

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
May 4, 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
William Martin, Chairman
Christopher Owens (Alt #1)
Michael Bieri (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
By Jennifer M. Knarich, Esq.
Louis Raimondi, Maser Consulting, PA
Steve Lydon, Burgis Associates
Borough Planner

ABSENT: William Vietheer (excused absence)

4. MINUTES - The Minutes of 4/6/09 were approved as amended on motion made by Mr. Owens, seconded by Mr. Arroyo, and carried.

5. CORRESPONDENCE: As listed on Agenda and read:

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1. Letter dated 4/7/09 from David L. Rutherford, Esq. RE: Salerno;
2. Letters dated 4/8/09 & 4/20/09 from Maser Consulting RE: Petrina and Schmidt, respectively;
3. Memo dated 4/24/09 from Burgis Associates RE: Albert's Westwood Cycle;
4. Memo dated 3/6/09 from Burgis Associates RE: Paragon Federal Credit Union;
5. Response from Westwood DPW dated 4/27/09 RE: Paragon Federal Credit Union;
6. Memo dated 4/30/09 from Burgis Associates RE: Salerno;
7. Reports dated 4/3/09 & 4/24/09 from Maser Consulting RE: Albert's Westwood Cycle;
8. List of Delinquent Escrow Accounts was read by Chairman Martin.

6. VOUCHERS: A motion to approve Vouchers totaling \$4,754.50 was made by Mr. Frasco, seconded by Mr. Koch and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. D. Eileen Clinch, 407 Kinderkamack Road - Application for Certification of Non-conforming Use - Ms. Knarich summarized the Resolution of Approval. A motion for approval of the Resolution was made by Mr. Owens and seconded by Mr. Hartman. There were no further questions, comments or discussions. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Koch, Mr. Owens, Mr. Oakes, and Mr. Martin voted yes.

8. PENDING NEW BUSINESS:

1. Liberty Associates, 225 Kinderkamack Road - Application for Certification of Non-Conforming Use - Scheduled for 6/1/09;

9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS

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The Board Professionals were sworn in.

1. Phil Petrina, 118 3rd Avenue - Proposed Sunroom Addition
Chairman Martin noted there was an escrow deficiency, and the applicant's attorney advised they would bring the account up to date. Attorney Petrina represented applicant and stated they were last present before the Board in January. There was a Section 68 issue that arose, and the Board passed a Resolution. There were issues with respect to impervious coverage on the lot, as well as shed and garage issues. Mr. Mileto prepared new plans. Mr. Raimondi issued a report dated 4/8/09 expressing his concerns.

Frank D. Mileto, AIA, previously sworn, continued under oath and testified as to the revised Zoning Schedule and Site Plan he submitted. One correction was on Sheet 1 of 1, "Proposed Sun Room and Garage Addition", dated 3/4/09, revised per surveys in 1994 and February 2008. The sheet was marked Exhibit A6. He recalculated the square footages of each of the structures and came up with new figures, as far as coverage was concerned, for building and impervious surfaces. Mr. Raimondi confirmed the calculations were correct - building coverage of 32%, impervious coverage of 62% and floor area ratio with the garage of 44%. Those were the only variances.

Chairman Martin commented this is a second "D" variance and asked if their notice covered these new variance figures. Ms. Knarich reviewed the notice and advised the second "D" variance was not included. Mr. Petrina raised the defense that this would be covered under the "catch all" phrase of "any other variances", and that this was discussed. Chairman Martin noted that Mr. Rutherford provided language for the notice, which specifically included floor area ratio. Case law has clarified the MLUL governing notice, and accordingly, more information in the notice was needed. Mr. Petrina brought forth a letter from Mr. Rutherford dated 9/30/08, marked A7, which he read into the record and felt they complied with notice. Mr. Rutherford had prepared a new notice and attached it to the letter. Chairman Martin stated they had that notice in the file and asked Mr. Petrina if he actually published it.

Chairman Martin suggested they postpone this application to later in the evening so that the applicant may return with the notice and proof of publication.

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The matter was continued. Ms. Knarich reviewed the Notice, reading it into the record and found it to be in order as far as the variances, including jurisdiction for a floor area ratio variance. Exhibit A7 was the Proof of Publication.

Mr. Mileto continued his testimony. They were present for the proposed addition on the North side of the building a one-story sun room the applicant built for his ailing mother to enjoy outdoors and sunlight. It is 85% complete. The exterior is done; the interior is not complete. As far as the variances, the hardship is under C1 and C2, flexible C, which allows the Board to grant bulk variances, because the benefits outweigh the detriments. The property is very attractive, having brick pavers. The sun room comes directly off the dining room and is not a bedroom. The 44% FAR for the garage is not a detriment to the community, and the benefits outweigh any detriments. It has a total area of 187 sq. ft., which is included in his area calculations for building and impervious coverage. It is his opinion that the variances, if granted, would not be a detriment to the zone plan, Municipal Land Use Ordinance, surrounding neighbors or municipality. It does not create any drainage issues for any other property.

Mr. Arroyo commented and asked to hear from Mr. Raimondi, who said he came up with different numbers because the plan said existing garage removed, but apparently the garage still exists. Also, he still does not see the numbers on the plan. Mr. Mileto had the exact numbers for the Board. Chairman Martin asked for clarification of the size of the garage. Mr. Hartman asked if some of the impervious coverage could be mitigated. It is a very sizeable addition for a piece of property that is already non-conforming. Mr. Mileto said he could remove some concrete from the existing patio if there was a particular square footage in mind. Mr. Martin said they would have to propose something and the Board would evaluate it.

Mr. Lydon said he did not hear any special reasons as to why the Board should grant the "D2" variance or FAR. Mr. Mileto stated they would like to keep the vehicle out of sight in the garage. It does not meet the stringent Medici special reasons, but since it is non-conforming, it does not have to meet the enhanced proofs. It would have an improved visual impact by having the car parked in the garage. The sun room provides an opportunity to enjoy the outdoors. Mr. Lydon asked if he

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reviewed the Westwood Master Plan, and Mr. Mileto responded briefly. He did not review the Re-examination Report. Mr. Owens asked if they needed a combined side yard variance, Mr. Martin calculated the side yards, and the response was no.

The matter was opened to the public. Gary Conklin, 406 Kinderkamack Road asked if the structure was already put up. The response came from the Board that it was put up without a permit. He hopes the Board is consistent and keeps in mind how long he was before the Board and how much money he spent. He asked if there was a fine for this. Mr. Martin advised the Board does not have jurisdiction over fines and wished the applicant had come in prior to building.

Chairman Martin found a couple of disturbing issues. The applicant did come in for a Section 68, which was granted, but the house is being substantially expanded with so many variances, including a substantial FAR variance. He is troubled by the large number of variances here. He agrees with Vice-Chairman Frasco and Mr. Arroyo that there could be been more mitigation. Mr. Hartman agreed. Mr. Oakes commented they could have come closer to what was permitted. Mr. Frasco did not see the proofs being met. Mr. Arroyo commented as to the Master Plan policies. The Chairman called for a motion.

A motion to deny without prejudice was made by Vice-Chairman Frasco and seconded by Mr. Koch. On roll call vote, all members voted yes to deny the application.

The Board took a recess from 10:15-10:25 pm.

2. F&A Woodland Associates, 309 Kinderkamack Road - Use Variance - Paul Giblin, Esq. represented the applicant. The applicant, Mr. Garino, and the planner, Ms. Petrou, were present. Mr. Giblin recalled from the last meeting clarification was needed regarding the door, and they also had photographs marked A5 - A7.

Ms. Petrou, Professional Planner, was previously sworn and qualified. She referred to Exhibits A3 and A4, Floor Plans corresponding to Interior Photo Exhibits for Unit 1 and Unit 2, which she distributed and described in detail. Chairman Martin noted she was showing that they removed one tenant, but they are asking for two tenants. Mr. Giblin stated they wanted the Board

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to see what it looked like vacant and that it lends itself to two dwelling units.

Ms. Petrou summarized her testimony. The application was for a two-family home in the R1 Zone. Based on this application and site plan submitted, the lot is irregularly shaped and there is limited parking with no option for expanding. They have the characteristics of two-stand alone units. It is a single family home with a stand-alone commercial unit which they are requesting to convert to a residence. The impact to the neighborhood would be greater with commercial space since commercial requires more parking giving the figures. Here they would be reducing the intensity of parking with residential use. Ms. Petrou testified it would be consistent with the existing development pattern in the neighborhood. Mr. Arroyo asked if it was more intense for a home office and why they would not put the superintendent in the home and the office in the home office. Ms. Petrou responded a residential use would fit better in the neighborhood because of the constraints.

Chairman Martin noted Ms. Petrou testified the property lends itself to residential. Referring to A5(a), it appeared this best be residential with an accessory office use as it presently exists. There was plenty of on street parking to support this use. Further, it is clearly laid out in the Master Plan, and the creators would not want to see this change happen.

Testimony was complete, and there were no further questions or comments from the Board. The matter was opened to the public. Gary Conklin came forward. He is a two-family home owner and a supporter thereof, but acknowledged problems with the Goal 6 prohibition. There were no further comments, and the matter was closed to the public.

Mr. Giblin summed up the application. It is the position of the applicant that this property is never going to be used or developed other than with the lease marked as an exhibit for a two-family dwelling and no other purposes. They cannot use it for commercial purposes because of the parking, and the only use is a two-family dwelling. It was original developed to have additional parking, which never happened.

Board discussion followed. Mr. Frasco did not think a two-family use would be better. Mr. Owens felt it conflicts with

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Goal 6 and did not see how this could be approved. Mr. Arroyo agreed and stated the proofs must be much stronger. There were no further comments.

A motion to deny was made by Mr. Oakes and seconded by Mr. Frasco. On roll call vote, all members voted yes to deny the application. Mr. Owens commented applicant first stated his intention was to use the parking on the adjacent property, and he should have stayed with that. Mr. Martin stated notwithstanding whether he intended to use parking on an adjacent property, this is the office zone and is very viable for a residence and attached office for a dentist or doctor.

3. Albert's Westwood Cycle, 182 Third Avenue - Use Variance approval (Dan Koch and Eric Oakes recused) - Mr. Koch and Mr. Oakes recused. Donald Nemcik, Esq. represented the applicant. Vincent Benanti, Architect, was present and testified to the revised site plan dated 4/9/09, consisting of two sheets. Mr. Raimondi's report was dated 4/24/09 and Mr. Lydon's report was also dated 4/24/09. Changes to the plan included a one-story addition, 14' wide, to be added to the rear of the existing one-story masonry structure for the entire width of the building. A 10' x 25' concrete pad will be constructed westerly of the proposed addition and centered on the lot. The existing storage container and trailer will be removed, as will a fence at the rear, with installation of 5' high evergreen plantings, and two planters in the front of the property on the concrete sidewalk. Mr. Raimondi recommended seepage pits be installed in accordance with the Westwood Stormwater Management Ordinance and that applicant be responsible for any required permits from outside agencies. Applicant would comply with Mr. Raimondi's report.

Mr. Lydon recited the variances. Applicant proposed intensification of a non-conforming use, with a maximum building coverage variance required as well as a parking variance. Applicant would comply with Mr. Lydon's report.

A motion for approval was made by Mr. Owens as submitted and amended by Mr. Benanti's plan dated 4/9/09, subject to conditions as stated, i.e., compliance with stormwater management, cleanup of debris and cars, landscaping, fence work, and planters as shown on the plan, with second by Mr. Frasco. On roll call vote, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr.

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Owens, Mr. Bieri, and Mr. Martin voted yes. Mr. Koch and Mr. Oakes were recused.

The Board took a recess from 9:35-9:45 p.m.

4. Paragon Federal Credit Union, Washington Avenue - Updated Plans - Jeff Zenn, Esq. represented the applicant. -Not reached; carried. Mr. Zenn requested a special meeting per discussion with Mr. Rutherford. May 18th was proposed. A motion was so made by Mr. Frasco and seconded by Mr. Koch and carried unanimously on roll call vote. The Board Secretary would verify the Council Chambers was available, and contact Mr. Rutherford as to publishing a public notice in a timely manner. There was no further notice required by the applicant.

5. Harold Keller, 16 Brookline Avenue - Application for Certification of Non-Conforming Use Harold Keller, 16 Brookline Avenue, and Donna Salimone, 19 Brookline Avenue, his daughter, were present and sworn in. Notice was served and published; however, the applicant would produce the Affidavit of Publication, as she did not have same in her possession. Mr. Keller owned the property since 1942. There was one meter. The Board reviewed the proofs submitted There were no further questions or comments. A motion for approval was made by Mr. Arroyo and seconded by Mr. Koch. On roll call vote, all members voted yes.

6. Pagliocca, 112 Third Avenue - Carried to 6/1/09 at request of applicant;

7. Salerno, 175 Third Avenue - Use Variance, Existing Conditions - Escrow deficiency; applicant not present - A motion to carry the matter to 6/1/09 was made by Mr. Arroyo, seconded by Mr. Oakes. On roll call vote, all members voted yes, except Mr. Koch, who voted no.

10. DISCUSSIONS:

1. New Email Address for Board Members - Each member now has an email address with the Borough.

2. Chairman Martin announced he was formally appointed Member for the Historic Preservation Advisory Board, with brief discussion as to its initiatives.

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11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:02 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary