

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
November 9, 2015**

APPROVED 12/7/15

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 **Regular 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 (8:05pm)
H. Wayne Harper
George James
Michael Klein (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis A. Raimondi, Board Engineer
Steve Lydon, Burgis Associates,
Board Planner by David Novak, Planner &
Kathryn Gregory, Substitute Board
Planner for Westgate Application

ABSENT: Cynthia Waneck (Alt #1) (excused absence)

4. MINUTES: A motion to approve the Minutes of the 10/19/15 Meeting was made by Eric Oakes, seconded by George James, and carried unanimously by those eligible to vote.

5. CORRESPONDENCE:

1. Memo from Steve Lydon, Burgis Associates dated 10/8/15 RE: Oberg, 400 Lafayette Avenue;

6. VOUCHERS: None

7. RESOLUTIONS: None

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. Fernandez, 125 Lake Street, Block 710, Lot 21 - Site Plan - Dave Repetto, Esq. represented the applicant in a continued hearing. Mr. Repetto gave a brief summary. The recommendation by the Board was to eliminate the bedroom on the first floor, which they have done, and they have provided a revised plan. There is now a reduction in parking need. There would be testimony about the building materials and how the structure would fit in with the surrounding neighborhood.

Mr. Repetto called upon William Petrone, Architect, previously sworn. Exhibit A6 was the revised plan, dated 10/20/15. Mr. Petrone described the plan. They are enlarging one of the existing bedrooms and adding a mud room area. The dining room remains the same, and the kitchen is slightly enlarged. The porch, bulk, setbacks and height have not changed from the original plan. They will either paint the back railing or leave it like the existing from porch. Everything else is an exact match of what is already there. The entrance to the basement is eliminated. The Board Planner asked how the basement would be accessed. Mr. Petrone responded the basement is accessed from inside the house. The old bilco doors are being eliminated. Chairman Martin requested that Mr. Petrone label the stairs on the plan. There were no further questions of Mr. Petrone and none from the public.

Brigitte Bogart, applicant's Planner, continued under oath. They have not increased the two-family home. The only thing they did was to modify the dwelling to improve it as previously testified. The driveway will be upgraded to accommodate the vehicles. The Board Planner asked if they

met Goal 6 of the Master Plan. Ms. Bogart responded by eliminating the bedroom, yes. There were no further questions of Ms. Bogart and none from the public.

Mr. Rapello summed up, stating they believed the revised plan meets the specifications and the Board's recommendations. Ms. Bogart's testimony shows it conforms with the Master Plan and fits in with the neighborhood, and it is an improvement. There were no interested parties.

Board Planner Novak was requested to recite the variances and gave a brief overview. A motion for approval was made by Eric Oakes and seconded by George James. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, Marc Truscio, George James, Michael Klein, and William Martin voted yes.

2. 90 Center, LLC, 90 Westwood Avenue, Block 807, Lot 20 - Sign Variance - Withdrawn by applicant;

3. Care One, 300 Old Hook Road, Block 2001, Lot 64.01 - Scheduled for the 12/7/15 meeting;

4. Hernandez, 211 Westwood Boulevard, Block 2001, Lot 20 - C Variance - Diana Hernandez, owner, and Richard Eichenlaub, NJ Licensed Professional Engineer, were sworn in. A waiver from the requirement of providing a topographical survey was requested and approved on motion made by George James and seconded by Wayne Harper. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, Marc Truscio, George James, Michael Klein, and William Martin voted yes.

Mr. Eichenlaub gave an overview. As a result of roadwork and paving, Ms. Hernandez is unable to park and is required to obtain a variance for her driveway and garage. She can no longer park on the street and needs to park in her driveway. The application is to allow construction of a single garage and paved driveway, which will put her over on structure and impervious coverage 40%. Mr. Martin noted this was thrust upon you by the Borough as a result of the roadwork. Mr. Eichenlaub commented the lot was place in a non-conforming state. A variance would not otherwise be necessary. The Board Planner gave an overview of the coverage, noting the square footage of coverage that is over is minimal, and it would be a C1 variance. He did not see any detrimental effects. It is probably supportive of the Borough's zoning

goals to get parking off the streets. Mr. Raimondi commented there was a high water table. Mr. Eichenlaub responded they would install a seepage system to handle the runoff from the garage, due to the high water table. They had soil samples. Mr. Raimondi was satisfied the drainage would work. Mr. Raimondi commented the Zoning Official suggested removing the fence, but he did not believe it should be removed. Mr. Martin agreed.

There were no further questions, comments or discussions and no interested parties. A motion for approval was made by George James and seconded by Wayne Harper. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, Marc Truscio, George James, Michael Klein, and William Martin voted yes.

5. Von Bradsky, 6 Elm Street, Block 913, Lot 5 - Section 68 - David Rutherford, Esq. reviewed the publication documents and notice and found them to be in order. Lauren Munzer, Esq. represented the applicant. Peter Von Bradsky of Park Ridge NJ, sworn in, testified he was the owner of the property, having purchased it 1999 as a two-family home. He obtained the tax assessment records from the town, which showed the property has been a two-family since the 1940's. There are separate gas and electric meters and separate utilities. Mr. VonBradsky never made any changes to the premises. Mr. Martin asked why the property record card said one-family in 1995, but it was determined to be in error. There are sometimes inconsistencies in the property record cards and it was consistent since the 1940's. Mr. Oakes asked if there were two separate entrances, and applicant replied yes.

There were no further comments or questions of the applicant, and no interested members of the public with questions or comments.

A motion for approval was made by Eric Oakes and seconded by Marc Truscio. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, Marc Truscio, George James, Michael Klein, and William Martin voted yes.

6. Oberg, 400 (410) Lafayette Ave, Block 301, Lot 7 - Scheduled for the 12/7/15 meeting;

The Board took a recess from 8:50-8:55 p.m.

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David Nova, Substitute Board Planner departed, and Kathryn Gregory, Board Planner for Westgate arrived, at approximately 9:00 pm.

7. 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 - (Continued from the Special Meeting held on 10/19/15) 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. Lamb advised they provided Mr. Alampi a transcript of the 10/19/15 hearing at his cost. As for the environmental remediation, he distributed today the case which he sent, Pullin v. South Plainfield Planning Board, 291 N.J. Super. 303 (Law Div.1994). Mr. Alampi commented the argument of environmental contamination and cleanup is not the jurisdiction of the Board, and no one has ever said cleaning up the property is not a good thing—it is always positive. This case was a car dealership with a Rite Aid to be placed on it and deals with the interpretation of the ordinance, and it was a permitted use with a dimensional variance. Because there was a deed restriction prohibiting the ingress and egress activity, Mr. Alampi explained, and there would be no such ingress and egress any longer, the Board was impressed with same. The environmental cleanup is a cost factor. Therefore, the case is irrelevant, Mr. Alampi concluded. Mr. Lamb reiterated the case is relevant, and Mr. Alampi contended it is not. Mr. Martin deferred to Mr. Rutherford. Mr. Rutherford advised he only saw the case today and would like to review it further. At the time of closing arguments, we would have all the facts, and he would advise if the case has any bearing and how the law fits in with that.

Mr. Steck was recalled and continued under oath. He described some corrections to the calculations. Mr. Steck reviewed how the negative criteria was satisfied. The aesthetics affect the site in a very important way. This is an aesthetic improvement and makes the self-storage use a very unusual one because of the aesthetics, in that it does not look like a self-storage facility. The ordinance allows them in the industrial zone. To summarize, they do need use variances for mixed use and a self-storage facility. There are slightly different arguments. In his opinion, because of

the low traffic generation of the facility and usage of parking and water, it is a very low impact. With the other use, retail, this is prompted by the Master Plan Re-examination Report, which states this is the type of use that is appropriate in this area, a mixed use. In conclusion, Mr. Steck reviewed there are significant public purposes of the MLUL being advanced, with the new buildings on site. There is environmental cleanup, which is a public benefit. If it doesn't get sold, it doesn't get cleaned up. He concluded that the positive and negative criteria have been satisfied in the prior application, and that application still stands. They meet the enhanced burden of proofs under the Medici case.

Mr. Lamb asked Mr. Steck if he reviewed the CBD Study and Plan of 12/1/05, which was marked A29. Mr. Steck referred to Page 8, Section 3.0 - Goals and Objectives, many of which they have met. He reviewed the bullet point items under Section 3.1 - Vehicular Pedestrian Circulation and Section 3.2 - Streetscape Design. Mr. Martin asked them to move more swiftly through the document, as it applies less in his view than the Master Plan would. Mr. Alampi commented it didn't go unnoticed by him that the 2014 Resolution relies heavily on this study, and he has intensive cross-examination on the document. The basis of Mr. Steck's testimony is rooted in this document. Mr. Steck continued. Does this project enlighten height, air and open space, Mr. Lamb asked. Mr. Steck commented the aesthetics relate to the fact there is interest in the architecture. There is no detrimental effect on the public or usability of the surrounding properties. They did not make any changes to the subdivision lines, which are now straight, rather than zig-zagged, which was previously approved.

Cross-examination by Mr. Alampi followed. Mr. Alampi asked about train activity. Mr. Steck noted it is not pedestrian-friendly, and traffic is at a standstill. The main blockage was on Washington Avenue. Is the property too remote, Mr. Alampi asked, and has he seen self-storage facilities in the central business district. He has never seen one with the high level of architecture. Mr. Alampi said so just because it is a high level of architecture it should be allowed in a zone where it is not permitted. Mr. Steck stated that was not his only testimony about the facility. Mr. Alampi asked what he knows about the rail platform. Mr. Steck did not know anything except that it may be improved. Mr. Alampi noted the buildings are 12' apart and the testimony was 8'. Mr. Steck scaled it and noted

approximately 15' apart. The height of the facility is about 40'. Mr. Alampi asked if it provides adequate light and air, and Mr. Steck responded yes. Mr. Alampi asked if he read the entire study/plan document. It is mentioned in the Resolution, but it does not give a reference as being marked as an exhibit. The document was marked Objector 01. Mr. Alampi referred to Page 24 and asked Mr. Steck to read it. Mr. Steck concluded it is a standards paragraph. There are restrictions based on conditions. Madison is an extremely weak retail environment. There would have to be a Walgreens, but that is not what you want in a downtown setting. Initially he would've had a negative reaction to the self-storage until he saw the architecture. The mixed use is a major step in advancing the goals of the Master Plan. Mr. Alampi asked if multiple dwellings are permitted in the zone, and Mr. Steck responded no.

Mr. Alampi marked the 1998 Westwood Land Development Ordinance as Exhibit 02. He referred to Page 90, showing permitted uses removed from the zone. This use is shown as not permitted in the zone. Mr. Steck did not know when it was removed. When is retail appropriate, Mr. Alampi asked. Mr. Steck said retail would never be placed on the second floor. Mr. Alampi asked why the use is suitable for this site and why 12 units is not suitable. Mr. Steck stated this application meets the positive and negative criteria. Mr. Alampi continued with questioning on height and use. Mr. Steck stated the volume of the self-storage facility fully satisfies the negative criteria. Mr. Alampi asked whether the Master Plan recommended parking in the CBD Zone. Mr. Steck said they are not proposing underground parking.

Questions and comments by Board Members followed. Mr. Oakes commented the he was disappointed in the repetition of line of questioning. Mr. Oakes asked Mr. Steck why retail is proposed on the first floor. Mr. Steck said because it is very visible there. Mr. Oakes said they intensified the project, but did not alleviate any of the intensities. You were deficient on parking before and you are even more deficient now. We are not seeing anything being reduced or less intensified. Mr. Steck responded there is on-street parking. Mr. Oakes said that would be intensified also, as it is already 60% utilized. They talked about splitting up the application. Mr. Oakes commented the mixed use portion is intensified, and he doesn't see any relief. Would it be a viable option to remove the retail and provide additional parking. Mr. Steck said that would destroy the project. It

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is an essential part of the application. What about removing the extra apartments, Mr. Oakes asked. Mr. Steck responded even with the two additional units, he meets the positive and negative criteria. Mr. Lamb cross-examined Mr. Steck, who said they exceed the benefits vs. detriments. There were no further questions of Mr. Steck.

Bruce Meisel was recalled and continued under oath. Mr. Meisel gave an overview of projects in the CBD Zone, with the exact analysis and exact distance from the railroad. He distributed a handout of the properties with 10 apartments in the downtown area. They are located at 27 and 30 Jefferson Avenue. He has managed them for ten years, and there is very little need for parking in the downtown area. Out of the 10 apartments, they provide 20 parking spaces; 14 are used. They have never had a problem with parking or overnight parking. These projects are sister projects to the subject application. There will be enough parking here he said. Mr. Alampi objected to all of the testimony as it is self-serving. Mr. Rutherford advised he thinks he is being offered more as a fact witness with experience in parking. There were no questions of Mr. Meisel.

The matter would be carried to 12/7. Mr. Lamb requested a special meeting on 11/30/15. There is a real possibility to finish on 11/30. Mr. Harper asked for a list of what is scheduled for 12/7. Mr. Martin noted there were two applications on the agenda that would occupy two hours of the meeting. He suggests it is a good idea to have the special meeting.

10. DISCUSSION: None

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

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary