

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
May 2, 2011**

APPROVED 6/6/11

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 our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Robert Bicocchi
Christopher Owens
Eric Oakes
Michael Bieri
Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Matthew Ceplo(Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Steve Lydon, Burgis Associates,
Board Planner

ABSENT: Guy Hartman (excused absence)
Vernon McCoy (Alt #1) (excused absence)

4. MINUTES - The Minutes of the 4/4/11 meeting were approved on motion made by Mr. Owens, seconded by Mr. Oakes and carried on roll call vote.

5. CORRESPONDENCE:

(WWZB 5/2/11)

1. Memo from Steve Lydon, Burgis Associates, dated 4/5/11
RE: Migliore;

2. Letter from Jared Lans, Esq. dated 4/11/11, RE:
Irrelevant Elephant;

3. Memo from Steve Lydon, Burgis Associates, dated
4/12/11 RE: Berkoben;

6. **VOUCHERS:** A motion to approve vouchers totaling \$4,902.50
was made by Mr. Arroyo, seconded by Mr. Owens, and carried
unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Hinsdale, 129 Lake Street - Certificate of Non-
Conformity-**

Mr. Rutherford read an overview of the Resolution of Approval
into the record. A motion for approval was made by Mr. Bieri and
seconded by Mr. Oakes. There were no further questions, comments
or discussions. On roll call vote, Mr. Bieri, Mr. Arroyo, Mr.
Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin 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. **DePaola, 112 Prospect Avenue - Certification of Non-
Conformity** - Mr. Rutherford swore in the applicant, Mr. DePaolo
and reviewed the publication documents and found them to be in
order. Any action would be contingent upon an Affidavit of
Service being submitted by Mr. DePaolo, per his certification
under oath that he served all the property owners on the list
within 200' via certified mail, return receipt requested.

Mr. Martin questioned the applicant. Mr. DePaolo submitted
tax records and separate utility bills. Mr. Owens commented
there was an error on the tax records, in that it listed the
home as a conversion, a single family house with an additional
apartment. Since the 1940's it was noted that it was a two-

(WWZB 5/2/11)

family house. There were no further questions of the applicant from the Board and none from the public.

A motion for approval with the condition as stated above was made by Mr. Bicocchi and seconded by Mr. Arroyo. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

2. Bell's Little Learners, 410 Center Avenue, Block 802, Lot 17 - Mr. Oakes recused himself and stepped down from the dais, as he resides directly across the street from the subject property. Mr. Rutherford reviewed the publication documents and found them to be in order, including the Affidavit of Service. David S. Lafferty, Esq. represented the applicant and presented the application for a child care center in the place of the Goldberg Child Care facility. The applicant intends to have the same exact use, and modify, but not enlarge the interior. His client intends to move the parking on site, as encouraged by the Master Plan, maintaining as many spots as possible.

Stacie Bell, Paramus, NJ, was sworn in as the property owner and proposed owner/operator of the day care center business. She currently runs a licensed day care facility in Paramus. The maximum permitted occupancy is 100, from infant to five years old. The Goldberg Child Care Center did not have approval for infants, but she has applied and received approval. The use has been in existence since the 1950's. She is proposing 104 children and 15 employees, staggered in different shifts. At noon, all would be present.

Mr. Lafferty noted this application was previously sent to the Planning Board, who stated it was an expansion of a non-conforming use, but he has had a conversation with Mr. Marini, who felt it was a site plan. The only variances triggered are parking variances by proposing the driveway and parking. Mr. Rutherford asked if he is of the opinion that the Board has jurisdiction to the extent that this is an expansion of a non-conforming use. Mr. Martin agreed the Zoning Board had jurisdiction. Mr. Rutherford advised they were here under a D2 variance, an expansion. Mr. Lafferty said it sounded appropriate. Mr. Lydon commented due to earlier testimony he deemed it a D1, but after reviewing prior applications and approvals, he was of the opinion that if the Board wants to call

(WWZB 5/2/11)

it a D2, he would have no objection. It was further noted that Mr. Marini did not issue a denial letter.

Ms. Bell described the drop-off and pick-up procedures. In their Paramus location, they have 75 children coming in between 7:00-9:00 a.m. easily, as parents pull up to the door and the employees bring the children in. She also described the enhancements and repairs. They will add a Hardie-Plank exterior and use the existing playground. Mr. Raimondi asked Ms. Bell to elaborate on the drop-off period, being concerned about the time it takes to park and drop off the child. That takes about four minutes, Ms. Bell explained, and she usually has no more than three children being dropped off at the same time. Mr. Raimondi was concerned about the time it takes cars to pull in, drop off, and pull out. Ms. Bell said she would explain the drop-off procedures to parents upon enrollment, and having them park on site and drop off is much safer than the previous practice of having the children getting out of the cars on Center Avenue. Questions by the Board followed.

The matter was opened to the public for questions of the applicant/witness. Joann Cowling, 420 Center Avenue, asked about the parking spaces.

Mr. Rutherford advised if it were not for the parking site improvements, they could apply for a building permit and complete their renovations. Mr. Rutherford suggested the current plans be sent to Mr. Marini for him to render an opinion as to what extent he believes this is a D2 variance--an expansion of a non-conforming use. Mr. Lafferty said he would oblige and have Mr. Marini issue a letter. He reviewed Mr. Marini said he would not sign a denial letter. He considered this a site plan matter for the Planning Board, and the Planning Board declined, stating it was an expansion of a non-conforming use.

Michael Morgante, P.E., Arden Consulting Engineers, was sworn in, qualified and accepted as engineer for the applicant. Mr. Lafferty questioned the witnesses. He prepared plans dated 1/21/11, revised to 3/11/11 and testified to parking in detail. The applicant was proposing to construct two driveways and an off-street parking area. The driveway off Irvington could be eliminated and two parking spaces added. The pavement behind the building could be extended for an additional five to six spaces. People would just have to make a "K" turn movement. A

(WWZB 5/2/11)

good portion of the mulch near the playground would be removed for parking. The goal is to reduce impervious coverage. There are two trees to be removed. There is no dumpster proposed. They want to use the space for parking. The garbage is usually picked up at 6am, so during business hours that space could be used for parking.

Questions by the Board followed. Michael Bieri questioned whether having the circular road was safe and beneficial. Mr. Lydon asked if they considered providing a parking drop off and pick up study and recommended same, together with handicapped parking/barrier free access. Also, impervious coverage calculations should be submitted. Mr. Martin stated to the extent that they can, the Board Members may consider making recommendations. Mr. Raimondi asked how the parking affects the playground area. Ms. Bell stated the playground is not affected since there is parking in the rear. Mr. Raimondi noted three to four cars could park in the back, and they could have a driveway going out. They need to show the driveway on the neighboring property. Any neighboring driveways, including those across the street, should be shown. If he could confer with Mr. Gigante, it could save a lot of time.

Mr. Martin commented it would be better off leaving what they presently have on Center Avenue. He felt it caused more problems than it solves, and they don't gain anything. To recap, they should speak with Mr. Marini to resolve the issue of being a D2 variance.

The matter was opened to the public for questions of the witness. Thomas Cowling, 420 Center Avenue, asked about going from a non-profit to a for-profit entity, and how it is transferred to the new owner.

There were no further questions, comments or discussions. The matter was carried to the 6/6/11 meeting for a continued hearing.

3. Irrelevant Elephant, 256 Westwood Avenue, Block 808, Lot 11 - Variance - Withdrawn by applicant;

4. Stewart, 463 Fairview Avenue - Certificate of Non-Conformity - Mr. Rutherford advised he discussed the form of the notice with the applicants, and Mr. Drisgula, attorney for the

(WWZB 5/2/11)

applicants, filed the Notice. Any action would be subject to applicant submitting the Affidavit of Service, as per his certification that he served all property owners on the list within 200'.

Richard and Jacqueline Stewart were sworn in and testified. They purchased the property in 1997 as a two-family home and since that time it remained as such. Mr. Drisgula advised that the tax record card from 1958 was missing, but they submitted records from the 1940's. Applicants testified there were two electric meters. The tax records appeared to be in sync, showing that the house was continuously used as a two-family. Photos were also submitted with the application.

A motion for approval with the condition as stated above was made by Mr. Oakes and seconded by Mr. Arroyo. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

The Board took a recess from 9:20 to 9:30 p.m.

5. Berkoben, 57 James Street, Block 1404, Lot 16 - Variance; Berkoben - L. Scott Berkoben, Esq. represented himself as applicant. The witnesses, Andre Fethers, the architect, and engineer, were sworn in, qualified and accepted. Mr. Raimondi advised his nephew had prepared the survey but did not see it as a conflict of interest. Mr. Rutherford advised it was a proper disclosure matter and no conflict of interest.

Mr. Fethes testified first as to his plan, dated 3/7/11 and revised to 4/18/11. The proposal is to widen the existing driveway and repave it, modify the front walkway and remove some existing concrete walkway going around the West side to the back of the house. A series of nine photographs was submitted and marked Exhibit A1. Mr. Fethes reported the only variance necessary was for the driveway being wider than the garage. Mr. Martin stated they would proceed with questions of the witness. He asked about the width of the curb cut, which is presently 14' wide, going to 18-19', and they are taking out an equal amount of the sidewalk which serves as a trade. Mr. Oakes commented they are not even over on the impervious coverage.

(WWZB 5/2/11)

Members of the public, Joanne Lage and Charles Nussman, next door neighbors, came forward and were sworn in. They brought about a problem with a 45-50' Colorado spruce on their property line. It has shallow roots that go over onto the Berkoben property. They are concerned that the roots may get damaged or cut. An arborist gave them an opinion that if this were so, they tree could come down onto their side of the property. Mr. Nussman took photos, which were submitted and marked into evidence, as N1, N2 and N3. He asked Mr. Berkoben if he would have curbing. Mr. Fethes stated there would be no curbing. He indicated the excavation would be shallow, such as 6-7".

Mr. Martin asked for Mr. Lydon's opinion as to the tree's roots. Mr. Lydon examined Exhibit N3 and requested identification of the tree in question. Mr. Martin inquired whether there was a report from the arborist. Mr. Nussman stated they already paid him \$200.00 to come and inspect the tree, and to have a report, it would cost an additional sum of \$200.00 to \$400.00. Mr. Berkoben advised you cannot cross-examine a report. Mr. Martin advised the arborist should really be present to testify and answer questions. Mr. Rutherford advised they would need to have the arborist appear. Mr. Martin commented typically we look at the drip line of the tree, which are the important roots. It appears from the photo that the driveway is outside the drip line. There is a fibrous root system, with many, many roots spreading out in all directions. Mr. Rutherford and Mr. Martin advised the witnesses would need to submit their survey, which they then produced. Mr. Raimondi looked at the survey and commented they need to show the distance to the side property line. Mr. Martin was skeptical that the tree would be affected, and there should be a survey with the tree located thereon.

Mr. Berkoben stated they had a sewer line installed on that side as well, and the tree was fine. Mr. Martin also suggested they have a meeting at the property with the architect and arborist and see if there is some type of agreement for saving the tree and widening the driveway. Mr. Raimondi clarified what was needed was a survey with the exact location of the tree and its dimensions, certified by a licensed landscape architect, and the arborist reporting on whether this would affect the tree and how it would affect it. Mr. Arroyo asked Mr. Berkoben to provide more information on the excavation. Mr. Berkoben stated it was

(WWZB 5/2/11)

done by the town. Mr. Ceplo commented as long as you follow the drip line, he believes the tree will not automatically die or fall down. Also, if roots are cut, there are many more roots and they keep growing. Mr. Martin stated this should be sent 10 days prior to the next meeting date, and that the arborist, along with his credentials, be available at the next meeting, 6/6/11.

6. Migliore, 4 Kingsberry Avenue, Block 1601, Lot 1 - Variance - Mr. Rutherford swore in the applicants, Toni Ann & Luigi Migliore and reviewed the publication documents, which he found to be in order. Mr. Rutherford advised that any action would be contingent upon an Affidavit of Service being submitted, per their certification under oath that they served all the property owners on the list within 200' via certified mail, return receipt requested. The application was for a 6' high, solid, privacy fence to close in the backyard for protection and privacy due to the dirt road, which never has been or will be paved.

Applicants submitted a survey dated 8/31/10. The property is a corner lot. A series of 10 photos was marked Exhibit A1. Mrs. Migliore testified that many day laborers pass through, right next to her property, and dirt comes into their windows. They have built a beautiful home with plantings on this vacant lot, surrounded by a NJ Transit railroad, PSEG power plant and Meadowbrook Little League field, plus a State-run house for men. The PSEG station has the only bathroom in the area and the workers go to eat their lunch nearby. People and dogs cut through their yard. They have no privacy from people, trucks and animals. They have a four year old child, who could easily climb over a 4' fence. For these reasons they are seeking a 6' high fence, using Emerson Fence Company, who would make it look beautiful, Mrs. Migliore testified. There would be a gap between this fence and the PSEG property line fence. Mr. Rutherford advised there is also another variance for the fence not being 100% opaque.

Mr. & Mrs. Concato came forward and were sworn in. They appeared in support of their neighbors, for the reasons stated, and agreed with the installation of the fence.

Mr. Bicocchi commented he walked past the property while coaching little league, and the fence they propose does not have

(WWZB 5/2/11)

a detriment to the neighborhood, and it would afford safety and privacy, and made a motion to approve. Mr. Martin added the property has an irregular shape to it, and the house is situated in an unusual way with unusual surroundings, such as the neighboring power plant, railroad and fields. The motion was seconded by Mr. Owens. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

10. DISCUSSION:

1. An Update on Master Plan Re-Examination - Mr. Martin gave an update as to the Planning Board's discussions at the last meeting.

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**