination. He did not know, and Mr. Lamb did not recall either. Mr. Webb, previously sworn, stated there are no seepage pits, so there is no possibility the ground water will be contaminated. Mr. Martin asked for Mr. Sorge to review historic fill. It is not high risk, Mr. Sorge stated. Mr. Martin asked a series of questions that were answered. There were several areas that have been addressed. The site is better now than before, even though not done. Historic operations, such as solvents by the prior user were being addressed. Over time the contaminants will break down. The actions they have taken will prevent migration of the materials off of the site. The remaining remediation will be done with the construction of the buildings proposed.

Mr. Alampi asked Mr. Sorge where the contaminants were located, and Mr. Sorge said across the entire site. It will not migrate off site. The contaminants were typical for that prior use. Mr. Alampi renewed his objections for the record. Mr. Lamb noted in the beginning of the project the seller did not do the work, so the buyer took over. Mr. Alampi objected, stating Mr. Lamb is feeding the answers to the witness, as Mr. Sorge did not know. Mr. Rutherford asked if there was another witness that could answer. Mr. Lamb rephrased. Mr. Alampi finished up with a last question. The witness was recused.

Peter G. Steck, NJ Licensed Professional Planner was sworn in and accepted. Mr. Lamb questioned the witness. Mr. Steck previously testified on this application prior to the amendments. He reviewed all the documents. Exhibit A27 was a handout from Mr. Steck dated today. This consisted of: Page 1 - an aerial photograph, prior lot configuration and approved new lot consolidation with subdivision. Page 2 - prior approved site plan for 100,140 sf self-storage space and 14 apartments, proposed modified site plan for self-storage space, 16 apartments and 2,698 sf retail space, and rendering of prior approved development. Page 3 - proposed modified site plan identifying instances where greater variances are proposed and proposed modified site plan identifying where prior variances are being reduced. Page 4 - view of Madison Avenue looking North, with subject site on right side and senior citizen building to the rear, view of

interior subject property looking South toward Washington Avenue, and view from subject property looking North towards Express Gas Station and Irvington Street. Page 5 - view of subject property looking southeast from Irvington and railroad crossing, view from Madison and Irvington looking southwest, and view from Madison and Washington looking southeast.

Mr. Steck described the exhibit in detail, stating they are not starting from scratch. This application is not that dissimilar from the prior application. This applicant does not have to meet the enhanced burden of proof, and this application does satisfy the Medici proofs. The site is irregular in shape. The buildings on it had an auto use and were vacant for seven years, having a blighting impact and conditions. The development addresses the peculiarities of the site. The Master Plan addresses this. The retail in the area drops off after Irvington. There is a lot of talk about environmental conditions, with this developer having to pay for cleanup rather than the original owner. That is why the applicant changed the format with less excavation than before. There is motivation that changes the design. There are many aspects that do not change. If the applicant does not go forward there is no motivation to clean it up. No one is putting a house on it if not appropriately clean up.

Mr. Steck continued. Exhibit A28 was entitled Westwood Building Estimated Heights counting brick rows. Right now this is a detriment since the site is vacant. There is clearly a benefit to its redevelopment. There was a blighting influence in having a building vacant for seven years. Mr. Steck cited certain components of the Master Plan. Mr. Lamb asked with respect to the prior Resolution if it is a summary of some of his testimony of the prior hearing and planning documents with the Borough. Mr. Steck explained those documents have not changed; the plan changed slightly. One of the goals he did not mention the last time is in the Periodic Re-examination Report of 2011 of the Master Plan, is to provide a variety of housing types. Mixed use was an appropriate use for this area. To spur economic development, it is appropriate to permit mixed use vs. single retail use. This is how the applicant can satisfy the negative criteria. The site is eligible for mixed use. The multi-family use also triggers a D1 variance. His exhibit addresses this. Because of the increase in height there is a D6 variance. Two units are also added. Impervious and building coverages have gone down. Setbacks and side yards have been improved.

Mr. Steck stated there are a number of improvements that bring this building more in compliance than before. To summarize, they are not starting from ground zero. They already have approval for the use and some height variance approvals. They still need D variances for the multi-family use becoming more intense and for height. C1 or C2 variances are also present, and the benefits outweigh the detriments. There are several purposes of the MLUL that are being advanced: a, g, h, and i, which he discussed. There is an environmental cleanup to be done only if the buyer purchases the site. This is a way to redevelop the site and the self-storage will benefit the residential and business uses. It produces very little parking demand. The site is particularly suitable for this use. It is designed so as not to look like a self-storage facility. A lot of effort has gone to making this as conforming as possible, Mr. Steck added. Mr. Steck summed up.

It was 11:00 pm, and Mr. Steck was not yet completed. This would be continued at the next meeting. Mr. Lamb thanked the Board and requested another special meeting. The Board was not prepared to discuss same. The matter was carried to 11/9/15 with no additional notice.

**10. DISCUSSION:** None

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

**Respectfully submitted,**

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