

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REORGANIZATION MEETING  
MINUTES  
January 12, 2009**

**1. OPENING OF THE MEETING**

The meeting was called to order at approximately 8:02 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  
William Vietheer  
Eric Oakes  
Joseph Frasco, Vice-Chairman  
William Martin, Chairman  
Christopher Owens (Alt #1)  
Michael Bieri (Alt. #2)

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

**ABSENT:** Guy Hartman (excused absence)

Mr. Martin opened the meeting and announced that Mr. Arroyo and Mr. Owens were reappointed to the Zoning Board, and we have the same Board as last year. He further clarified that Mr. Owens is Alternate #1, and Mr. Bieri is Alternate #2. The Board circulated a contact information form to be filled out for email addresses and telephone numbers.

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**4. REORGANIZATION MEETING:**

**NOMINATIONS FOR CHAIRMAN OF THE ZONING BOARD:**

David Rutherford, Esq. nominations for the position of Chairman of the Zoning Board.

Upon nomination by William Vietheer, seconded by Raymond Arroyo, with no further nominations, **William Martin** was nominated as Chairman of the Zoning Board.

Upon motion of Joseph Frasco, seconded by William Vietheer, all ayes, the Board closed the nominations for Chairman. On roll call vote, all members voted yes.

**NOMINATIONS FOR VICE-CHAIRMAN OF THE ZONING BOARD:**

Chairman William Martin requested a nomination for the election of a Vice-Chairman:

Upon nomination by Raymond Arroyo, seconded by Dan Koch, with no further nominations, **Joseph Frasco** was nominated as Vice-Chairman of the Zoning Board.

Upon motion of Dan Koch, seconded by Raymond Arroyo, all ayes, the Board closed the nominations for Vice-Chairman. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF ATTORNEY FOR THE ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of an Attorney:

Upon nomination by William Vietheer, seconded by Joseph Frasco, with no further nominations, **David Rutherford, Esq.** was nominated as Attorney for the Zoning Board.

Upon motion of William Vietheer, seconded by Dan Koch, the Board closed the nominations for Attorney for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF PROFESSIONAL ENGINEER FOR ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of Professional Engineer for the Zoning Board:

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Upon motion of Raymond Arroyo, seconded by Joseph Frasco, with no further nominations, **Louis Raimondi of Maser Consulting**, was nominated as Professional Engineer for the Zoning Board.

Upon motion of William Vietheer, seconded by Dan Koch, the Board closed the nominations for Professional Engineer for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF PROFESSIONAL PLANNER FOR THE ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of a Planner:

Upon motion of William Vietheer, seconded by Christopher Owens, with no further nominations, **Steve Lydon, Burgis Associates** was nominated to continue as Professional Planner for the Zoning Board.

Upon motion of Raymond Arroyo, seconded by Joseph Frasco, the Board closed the nominations for Professional Planner, for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF RECORDING SECRETARY:**

Chairman Martin requested a nomination for the appointment of a Recording Secretary:

Upon motion of William Vietheer, seconded by Raymond Arroyo, with no further nominations, **Mary R. Verducci** was nominated to continue as Recording Secretary for the Zoning Board.

Upon motion of Raymond Arroyo, seconded by William Vietheer, all ayes, the Board closed the nominations for Recording Secretary for the Zoning Board. On roll call vote, all members voted yes.

**ADOPTION OF 2009 MEETING DATES:**

Upon motion of William Vietheer, seconded by Dan Koch, all ayes on roll call vote, the Board adopted the 2009 Meeting Dates for the Zoning Board as attached. A copy would be forwarded by the Zoning Office to the Mayor and Council and Borough Clerk.

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**ADOPTION OF PROCEDURAL RULES & BY-LAWS** - Mr. Martin stated he met with Mr. Marini to discuss same, as that office is now handling the administration of the Zoning Board. Also, they discussed filing fees, and Mr. Marini is to give a report so that we may ascertain if our escrow deposits should be adjusted. That would be via a recommendation by the Zoning Board to our Governing Body, as it seems to be a concern from time to time. The Board adopted same, and would amend them at the next meeting accordingly. A motion was so made by Mr. Frasco and seconded by Mr. Arroyo and carried unanimously.

**ADOPTION OF THE ANNUAL REPORT** - The Board postponed the Annual Report until the next meeting, as it was not yet received and reviewed.

**SWEARING IN OF MEMBERS:** Mr. Arroyo and Mr. Owens were previously sworn in as reappointed members as stated above.

#### **REGULAR MEETING**

**5. MINUTES** - The Minutes of 12/1/08 were approved as amended on motion made by Raymond Arroyo, seconded by Eric Oakes, and carried unanimously on roll call vote.

**6. CORRESPONDENCE:** As listed on Agenda and read:

1. Letter dated 1/6/09 from Walter K. Schreyer RE: Dennehy, enclosing revised survey;
2. Letter dated 1/6/09 from David Rutherford, Esq. RE: Salerno, 175 Third Avenue;
3. Letter dated 12/5/08 from Louis A. Raimondi, RE: Lebanon Baptist Church;
4. Letter dated 12/2/08 from Donald Nemcik, Esq. ER: Mark Albert;
5. Memo dated 12/17/08 from Armand Marini RE: Linda Koch, contact information;

**7. VOUCHERS:** A motion to approve Vouchers totaling \$590.00 was made by William Vietheer, seconded by Eric Oakes and carried unanimously on roll call vote.

**8. RESOLUTIONS:**

1. **Schreyer (Dennehy), 40 Lester Avenue Section 68 application** - Held until next meeting;

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**2. Lebanon Baptist Church, 20 High Street - Site Plan & Use Variance for Non-conforming Use** - 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. Frasco. There were no further questions, comments or discussions. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Vietheer, Mr. Oakes, Mr. Koch, and Mr. Martin voted yes. The remaining members present were not eligible to vote.

**2. Donald R. O'Connor, 234 Washington Avenue - Section 68 Appeal** - 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. Vietheer. There were no further questions, comments or discussions. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Vietheer, Mr. Koch, and Mr. Martin voted yes. The remaining members present were not eligible to vote.

**3. Harmony Tea Room, 7 Bergen Street** - Mr. Rutherford gave an overview of the Resolution of approval. A motion for approval of the Resolution was made by Mr. Oakes and seconded by Mr. Frasco. There were no further questions, comments or discussions. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Vietheer, Mr. Koch, and Mr. Martin voted yes. The remaining members present were not eligible to vote.

**9. PENDING NEW BUSINESS:** None

**10. 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 3<sup>rd</sup> Avenue - Proposed Sunroom addition and Section 68 Certificate** - William Petrina, Esq. represented the applicant. When Mr. Petrina purchased the home, it was a pre-existing, non-conforming use, and it was converted to a two-family. He had a letter from 5/23/85 from Steven Negri, Construction Official and Zoning Officer of Westwood, marked Exhibit A1, stating the premises in question is in an R2 Single Family Home, and the house is converted to a two-family. It is a legal, non-conforming use in the zone. This was prior to his client's purchase of home, which was in 1994. Mr. Negri also indicated a C/O is not required for the sale of the home. Mr.

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Petrina also referred to a Certificate dated 4/23/92, marked A2. This was to a prior owner for her refinancing. It noted use R2, two-family residence, and this was a zoning permit. He also had a Certificate of Zoning Compliance from 1994 issued to the applicant by Zoning Official Timothy Maurer, and the home was designated Group R2, two-family residence, which was marked A3. The Town amended and changed the zone to R1. They also submitted tax records and property records cards going back to 1994, which were marked collectively A4 and submitted.

The matter was opened to the public, but there were no interested parties. A motion for approval of the Section 68 Certificate was made by Mr. Koch and seconded by Mr. Owens. On roll call vote, all members voted yes.

Mr. Martin advised they would be carried to the next meeting for the variance portion of the application. Mr. Petrina requested to be heard since he had witnesses and neighbors present. Mr. Martin and the Board agreed they would take the next application and come back to this one.

The hearing on the matter continued. Dr. David Levesque, 124 Third Avenue, Westwood, NJ was sworn in by Mr. Rutherford. Dr. Levesque, a medical doctor, lives immediately adjacent to the subject premises. He was present to testify in favor of the application on behalf of Mr. Petrina, his neighbor, who has always done a great job with keeping his property up aesthetically, and he is doing a great job for the neighborhood. Dr. Levesque had recalled coming before the Board for his own office five years ago and hoped the Board would extend the same courtesies to Mr. Petrina as they did to him.

Pat Giannaotti, of 115 Third Avenue, Westwood, NJ was sworn in by Mr. Rutherford. She stated she lives across from the applicant and is a realtor. She had no problem with the applicant adding a sun room and stated the applicant is very meticulous about his property and has always done a great job with the landscaping and the entire property.

Mr. Petrina submitted a Photo of the house, which was marked Exhibit A5.

Frank D. Mileto was previously sworn, qualified, and accepted as a NJ Architect and Planner. They are seeking to get

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approval for a sunroom that was constructed on the North side of the house as depicted on A1. They established the house is a two-family, non-conforming dwelling earlier this evening. These homes were constructed to accommodate soldiers returning from war, with their wives and families. They are not proposing bedrooms or an expansion, but just a one-store sunroom adjoining the doctors' facility. They are only asking for two variances--an expansion of a non-conforming use, which is a "D2" variance and requires substantially less intensive proofs, since it is existing. The sun room was constructed for the applicant's mom for her to have some time outside. There are no negative impacts, and it would not be a detriment to the zoning ordinance or zone plan. There is no detriment to any of the surrounding properties, and it does enhance the living space for this modest home. It will not disturb any light or impact any of the surrounding properties.

Mr. Mileto continued. They also require a "C" variance for coverage. Two particular hardships are: it is undersized, less than 7,500 sq. ft., and because it is smaller in area, the impact of an addition is greater and the size impacts where the addition could be located. It is a hardship to meet the coverage, and they have an addition that would require some relief from the zoning ordinance. The "C2" variance is applicable in that it allows for a deviation from the ordinance. The positive is that they can enjoy the yard and property from a one-story grade level sun room. There will be no shading or obstructions and no substantial detriment to the zone plan or the surrounding areas. The grading is away from the street and will not impact the properties. There is a shed/garage that houses a classic vehicle of Mr. Petrina. The two-car garage and driveway remain and contribute to the coverage. For those reasons, the variances can be granted.

Mr. Oakes suggested eliminating some of the impervious coverage by removing some of the concrete. Mr. Mileto would have to discuss same with the applicant. Mr. Petrina stated he would lose the parking for the tenant upstairs and was concerned about the effect on the garage.

Mr. Martin compared the old and new surveys and asked if he obtained permits for the pavement, garage and sunroom, and the applicant responded no. Mr. Martin stated none of it meets the zoning requirements. Mr. Frasco questioned the notice in light

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of all the impervious coverage. Mr. Rutherford advised the notice covers everything. If work was done in violation of the zoning ordinance, it needs to be addressed. Mr. Frasco recommended that Mr. Rutherford advise whether the Board could continue. The Board discussed the variances necessary to be granted. Mr. Martin advised the neighbors may appreciate how he keeps his property, but he must conform to the Borough Code. There are substantial non-conforming conditions and variances that need to be requested. The planner's testimony was just for the sunroom. Mr. Mileto commented he was prepared to go further with his testimony.

Mr. Lydon stated that testimony about parking was also required. Mr. Mileto said they do not need additional parking, because they are not adding bedrooms. Mr. Lydon said they placed the garage in the rear yard, and it did not come before this Board. It completely changes the way this property operates. Mr. Mileto appealed to the Board to consider the application on its merits and the improvements, and although done in an improper way, it does not interrupt the peace and tranquility of the neighborhood, and has no negative impacts and can be granted as requested. Mr. Martin commented he was not suggesting the Board act in a way of punishment, but the Board must act in accordance with the Code and grant or not grant the variances. He suggested counsel may want to carry and come back next month or ask the Board to rule on this now. When he sees 40% building coverage in a zone that only allows 22%, that is a lot of building coverage. Mr. Arroyo suggested they look at how the percentages could be brought down; it would be helpful to the application. Mr. Frasco agreed. The applicant requested to be carried to 3/2/09 with any time extensions granted. The matter was carried with no further notice.

**3. Dennehy, 40 Lester Avenue - Addition/Front Porch & Hearing on Appeal** - Walter K. Schreyer, Esq. represented the applicant. Mr. Rutherford outlined the Exhibits that would be entered into evidence, some of which the Board already had in its possession. Exhibit A4 was a Joint Driveway Agreement and Easement. Exhibit A5 was a Revised Survey by Koestner revised through 12/29/08. Exhibit A6 was a similar Survey dated 5/25/2001. Exhibit A7 was Sheet 1 of the Architectural Plan by Mr. Blake, revised to 10/30/08. Exhibit A8 was Sheet A1B, an Aerial Map and Photos, revised to 10/30/08; Exhibit A9 was the Tax Map exhibit by Mr. Blake revised to 10/30/08. Exhibit A10

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was an Aerial Photograph; Exhibit A11, six photographs; Exhibit A12 was four photographs; Exhibit A13, was the Land Use A by Ms. Petrow. Exhibit A14 was the Lot Analysis & Exhibit A15 was the Concept Plan based on the architectural plans submitted, both by Ms. Petrow.

Chris Blake, applicant's architect, continued under oath and testified to the exhibits, beginning with Aerial Photo, A8. He is proposing a front yard setback variance, and this photo shows the houses in the neighborhood, with two stories and porches, and they show the same characteristic as the one they are proposing. Exhibit A9 was identified as a copy of the Tax Map of the entire street of Lester Avenue, with #40 highlighted. The purpose was to show the distance of the front yard setback to the curb. Mr. Raimondi questioned the data and commented the exhibit should have been prepared by a surveyor. Mr. Raimondi asked about lot coverage. There were no further questions and no questions from the public.

Mr. Schreyer called Mia Petrow, Professional Planner, who was sworn in, qualified and accepted. Ms. Petrow addressed total side yard setback, stating that there would be a continuation of the side yard setback requested. She prepared a Lot Analysis and Land Use Analysis, as well as a report on compliance with the Master Plan. She prepared a Concept Plan based on the Architectural Plan and a Site Plan based on Mr. Koestner's survey. The total area she referred to on the plan provides 324 sq. ft. of additional coverage. The total coverage would be 44%, which exceeds the maximum permitted coverage of 40%; however, the applicant would be willing to remove the patio. Ms. Petrow described Exhibit A15, illustrating a red, hatched impervious area, which would become pervious. With the red area, it would be 39.8%. Both scenarios shown meet the requirement for impervious coverage. Mr. Raimondi did not see how she could square off the red area. Ms. Petrow indicated that is how the applicant currently parks, but did not see a problem with it.

Ms. Petrow continued with her planning testimony as to the "D2" variance and the "C" variances of front yard and side yard, minimum lot area and maximum building coverage. The encroachment of the second floor encroaches into the side yard; a maximum building coverage variance of 1.5% is also required because of the expansion of the porch.

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The photograph exhibits were described by Ms. Petrow, continuing with the Lot and Analysis and Land Use Analysis. The property requires a D2 "use" variance, which focuses on the expansion of a non-conforming use. The premises is a pre-existing, non-conforming, two-family use. Ms. Petrow referred to Goals #5 and #6. The "C" variances are bulk variances solely related to the porch. The proposal of 20.5' setback is consistent with the neighborhood. The variances will not be a detriment to the public good, and there will be no significant impairment to the zone plan. Ms. Petrow testified in looking at the intent and purposes of the MLUL, these are significantly advanced and the benefits will substantially outweigh any benefits, giving specifics.

Questions of Board Members followed. Mr. Arroyo questioned Goal #6, which Ms. Petrow read, along with the Policy Statement. Mr. Lydon commented with respect to intensity of use and disagreed that bedrooms are not considered an intensity of use. Mr. Lydon stated the State adopted the RSIS, and the two-family home has to have a certain number of parking spaces. Ms. Petrow testified the applicant did not need to promote the Master Plan. Mr. Arroyo asked Mr. Lydon if that was correct. Mr. Lydon believed you had to show there was no substantial detriment to the Master Plan as well as the Zoning Ordinance. Mr. Rutherford advised you don't have to reconcile it. Mr. Martin referred to Goal 6, and it seems to him that the intent was to prevent the construction and expansion of two-family house and that the Borough would like to see them brought back to one-family houses. Ms. Petrow said in all cases it should conform to the degree possible. It is only 400 sq. ft. Mr. Martin commented the Board could also not approve the expansion, and the applicant could choose to reapply without the expansion. Ms. Petrow indicated she would have to discuss with her client and read from the Master Plan. The two-family home is not inconsistent, it is pre-existing and will not be a detriment to the zone plan or zoning ordinance. Mr. Lydon questioned her Land Use Analysis and the data obtained. They are going from one to four bedrooms, increasing intensity. He asked about some of the other two families, and she did not have any documentation regarding this. Mr. Oakes noted there were not many other multi-families on the exhibit. There were no further questions, and no interested parties from the public.

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Mr. Schreyer gave closing comments stating the application promotes the aesthetic appearance of the entire neighborhood, and he feels it is not inconsistent, and in light of all the testimony, as their planner has put forth, the variances are de minimus for the reasons laid out for the Board. The bulk variances are only due to the porch; they do not increase the intensity and they add to the aesthetics. Therefore, he would request the Board approve the application for the "D2" and "C" variances, stating that the applicant would accept either scenario and remove the patio in the back and provide for two parking spaces in the rear and/or diagonal or perpendicular.

Board comments and discussions followed and were favorably given, starting with Mr. Frasco and Mr. Bieri. Mr. Arroyo recalled related applications, stating the Board never approved anything as large as this. Mr. Owens commented based on the size of the unit you probably would not get more than two people living in there, and from the front you wouldn't see the two-family entrance. Mr. Koch commented he liked the aesthetics. Four bedrooms are a lot, but not much when coinciding with other homes on the block. He liked the architecture and feels it would actually fit in with the neighborhood. Mr. Martin commented his concerns are always trying to comply with the Master Plan, which is there to guide us in dealing with expansions. His further concern is that the unit which is part of the property that makes it a two family is very small, and the owner's part is very large. His concern is that someone may come back in the future and try to make the second unit larger, in opposition to Goal 6. To safeguard this, Mr. Martin suggested the Board craft additional language stating that the small unit was not to be expanded in any way shape or form into the first floor or otherwise. Further, he noted a four bedroom house is not inconsistent. Mr. Rutherford advised such a condition could in fact be crafted.

Mr. Frasco moved for approval with conditions. The motion was seconded by Mr. Koch. The conditions were outlined as stated. Mr. Martin added a requirement updated documentation be provided to match the surveyor's parking layout, together with updated tables with respect to conforming surface coverage. There were no further questions, comments or discussions. On roll call vote, all members voted yes. Five affirmative votes were required, and there were six affirmative votes.

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**3. F&A Woodland Associates, 309 Kinderkamack Road - Use Variance - Carried to 1/12/09;**

**4. Albert's Westwood Cycle, 182 Third Avenue - Variance approval; (Dan Koch and Eric Oakes recused) Carried to 2/2/09;**

**5. Lynch, 117 Beech Street - Application for "C" variance Carried to 2/2/09;**

**6. Mark Salerno, 175 Third Avenue-Storage -** A discussion ensued regarding whether to put the Salerno application back on the agenda. Mr. Rutherford advised he is in the process of addressing the items deeming him incomplete. He would be listed for 2/2/09 with notice. Mr. Arroyo suggested letting the dismissal stand and having him refile since he was remiss in responding. Mr. Rutherford advised he would have to renote and republish in any event. The Board agreed to let it stand, and Mr. Frasco retracted his motion. Mr. Rutherford would advise Linda Koch as to same, so there is no confusion. The Board took a recess from 9:23 to 9:33 p.m.

**7. Paragon Federal Credit Union -** Mr. Rutherford discussed a Special Meeting with applicant's attorney. The Board if amenable, would then discuss a date. Mr. Martin suggested 2/9/09 or 3/9/09. Mr. Owens suggested, since there is no other pending new business, having them come in on 2/2/09, and see if a special meeting is necessary after that. Mr. Rutherford advised that they did file their application. The Chairman advised to place them on the agenda for 2/2/09, and a special meeting could be considered at that time.

**11. DISCUSSIONS:** Mr. Oakes questioned correspondence regarding Planning Board and Zoning Board Certifications and Training. It was noted that the Board Members were already certified, and that there were advanced courses available that were optional.

**12. ADJOURNMENT -** On motions, made seconded and carried, the meeting was adjourned at approx. 11:23 p.m.

**Respectfully submitted,**

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