

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
February 2, 2009**

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: Raymond Arroyo
Dan Koch
Eric Oakes
Guy Hartman
Joseph Frasco, Vice-Chairman (Chaired)
Christopher Owens (Alt #1)
Michael Bieri (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Maser Consulting, PA
Board Engineer by Tom Urmanowicz
Steve Lydon, Burgis Associates
Borough Planner

ABSENT: William Martin, Chairman (excused absence)
William Vietheer (excused absence)

Joseph Frasco chaired the Meeting in the absence of William Martin. Guy Hartman announced he listened to the tape of the 1/12/09 meeting and signed a Certification.

4. MINUTES - The Minutes of 1/12/08 were approved as amended on motion made by Mr. Arroyo, seconded by Mr. Owens, and carried unanimously on roll call vote.

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5. CORRESPONDENCE: As listed on Agenda and read:

1. Letter dated 1/15/09 from Louis A. Raimondi, RE: Schmidt;

2. Letter dated 1/23/09 from William Petrina RE: Petrina;

6. VOUCHERS: A motion to approve Vouchers totaling \$14,367.08 was made by Mr. Owens, seconded by Mr. Koch and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Schreyer (Dennehy), 40 Lester Avenue Section 68 application & Addition/Front Porch - Mr. Rutherford gave an overview of the Resolution of Approval. A motion for approval of the Resolution was made by Mr. Arroyo and seconded by Mr. Owens. There were no further questions, comments or discussions. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Koch, Mr. Owens, and Mr. Bieri voted yes. Mr. Hartman abstained.

2. Phil Petrina, 118 3rd Avenue, Section 68 Certificate - Held as application for addition is still pending;

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. Phil Petrina, 118 3rd Avenue - Proposed Sunroom Addition - Scheduled for 3/2/09

2. F&A Woodland Associates, 309 Kinderkamack Road - Use Variance - Carried to 3/2/09;

3. Albert's Westwood Cycle, 182 Third Avenue - Variance approval; (Dan Koch and Eric Oakes recused) - Carried to 3/2/09 at request of applicant;

4. Lynch, 117 Beech Street - Application for "C" variance
Roy Kurnos, Esq. represented the applicant in a continued hearing. The impervious coverage is over the limit. They applied for an interpretation and came before the Board. They applied

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for a "C" variance. He appeared and presented evidence. At the 1/12/09 meeting, the Board asked them to remove some coverage and prepare a map showing what can be done to reduce coverage. On 1/27/09 he submitted 18 copies of the plans evidencing removal of impervious coverage, marked as Exhibit A13. They are proposing to remove 8' of the western driveway, saving approximately reducing it to 143 sq. ft. and going from 45% to 43.7%. The applicant is willing to remove the shed, 50 sq. ft., resulting in only a ½ percent. There is a hot tub and patio in the rear. Some of the slates are concrete and some are set in quarry process. In Exhibit A13 you will see if we remove 90 sq. ft. it will reduce the coverage to 42.4%. And if that doesn't satisfy the Board, some of the coverage to the rear of the property could be eliminated, which at 4' would bring it to 41.4%. The survey shows 1% above when they purchased the property, 41%. The Board when they expanded the family home was satisfied with 41% coverage. That is basically the application. The client is the new property owner, who is prepared to make these improvements. Mr. Frasco clarified the coverage. Mr. Kurnos said they should really look to the two-family zone requirements, which would be 45%. Mr. Arroyo clarified it is 45% coverage.

Mr. Lynch came forward and testified under oath that this was the plan he was proposing. There have been no complaints from any neighbors and he is prepared to remove the impervious coverage as stated. Mr. Hartman asked what order of preference he would have in removing same. His neighbors appreciate the second driveway and so does he. If he had to put them in ranking order, he would do the patio and then the driveway. He would not change the structure of the driveway; it is safer than minimizing the driveway as there is a slip and fall hazard in coming out of the car onto the lawn. There were no further questions.

The matter was opened to the public. Gary Conklin, 406 Kinderkamack Road was sworn in. He is a two-family homeowner, who faced the same issues, and he was granted a variance for impervious coverage. He did remove a good portion of the driveway, which resulted in a safety issue for the tenant.

Mr. Arroyo asked if the applicant had any drainage issues on the property, and the response was no. Mr. Kurnos stated the plan is well engineered. Mr. Kurnos summed up. The present

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homeowner is being penalized for what the former owner did. If you visit the property you will see the drains installed, and everything was done properly. If the coverage is not acceptable, he would recommend a portion of the patio and hot tub be removed and leaves it up to the Board for a decision on the driveway.

Mr. Bieri commented removing the driveway could cause more of a detriment than a positive. Technically water does flow through crushed stone; therefore, it is pervious, and he does not see it as a drainage issue. He would leave the driveway in tact and seek a reduction otherwise. Mr. Koch and Mr. Arroyo agreed. The return in impervious coverage is minimal, and they would not touch the driveway. Mr. Arroyo pointed out this is the last house on Beech. Mr. Hartman agreed, stating narrowing the driveway would not improve anything. The shed is valuable for storage, so if the one part of the patio that touches the hot tub could be removed, he would recommend that. He is happy to see a plan. Mr. Oakes commented removal of the second driveway was looked out because it was possibly put in without permits. Mr. Frasco said they cannot look at that. Mr. Oakes said it is very close to the rear setback and elimination of that portion would be recommended. He does see the point about having a certain width for safety issues and felt approximately 2' instead of 4', together with removal of the shed and patio. Mr. Owens said they could take away a portion of the driveway and patio.

Mr. Frasco stated it seemed the majority of the Board is looking to keep the driveway and not reduce it, except for maybe 2' and shaving off the patio and keeping the shed. A discussion ensued. Mr. Kurnos said they have evidence, by way of a survey prior to 1989 that this second driveway was already in. The Board reached a consensus. They would be squaring off at the hot tub and taking some off the back, keeping the driveway and shed. Mr. Kurnos accepted.

A motion for approval of the "C" variance relief, with conditions that the western driveway and shed remain as shown on the plan, the back patio is reduced according to the plan that will be submitted hosing squaring off the hot tub with a 4' reduction along the southerly line as stated was made by Mr. Arroyo and seconded by Mr. Owens. On roll call vote, Mr. Koch, Mr. Arroyo, Mr. Hartman, Mr. Owens, Mr. Bieri, and Mr. Frasco voted yes. Mr. Oakes voted no.

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The Board took a recess from 8:55-9:02 p.m.

5. Pavese Family Living Trust, 609/515/617 Broadway - Notice of Appeal - Elliot Urdang, Esq. represented the applicant and summarized the reason of the appeal. This is not an application for a variance, but an appeal for subsection "a", an appeal of the Zoning Officer, and also seeking an interpretation that the use we are requesting is in fact a permitted use. The application itself presents a very narrow issue to the Board, which is essentially legal in nature, so much so that the information needed has already been supplied in the application submitted by the predecessor, with documents and exhibits attached. The relief sought is a determination that the front unit at 615 Broadway can be used for storage purposes. That is the only issue before the Board this evening.

Mr. Urdang continued. This property is located on the East side of Broadway. It contains three structures with three addresses. The rear is occupied by Edward Libby and Company, the most northerly contains an older dwelling with a tenant that has been there for 20 years and is pre-existing, non-conforming. The middle structure, #615 is occupied by Mr. Pavese's company, which is finding vehicles for shipping abroad. Edward Libby's prior application for storage was granted. After 2007, the Libby Company stopped using it for storage and went elsewhere due to the need for a larger space. The Pavese's came before the Board for an application for storage purposes for other tenants and at all times, the applications were denied. The reason giving was that storage was not permitted in the LB Zone per Mr. Strabone, but it was not actually the LB Zone. Mr. Strabone said it was not permitted in the Ordinance; however in 1997 the front portion was granted use for storage purposes. A variance is not a personal right, but attaches to the property and runs with the land.

The issue before this Board, Mr. Urdang said, is the new applicant for storage fit within the variance that was granted in 1997. That was resolved via the Stop and Shop case, decided by the NJ Supreme Court in 2000 that the type of storage user does not matter. (Saks Fifth Avenue vs. Stop and Shop) It said you need to look at the ordinance. He does not know why Mr. Strabone does not know about the 1997 Resolution as he says. You need to look at the 1997 variance, even though it is not

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permitted in the ordinance. He also said that since there was a change of use, applicant had to go before the Board of Adjustment. Mr. Urdang did not know why he would say this. This issue is very narrow in nature, and is a legal issue. Mr. Pavese was present in the event testimony was needed.

Mr. Frasco clarified the facts. Mr. Urdang said he also had the Minutes from the prior hearings. The previous use was an auto detailing shop, and the Board felt storage was a much better use. They fall squarely in the Resolution that was granted. In Stop and Shop, it does not have to be the same use, but a similar use, which is simply governed how your ordinance treats it as this time. Mr. Frasco deferred to Mr. Rutherford for advice. Mr. Rutherford advised Mr. Urdang accurately describes the case, wherein it was changed from a Stop and Shop to a Saks Fifth Avenue. The important issue is that the ordinance considered the supermarket and the shopping use to be the same. It was up to the ordinance to determine the parking requirement. The case does talk about the use variance runs with the land.

Mr. Arroyo commented the Resolution says the accessory use storage in the front is an accessory use of Libby's in the rear. Then it refers to the storage as the "new storage" area. Mr. Rutherford advised as to the condition stating the Resolution did note that the storage use was considered an improvement over the auto detailing use. Mr. Oakes asked what could be stored, and Mr. Urdang said clearly it is not limited. The ordinance does not say anything. It is a little storage area.

Nicholas Pavese, Park Ridge, NJ, was sworn in and said the tenant was going to keep tools, toolboxes of his trade for autos, and also there was a plumber to keep his tools, and both were denied.

There were no members of the public present. Mr. Urdang rested. Board discussion followed. Mr. Arroyo commented they would rely heavily on Mr. Rutherford as to what the Resolution reads. If we cannot tie in #15 with an applicant user of #09, then the only interpretation we are left with is that this Resolution created a new principal use, storage space. Mr. Rutherford advised that is exactly the issue. Mr. Owens asked if it should be before the Planning Board. Mr. Rutherford advised they are here for an interpretation, and this Board has

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jurisdiction. The storage itself is a zoning consideration. Stop and Shop is a good comparison case. Mr. Frasco commented it was pretty straightforward.

Mr. Rutherford advised a "yes" vote is a vote to overturn the Zoning Officer's decision. Mr. Koch made a motion to approve the application and overturn the Zoning Officer's decision, with second by Mr. Bieri. On roll call vote, all members voted yes. Mr. Arroyo proposed that Mr. Rutherford define the exact parameters and that Mr. Strabone be given a copy of the Resolution. This was agreed to by the Board.

10. DISCUSSIONS:

1. Paragon Federal Credit Union - Request for Special Meeting on 3/9/09 discussed - Mr. Owens commented the agenda is light. The applicant should come in for 3/2/09. Mr. Frasco commented they were not present at the last meeting to request a special meeting. Mr. Hartman agreed with Mr. Owens and also noted the public would be more likely to attend a regular meeting than a special meeting. Mr. Owens commented he would have an hour or two to begin the application. Mr. Rutherford advised the notice and the matter would be carried to 3/2/09, and he would advise applicant's attorney to not come with his entire team. The Board would then determine at that time whether there would be a special meeting. The matter was carried to the 3/2/09 meeting.

2. 2008 Annual Report with Summary - A motion to approve the Annual Report as amended was made by Mr. Arroyo and seconded by Mr. Owens. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Koch, Mr. Owens, Mr. Hartman, and Mr. Bieri voted yes.

3. Procedural Rules - Mr. Arroyo suggested adding a list of approved substitute planners, rather than defaulting to Mr. Spatz. The Board agreed. Mr. Rutherford would implement same. Mr. Frasco commented applications sometimes disappear from the agenda and questioned a procedure for withdrawal. Mr. Rutherford advised they could be withdrawn without prejudice on the record. The information sheet for the applicants was revised. He would further incorporate comments made in the By-laws as well. Mr. Rutherford advised he would revisit the filing of escrow fees section, and the Procedural Rules would be continued at the next meeting.

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11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 9:47 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary