

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
August 1, 2016**

**APPROVED 9/12/16**

**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 **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  
H. Wayne Harper  
Matthew Ceplo  
Anthony Zorovich (Alt #2)

**ALSO PRESENT:** David Rutherford, Esq., Board Attorney  
Not Required:  
Louis A. Raimondi, Board Engineer  
Steve Lydon, Burgis Associates,  
Board Planner

**ABSENT:** Eric Oakes, Vice Chairman (excused absence)  
Cynthia Waneck (excused absence)  
Marc Truscio (excused absence)  
George James  
Michael Klein (Alt #1) (excused absence)

**4. MINUTES:** The Minutes of **6/13/16 were approved** on motion made by Wayne Harper, seconded by Matthew Ceplo and carried unanimously on roll call vote. The Minutes of **7/11/16 were approved** on motion made by Anthony Zorovich, seconded by Matthew Ceplo and carried unanimously on roll call vote.

5. **CORRESPONDENCE: None**

6. **VOUCHERS: None**

7. **RESOLUTIONS:**

1. **Oberg, 400 (410) Lafayette Ave, Block 301, Lot 7 - Adoption of Amended Resolution - (See also below)** Board Attorney Rutherford summarized the **Resolution of Approval**, as amended, on the record. A motion for approval was made by Wayne Harper and seconded by Matthew Ceplo. There were no further questions, comments or discussions. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William 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. **Oberg, 400 (410) Lafayette Ave, Block 301, Lot 7 - Correspondence from John Lamb, Esq.** - See also Adoption of **Amended Resolution** above - John J. Lamb, Esq. represented the applicant, also present, and addressed the notice issue and they renoticed everyone. The defect was corrected. Nothing changed with respect to the application or plans. There were no interested parties. The Board re-voted on Resolution, ratifying and confirming and re-approving same. Board attorney Rutherford summarized the Resolution of Approval as corrected. A motion for approval was made by Wayne Harper and seconded by Matthew Ceplo. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William Martin voted yes.

2. **Schrottner, 72 Benson Avenue, Block 1301, Lot 1 - Variance** - Board Attorney Rutherford reviewed the publication documents and found them to be in order. The applicant, Erwin Schrottner, was sworn in and testified they originally moved to Westwood due to the location and commute to New York. His wife passed away, and he had to hire an au pair. He needed to put on an addition to add a room. George Held, his architect, prepared the plans, and there is a very small area on the side he is missing. Required side yard is 10', and he has 5'.86', existing and proposed. The front yard setback is 22', and he has 20.73' and proposed 21.11'. The neighbors

are very supportive of this addition and improvement to the property. The addition goes straight up as appears in the photo he took, marked Exhibit A1. Mr. Lydon reviewed his report and gave an overview. Mr. Raimondi stated everything he asked for was provided. A neighbor, Elio Mena, commented on behalf of the applicant and in favor of the application.

There were no further questions, comments or discussions and no further questions or comments from the public. A motion for approval was made by Wayne Harper, and seconded by Matthew Ceplo. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William Martin voted yes.

**3. 7-Eleven/Boos States Development, LLC, 561 Broadway, Block 802, Lots 1 & 2 - D(1) Use Variance** - Damien O. Del Duca, Esq. represented the applicant. John J. Lamb, Esq. represented objectors, a group of owners within 200'. Mr. Lamb had an objection to the form of notice and filed his objection in advance of the hearing. The issues raised are as follows: The hours and days of operation do not appear in the Notice, and this is a 24 hour operation. Also, under the MLUL, the law requires the Administrative Officer as the person designated to handle the file. In this case the Westwood Ordinances have designated the Zoning Officer. In their Notice, the applicant improperly named a department, the Building Department, not a person. Lastly, they did not list the hours of operation.

Mr. Del Duca stated the objectors are here to delay the application, and time is crucial. He filed on 5/23/16, and sent notice on 6/24/16, yet their letter objecting to the notice is dated 7/25/16, one day too late for the issue to be addressed and too late to file a new notice. He could not do anything to address it until it was too late. Looking at substance, Section 11 of the MLUL states what the Notice must say. You put the property owners and Board on notice as to when and where the application will be heard. There is no question they did not have adequate notice - they filed four letter briefs. The Notice was sent to Mr. Lamb in May. He had a conversation with Mr. Lamb in May. The objectors had ample time and notice to prepare for the hearing. The MLUL states the Notice must contain four things: the nature and matter to be considered, where and when the matter will be heard, an identification of the property, and the location and times for documents to be inspected. They comply with all four. There is no issue here. Usually an inadequate Notice will have an incorrect date or will leave out a variance.

That is the not case here. The objection should be dismissed. Further, Mr. Del Duca, explained, as a routine phone call, his Paralegal called the town and was advised that "the Building Department between the hours of 8:00 am to 1:00 pm" is the person designated as the Administrative Officer. There is clear direction when entering the elevator where the Building Department is and that is where the file and records can be inspected. If they did not put the hours, they would have been criticized. Time is on the objector's side, not their side.

Chairman Martin commented this is a matter of law and deferred to Mr. Rutherford, who reviewed the matter and took the opportunity to provide written comments. It is clear the application will extend over several months. Mr. Rutherford gave an overview and legal opinion. As Mr. Del Duca states, a defective notice is clear, and this is not the case. The statute requires that the time and place for inspection must be specified. The days and operation are an important part of the Notice and were not included. It appears the Notice does not strictly apply to the MLUL. He believes a review in Court could find that parts of the Notice did not comply with the statute. Mr. Rutherford stated he is taking a conservative view that can be rectified with a new Notice. This is a very important judicial aspect. Therefore, after all the facts and circumstances, Mr. Rutherford advised it is his opinion that the jurisdictional requirements have not been met, and the applicant should renotice for 9/12/16. If the Board agrees, the matter will receive no further consideration this evening and will be adjourned until 9/12/16.

Mr. Martin asked, and Mr. Rutherford advised if the matter were heard without jurisdiction, the Board's action could be nullified. This, however, can be cured with a new Notice. Mr. Del Duca stated if the Board sides with Mr. Lamb in his opinion and carry the matter, they request a special meeting in the month of August. Mr. Martin stated before scheduling a special meeting, they would have to agree on the Notice, so as not to re-argue this issue. The both attorneys would work together to resolve the Notice issue. Mr. Lamb stated there is also a bifurcation issue. Mr. Rutherford would review the Notice for that as well.

Board action was required. A motion to accept Mr. Rutherford's recommendation was made by Mr. Harper, seconded by Mr. Ceplo and carried unanimously on roll call vote.

Chairman Martin stated due to vacation schedules, and since only four members were present, he did not believe it would be possible for a special meeting in August. The hearing of the application will go beyond 9/12/16, so they could discuss a special meeting in the future.

Mr. Del Duca asked if any additional traffic study is required that would prevent them from proceeding on 9/12/16. Mr. Martin responded they would like the hearing to begin and ask questions before deciding whether an expert needs to be retained. It really depends on the issues surrounding the application, which the Board has not had an opportunity to hear about yet. It will likely be discussed on 9/12/16 after the Board hears some of the proposed details. Mr. Lamb stated bifurcation will be an issue on 9/12/16 as well. Mr. Del Duca stated bifurcation is allowed by statute; Mr. Lamb did not object, just raised the issue. Mr. Lamb laid this out in his letter of 7/29/16, outlining two cases where bifurcation was not permitted because of traffic issues. Before the use variance finishes, a traffic expert should be hired by the Board, Mr. Lamb stated. Mr. Martin stated when site plan issues are intertwined with use variance issues, the Board can decline the bifurcation. Perhaps they may not want to bifurcate. Mr. Del Duca stated they are confident as the plan has been fully engineered, with a traffic study, and they are fully prepared with the use variance. Chairman Martin stated the Board should be prepared with a traffic expert identified at the next meeting, in the event the Board deems one necessary.

**4. Fowler, 2 McDaniels Street, Block 2203, Lot 1 - C Variance for in-ground pool** - Mark Fowler, applicant, was sworn in and presented his application for a pool. The pool needs a 15' setback to the water line from the side and rear lot lines, a 10' set back from the dwelling and 5' from the shed. Mr. Lydon gave an overview and stated there is a C1 hardship and C2 basis for the granting of the variances. There were no coverage issues. The C1 hardship relates to the location of the dwelling and garage. Mr. Raimondi had no remaining issues. There were no further questions, comments or discussions and none from the public. A motion for approval was made by Wayne Harper and seconded by Anthony Zorovich. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William Martin voted yes.

(ZB 8/1/16 Regular Meeting Minutes)

5. **WestMack - 355 Kinderkamack Road, Block 810, Lot 4 - D6 Variance and Site Plan** - Incomplete/Carried to 9/12/16 for hearing if deemed complete with notice;

10. **DISCUSSION: None**

11. **ADJOURNMENT** - On motion made seconded and carried, the meeting was adjourned at 9:30 p.m.

**Respectfully submitted,**

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