

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
MINUTES  
November 30, 2015**

**APPROVED 1/11/16**

**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 table the Minutes of the 11/9/15 Meeting was made by George James, seconded by Eric Oakes, and carried unanimously.

**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 discussions. 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** - 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.

There was no court reporter present. At the last hearing, they left off with Mr. Steck being completed.

Mr. Alampi called Michael Kauker, Licensed NJ Professional Planner, who was recognized and accepted, waiving the voir dire. He reviewed the original application, the revised application and Ms. Gregory's reports. Mr. Kauker also was present for the hearings and reviewed Mr. Steck's testimony, the Master Plan Re-examination Reports, Ordinance regulations for uses and heights, site plans and engineering plans, the Code, and the 1998 Westwood Land Development Ordinance, which he would connect to his testimony. He reviewed Ms. Gregory's report as to the height variance, and the CBD Review and Study dated 12/1/05 and Resolution of Approval dated 8/14. Mr. Alampi marked as an exhibit the NJ State Rail Plan Final Report dated April 2015, from the official website of NJ Transit, which was marked O3.

Mr. Alampi questioned Mr. Kauker, who reviewed all the handouts/exhibits from Mr. Steck. He noted page 3 of Exhibit A27. Mr. Kauker visited the site four or more times and is very familiar with the site and area. Mr. Kauker compared the height between applications, and they more than doubled the height. There is an increase in height of the self-storage building of 13.84'. The difference between the C1 proofs vs. the level of testimony and MLUL required proofs are far more significant, pointing to the fact that it is a new application vs. an amended application. Essentially, in his view, it replaces the original application, notwithstanding the legal implication, which he leaves up to counsel. Mr. Alampi asked what the proofs are for the 2015 version and if he reviewed the proofs offered. Mr. Kauker mentioned Ms. Gregory's report as part of the record. Mr. Alampi marked her report dated 7/13/15. There was a 6/30/15 report, revised to 10/5/15, which Mr. Alampi was not provided. Mr. Kauker referred to the D6 height variance and case law, Grasso v. Spring Lake Heights, 2004, mentioned in Ms. Gregory's 7/13/15 report. Mr. Steck offered his opinion that the case related to the application because of the senior housing and the bank on Westwood Avenue, citing the heights of those structures in excess of the standard of 30', stating they are 50' in height and supported this application. Mr. Kauker concluded they are not reasonably relevant. The senior housing project was constructed many years ago and is somewhat outside the grasp and jurisdiction of the Master Plan and is an extraordinarily different type of development in the CBD zone. The bank is a classic design and architecture. He disagreed with Mr. Steck's conclusion as to the wording that it is consistent with the surrounding neighborhood in that they are not for the reasons that the senior housing is located 800' from the center of the subject property, and the bank 700'. The MLUL prescribes notice to be provided within 200', which is the area of influence for potential effect. That would circumscribe the immediate use. He never saw a Grasso proof beyond 200-300'. If you look at the surrounding neighborhood 200-300' radius, you will notice on the easterly side of Broadway are numerous retail and residential activities, and a bank, which are mostly two stories, with one being three stories. Mr. Alampi asked Mr. Kauker if Mr. Steck offered any other proofs for these two buildings, but he did not.

Mr. Alampi continued. With respect to the change in height, what is the significance of a "C" variance morphing into a "D6" variance, he asked. Mr. Kauker stated it was

significant in that another several hundred feet on each side, it encompasses 103 acres, and the CBD in its entirety, is approximately 35 acres. This precedent could give rise to a dramatic, significant and negative impact on the intent and purposes of the zone plan as it relates to the CBD zone. That is part of the negative criteria and is certainly a functional necessary part of the proofs you must put before the Board in an application. Mr. Alampi asked about the proofs offered for the "D1" variance. Mr. Kauker explained. Mr. Steck testified the retail is inappropriate for certain reasons, one of which is that Madison is a one-way and he felt it was inappropriate for retail use. The land use across the street on the East side is dominated by the rear yards on Washington, and the streetscape has a negative impact on the subject site to support retail.

Mr. Kauker referred to photo #14, on page 5 of the A27 exhibit, which shows a view from Madison and Washington looking southeast. It shows a bank, a kiosk and a beautifully landscaped parking area along Madison Avenue across from the subject site. Mr. Kauker did not think that would negatively impact a retail use on the subject site. There were several defects in facts given by Mr. Steck in that 200' strip of property near the center is inappropriate for retail. Other negative references are made to retail use. Mr. Kauker stated there is ample opportunity for this site to be used entirely for retail purposes. There was no demarcation at the 100' line from the 200' line mentioned by Mr. Steck. There is no benefit for the self-storage use over one of the 89 listed permitted use. Under Medici, you cannot make up a use for your own purposes. Mr. Steck mentioned the one-way northerly into the site on Madison. This site has two frontages, one on Irvington, a two-way and that access point is shown on the plans as ingress and egress with parking along the easterly boundary. The one-way Mr. Steck brought up did not include the other access point to the site. The name of the project is Westgate. He was about ready to take a view that this site is at a gateway for the Borough. You are at the core of the Central Business District. The building provides enhanced visual access, which allows the site to remain appropriate for any of the 89 permitted uses.

Mr. Alampi asked about other proofs by Mr. Steck. The exterior façade and architecture have more of an impact on the negative impact than the special reasons. The residential portion is not a permitted use. Why go out of your way to create a design for residential when it is not permitted in

the zone. Self-storage is permitted in the I1 Zone, in the southeast corner of the Borough off Old Hook Road. It is visually accessible from Old Hook Road. He does not view the subject site as a commercial corridor. Photo depicting a lock up storage center was marked O4. He does not see these facilities in a downtown or suburban area. Mr. Kauker reviewed that Mr. Steck referred to the Master Plan Re-examination of 11/2007, and stated that mixed use may be appropriate. Mr. Kauker did not see that there were any positive recommendations. Otherwise there would be a recommendation to make a use change. Do you consider this retail of 2,600 sf with 16 apartments to meet that characterization of mixed use, Mr. Alampi asked, and Mr. Kauker did not agree. The mixed use as proposed does not represent a balance of classical mixed use. Only 15% of the mixed use is retail; 85% is residential. There should be more retail and less residential. This is the least practical and least desirable use for this site. The density calculation comes to 41 units per acre. A density standard is 24 units per acre in a much larger tract, 3-4 acres. Mr. Lamb objected since there is no indication that this zone has a density requirement. If this was the R3 zone, density would be required. Therefore it is irrelevant. Mr. Martin noted he understood there was a distinction made by Mr. Alampi, and Mr. Alampi agreed he was only making an analogy.

Mr. Alampi asked about the functioning of the alleyway. Mr. Kauker commented the structures are separated by space. The three-story height of the mixed use building, he would provide the thought that the separation could be greater. With respect to the CBD Review and Study dated 12/1/05, previously marked, does the alleyway support the "D" variance, Mr. Alampi asked. Mr. Kauker stated the alleyway does not have a use as a pedestrian walkway, as it is based on construction of a commuter pad on the West side of the railroad. Mr. Alampi asked why it was an important discussion. Mr. Kauker stated most of the bullet points would not relate, and the design will not be achieved by this separation corridor. He went to the NJ Transit website and marked in earlier O3, the NJ State Rail Plan. Mr. Kauker gave the significance of the plan. The report includes rail connections to the Pascack Valley. The State controls all rail plans. Mr. Kauker found this report important in the analysis of the separation corridor. The applicant's application is relying on the construction of this pad and to connect the pad with Madison Avenue. In referring to the report are there any plans to upgrade the facility behind the

subject site, Mr. Alampi asked and Mr. Kauker stated there were none. He was asked if the installation of the pedestrian corridor meet the burden of proof and provide the necessary evidence to build a use that is not permitted in the zone. Mr. Kauker responded it is not applicable since the possibility is not contemplated at this time. What effect would it have anyway as to whether it was a permitted or non-permitted use. It has no bearing; it is just a separation, that's all, Mr. Kauker noted.

Mr. Alampi continued. There is a parking deficiency noted, with a variance requested. Mr. Lamb objected to any opinion as to parking. Mr. Rutherford advised if he can't answer the question it has no bearing. Mr. Alampi marked the 1998 Land Development Ordinance Revision. Mr. Kauker gave an overview. There were 44 permitted uses; now there are 89. Residential was previously permitted, and it was removed as a permitted use. The significance, Mr. Kauker explained, that at some point in time newer ordinances were created. They took it out of the ordinance. It was excluded from the CBD Zone.

The Board took a recess from 9:40-9:50 pm.

Mr. Lamb cross-examined Mr. Kauker, asking who his clients are, and Mr. Kauker recited their names. Mr. Lamb asked if he reviewed the transcripts of the prior meetings before Mr. Steck. He did not. Mr. Lamb asked if he knew about the retailing business. He did not. Are there any vacant lots along the railroad, Mr. Lamb asked, and he did not believe so. He asked if there were any lots in need of repair on the railroad with three streets around it and if it were fairly unique. It is atypical. It is a rectangle. Mr. Lamb displayed the site plan showing a little piece of the property going off on Irvington and Washington. It is substantially rectangular, Mr. Kauker noted. Mr. Lamb asked if there were any provisions to have a straight line between two properties, and if this was a benefit. Mr. Kauker said it was fair to say. Mr. Lamb stated the prior approval was for self-storage for 1,140 sf. Is he aware if his clients are connected with any properties in Westwood, particularly at 40 Kinderkamack Road, he asked. Mr. Kauker did not. Did he know his client's interest in opposing this application, Mr. Lamb asked, and Mr. Alampi objected. Mr. Martin stated the standing was already resolved. Mr. Kauker had no knowledge of the reason for the client's objection or the property at 40 Kinderkamack Road. Mr. Martin asked if that

was really a question for the planner. Mr. Lamb wants to know how this affects his client, and if he does not know, it's ok. Mr. Alampi objected. This is a planning consultant. He critiqued the application at hand. He did not make any comparison with 40 Kinderkamack Road. Mr. Lamb moved on.

Mr. Lamb asked Mr. Kauker to read Harvey Moskowitz' definition of self-storage. Mr. Lamb inquired if he was familiar with the Medici case footnote 11. Did he read the transcript of John Lignos, architect. He did not. Mr. Lamb referred to the NJ State Rail Plan. There is nothing planned for this particular property, correct, he asked, and Mr. Kauker responded possibly for the current pad, but that is a distance away. Mr. Lamb referred to the Hudson River walkway and said these walkways do not occur immediately. This may not happen in the next 5 or 10 years, but it is possible the corridor will connect. Mr. Kauker responded if it did happen, it would happen on the East side, the other side, not the side of the corridor. There are some improvements in Mr. Steck's P3 report, Mr. Lamb stated, and asked Mr. Kauker if he agreed. Mr. Kauker agreed.

Mr. Lamb continued, stating the Board said it was ok to have 38.1' high building, and they are asking for another 4'. 30' was permitted. It is the change from C1 to D6 that is significant and increases the burden. The application is asking for doubling the stories. Mr. Lamb asked if he agreed with the Board's original decision. Mr. Kauker stated his testimony went to Mr. Steck's testimony as to the D6 variance. He has no position on the Board's prior decision on the original application. His focus is and he was retained to review the basis of the current application and the proofs that are necessary to support the application before the Board at the present time. Mr. Lamb asked if architecture could be a special reason. Mr. Kauker stated no, because it is self-created. Mr. Lamb asked if he was aware of certain improvements that could be an aesthetic benefit. It could be a benefit but not a special reason.

Mr. Lamb asked if he reviewed Mr. Steck's height exhibit and what is the height of the buildings across the street. Mr. Kauker responded yes; 27', 38, 35, and 26. Is that part of the neighborhood, and he responded yes. Mr. Lamb asked about Exhibit O4, the photo of the building on Old Hook Road, in the Industrial Zone. It is designed as two-stories, but could have the illusion of more, Mr. Kauker responded. Is it a benefit to develop a site that has been vacant for many

years, Mr. Lamb asked. Obviously, it would be better if it were developed, was the response.

Mr. Lamb inquired about mean of pedestrian access. He asked if he was aware of the square footage and apartments added; Mr. Kauker responded. Mr. Lamb asked about height. Next, he touched on notice to persons within 200'. With a height variance do you take into consider light, air and open space. Mr. Kauker did not see how increasing the stories could benefit light, air and open space. Mr. Lamb mentioned the triangle building and the historical building, stating the rears are on Madison Avenue. Mr. Lamb asked about the necessity to have a walkway and NJ Transit plans. There is no reason to have a pedestrian walkway, Mr. Kauker stated. Mr. Lamb had no further questions.

There were no questions from the Board of Mr. Kauker. There were no questions from the public. This witness was concluded. Mr. Kauker was dismissed and departed, thanking the Board. Mr. Alampi had no further witnesses.

The matter was open to the public for comments. Richard Heck, realtor in Westwood, came forward and was sworn in. He has been working on the sale of the property for six years, having been involved with multiple buyers, mostly for high-rise apartment buildings or assisted living facilities. He doesn't remember any retail proposals, except for a bank. He feels another bank coming on the scene is very unlikely. The climate for retail space in this area has not been strong. Mr. Alampi asked Mr. Heck if he was the realtor for the Wachovia Bank application. Mr. Steck was not, but kept in contact with the owner. With regard to testimony tonight, did they ever appear before the Governing Body to request a change in zoning. Mr. Heck responded they did not. Mr. Lamb asked how many years he has been in business in Westwood, and he responded 40 years and owns seven properties. Mr. Alampi asked if he was involved as a realtor for this property, and Mr. Heck responded yes. Ms. Waneck asked if any professionals such as doctors have expressed interest. Mr. Heck responded there has not been such interest. Mr. Martin asked if there was a reason why uses would not want to go there. Mr. Heck stated the traffic and one-way street are big problems. Irvington is congested and backs up at the light. It is difficult to maneuver around. There were no further comments by or questions of Mr. Heck.

Neil Volant, Bryant Place, Westwood, NJ was sworn in. He is a third generation resident and has seen Westwood change. There were three supermarkets and several car dealerships, all gone now. That is change. The building was in bad shape when it was a car dealership—never a pretty site. Having seen the plans, he thinks it will be a benefit. The property is like a misfit island. Tall buildings are not necessarily unattractive. You have the senior building, bank and St. Andrews. This is not an R1 zone. It does not back up, impact or touch our residents. It will be a benefit to the town and the residents and mitigates taxes. Mr. Martin stated we are not allowed to take that into consideration. Mr. Volant said he can and does. He encourages the Board to do what they did a year ago and approve this applications. There were no questions of Mr. Volant. Mr. Rutherford advised the Board cannot take the taxes comment of Mr. Volant into consideration.

Mr. Martin deferred to Mr. Rutherford to direct closing statements from both counsel. Mr. Alampi did not intend to go over point-by-point each element of the application. He finds the Board to be attentive, highly intelligent and courteous. This application, with the changes and increase in height is a major change. He doesn't care about the square feet, but there is a major change in impact. Adding two units and reducing parking are major changes. This is not an amended application, but a new application. The reason that is important is *Medici*, and you cannot take an approval and stack it on. Any applicant can take an approval, pocket it and add onto it. This development and the previous site plan were poorly developed and laid out. It doesn't make sense from a planning point of view, but maybe a financial point of view. The environmental cleanup has been modified by the applicant. The applicant has reduced the cleanup from removal of 15,000 c.yds. vs. the prior 25,000 c.yds. This is a financial decision. The owner must clean up the site regardless for any development to take place. The height is a "D6" variance. The pedestrian corridor, using the CBD study pages 8, 9 and 10 is a reason there is a disconnect there. The corridor is not a reason to grant the self-storage use. It is a self-created situation. It is not a reason for zoning. Finally, this is not a reason for granting the variance, and the application should be denied.

Mr. Lamb states Mr. Alampi wrote he represents 40 Kinderkamack Road, LLC. Mr. Lamb explained the reason for the redesign is to make more light, air and open space, and

they added two additional apartments. He feels they did start from scratch, having their experts repeat their testimony. One of the things lost is that the objector is the contract purchaser of 40 Kinderkamack Road. He gave notice to persons within 200', and no one came out. This site can accommodate the height. He provided an exhibit that Mr. Kauker did not look at, which showed how they bumped out a side of the building, mitigating the impact intentionally. It does not stick out like a sore thumb. Aesthetics are important. It is not non-conforming it is non-conforming with a variance. They are expanding a variance-approved project. Mr. Steck's testimony and exhibit showed benefits. They focused on light, air and open space in this new application and think the height can be accommodated in the neighborhood. Both buildings will be fully sprinklered, and they get this eyesore out of the CBD Zone. There is no doubt environmental considerations improved this project, and he asks the Board to approve the project unanimously.

Chairman Martin stated both sides cases are completed, and there is no further testimony. The next step is for the Board to discuss the project and take a vote on the application. Due to the lateness of the hour, he suggested the discussion and vote take place at the 12/7/15 meeting. The matter was carried to 12/7/15 with no further notice.

**10. DISCUSSION:** None

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 11:05 p.m.

**Respectfully submitted,**

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