

(WWZB 9/13/10 Minutes)

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
September 13, 2010**

APPROVED 10/4/10

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: Eric Oakes
Michael Bieri (8:05 pm)
Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Guy Hartman
Vernon McCoy (Alt #1)
Matthew Ceplo (Alt #2)

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

ABSENT: Robert Bicocchi (excused absence)
Christopher Owens

4. MINUTES: The Minutes of 8/2/10 were approved as amended on motion made by Mr. Arroyo, seconded by Mr. Oakes, and carried on roll call vote.

5. CORRESPONDENCE:

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1. **Memorandum from Burgis Associates dated 9/8/10 RE: LB Zone Use Analysis;**
2. **Letters from Louis Raimondi, dated 8/23/10 RE: Heid, 27 Hurlbut Street, and Sidler, 131 Langner Place;**
3. **Memo from Burgis Associates dated 8/24/10 RE: Heid;**
4. **Memo from Burgis Associates dated 8/23/10 RE: Sidler;**
6. **Letter from Charles Sarlo dated 8/31/10 RE: Masnick fitness d/b/a Retro Fitness, 25 Sullivan Street;**

6. **VOUCHERS:** A motion to approve vouchers totaling \$26,342.16 and a return of escrow monies totaling \$4,754.50 was made by Mr. Arroyo, seconded by Mr. Oakes, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. **Kim - 663 Ackerman - Variance** - The Resolution was tabled pending receipt of the as built survey by the next meeting. Attorney Rutherford would advise Mr. Nemcik, applicant's attorney, and Mr. Benanti, applicant's architect. A motion to table was made by Mr. Arroyo and seconded by Mr. Oakes. On roll call vote, all members voted yes.

2. **Olivier - 174 Third Avenue - Variance** - Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Mr. Oakes and seconded by Mr. Bieri. On roll call vote, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. McKoy, and Mr. Ceplo voted yes. Mr. Martin was recused. Mr. Hartman was not eligible to vote.

8. PENDING NEW BUSINESS:

1. **Go Green Car Wash, LLC, 22 Kinderkamack Road, Block 1608, Lot 14** - Scheduled for 10/4/10;

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

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in

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1. New St. Mark AME Zion Church, 100 Palisade Avenue - Minor Site Plan application - Adjourned to 10/4/10 per letter of Mr. Berkoben, applicant's attorney, who is also required to renotice and republish.

2. Fahie - 60 Westwood Boulevard - Application for Certification of Non-Conforming Use - Carried to 10/4/10 at the request of the applicant;

3. Retro Fitness - 25 Sullivan Street - Variance - Adjourned to 10/4/10 at the request of the applicant;

4. Heid, 27 Hurlbut Street, Block 1605, Lot 5 - Application for Expansion - "C" Variance - Mr. Rutherford reviewed the notice and publication and found them to be in order. Joseph Bruno, NJ Licensed Architect and Professional Planner, was sworn in, gave his credentials and was accepted. Mr. Bruno prepared an architectural plan dated 4/10/10, revised to 8/11/10. Christopher and Nicole Heid were sworn in. Mr. Bruno presented the application for an expansion of a small, three bedroom, two bath home. The purpose of the application is to create an additional space for kitchen and dining room space combined. They also seek to add a foyer and portico to the front of the home, and expand the master bedroom suite and two adjoining bedrooms. The addition proposed is 4'4" of the existing northeast wall of the premises. Photographs were submitted and described.

The home is a very pretty, craftsman style home, Mr. Bruno explained. Even though they are asking for relief for the front yard setback, they have no choice. They cannot expand to the East by the driveway or garage, and to the rear they cannot go out because of the existing bedroom, which creates a hardship, and this is the only way they can expand the home. This is one of the charming homes on Hurlbut Street. The average setback for the street is 39.10'. Currently the home is set back 35.3' from Hurlbut Street. Applicant's proposal includes a 26.66' setback due to the addition of the portico, resulting in the variance requested. Chairman Martin noted the grade drops off in the back. Mr. Bruno stated they are enhancing the home and creating a much more friendly facing to the street and keeping the residential scale and character of the original home.

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Mr. Lydon and Mr. Raimondi reviewed their reports.

Chairman Martin noted the only option they have is to go towards the front. He asked about Hurlbut Street, which is not a straight street. Mr. Bruno had the tax map and highlighted in yellow the subject lot and distributed same to the Board. Mr. Rutherford marked the exhibit A1. Mr. Martin noted the grade drops off to the East and where it curves, so the addition in the front might be mitigated by the curvature of the street. Mr. Bruno commented in a straight street, you can see clear down the line up and see any differences, but in this curvature, you actually see Lots 6, 7 and 8 as being closer than Lot 5, since they are on the curve.

There were no further questions from the Board. The matter was opened to the public. Frank Breali, 15 Hurlbut Street, was sworn in, and stated that from his vantage point looking West, the addition they are looking to put on their home would do nothing more than beautify the Goodwin Park area. He hopes that the plan goes through for them and would give their family the room they need and stay as neighbors. Maureen Shandler, across the street from the Heid's, commented the addition will improve the neighborhood and the block and benefit all of them. It improves the look of the house but maintains the same character. There were no questions of the interested parties and no further interested parties in the public.

There were no further discussions. A motion for approval was made by Mr. Arroyo and seconded by Mr. Bieri. On roll call vote, and Mr. Bieri, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. McKoy, and Mr. Ceplo. Mr. Martin voted yes.

5. Sidler, 131 Langner Avenue, Block 1105, Lot 3 - Application for Pool and "C" Variance - Mr. Rutherford reviewed the notice and publication and found them to be in order. Jane Sidler and Mr. Masterson of Masterson Pools were sworn in and presented her application for a pool of 16' x 32'. They would have to demolish their patio. They would not change the integrity of the neighborhood, just make it better. Mr. Lydon reviewed their reports. Mr. Lydon noted approval was needed for exceeding the maximum permitted building and impervious coverage. Mr. Raimondi questioned whether there was enough room for the pool due to the distance from the back of the house to the rear property line. He was concerned there was not the

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required 15' and requested that the surveyor to compute this before any construction or stake-out is commenced. They don't have 90 degree lines for lot width or lot depth.

Raymond Sidler was sworn in. He commented he thought that the variance was for not coming 15' from the house. Jane Sidler stated they were willing to demolish the patio. Mr. Raimondi said the patio was not the issue. The measurements shown are not 90 degree. If you take the definition of lot depth and width, it is not perfectly rectangular. That is why he recommended to Mr. Vergano, applicant's engineer, that by using the pool plan and setting the rear property line, he can tell exactly how much room there is. The surveyor, Mr. Eid, knows what has to be done and can give the answer. Mr. Martin clarified the Board needs the information because it may not fit. They should come back with revised plans. It may be evident that they may have to move the pool closer to the house or further North.

Mr. Arroyo said he has two issues - setback issues where the pool sits and the impervious coverage issue. Mr. Sidler wanted to apply for the variance and would come back with the new plan. He did not want to move the pool too close to the house because of his young daughter. They are proposing a new seepage pit, which Mr. Raimondi had no issue with.

The matter was carried to the 10/4/10 meeting. Applicant to advise their engineer and survey to have this information right away. Applicant to renote and republish and advise if they could be ready for the next meeting.

The Board took a recess from 9:30 to 9:40 p.m.

6. Pourquoi Pas - 31 Westwood Ave. - Appeal/Variance Application - Steve Lydon, Board Planner, recused himself and departed. Substitute Planner, Catherine Gregory arrived on the dais. John J. Lamb, Esq. represented the applicant. Catherine Gregory, acted as Substitute Planner. Steve Lydon departed. He summarized briefly and distributed a tabulated Schedule of Exhibits. The Notice was changed several times, Mr. Lamb noted. The 16 seats are permitted by variance. There is an easement in the rear and Pompilio's Pizza uses the space 200' from the access to the rear can be utilized, and the Notice reflects this. Since 2003 the mixture of clientele has shifted. This 1,558 sq. ft. property has always been involved in a food use.

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With this application, they want to add four tables with four seats per table or eight tables of two. They are not asking to go beyond the current 1,558 sq. ft., but to add 16 seats for a total of 32 seats. There have been two seatings. Sometimes they open for lunch, but most of the patrons have stayed for dinner, and this is the least parking demand in the area. Retail has wound down by 7:30 p.m., and like Pompilio's, this evening parking has no effect on the retail parking.

The first witness was Bruce Meisel, 263 Center Avenue, Westwood, NJ, who was sworn in. He is the Managing Member of First Westwood Realty, the owner of the property. Calling attention to A2, the photographs, Mr. Meisel indicated the photos depicted what the building looked like in 1986, when they purchased and then in 1987 when they leased to Poultry Place. Mr. Meisel gave details of the occupancy. Exhibit 3 showed the Parking Distribution Plan and easement. There were no questions of Mr. Meisel from the Board Members. Ms. Gregory asked if he believed this use was a restaurant more than a specialty store, and Mr. Meisel stated a restaurant. Ms. Gregory commented she felt it would be a D1 use variance. Mr. Lamb said there was still take out food also, and that is why they applied for a D1, D3 variances. He refers to it as a specialty food store, full restaurant and bistro. Mr. Martin deferred to Mr. Rutherford as to the nature of the use and type of variance and what to base their decision. Mr. Rutherford advised legally as to the various components of the D variances as pertains to this application. Mr. Arroyo asked why not ask relief under "C". Mr. Lamb felt the restaurant use required a D1 variance. There were no further questions of Mr. Meisel.

Bernard Vard was sworn in as owner of the business. Mr. Vard gave the history of the store and how he consulted with Mr. Meisel, his landlord, as he sought seating for clientele to dine in for lunch and dinner. Mr. Lamb questioned Mr. Vard. As they grew, more seats were desired. In 2004 the dinner business was taking over. He does all the cooking, basically French food, naming a few other French restaurants serving this type of food. They close Sunday and Monday they open at 5:30 p.m. Lunch would be done for a special occasion, and take out food is also available. Mr. Vard kept a schedule of daily customers, with two seatings, as appears in A6. Presently he does not have regularly scheduled lunches. The total number of employees would be five to six. Mr. Vard stated he has room for 32 seats and if

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they stay as is, his business will not survive.

Questions from Board Members followed. Mr. Oakes asked what the maximum occupancy was. Mr. Lamb said the maximum legal capacity for a 494 square foot seating area is 32 seats. Mr. Martin said per the building code, the maximum capacity is 32, and that is how he gets the number of seats. People have not had to wait outside, and they try to accommodate everyone. Ms. Gregory questioned the restroom facilities and whether patrons had to walk through an office, but Mr. Vard said it used to be an office and now it is an open waiter station. Mr. Martin expressed concern about daytime intensity in terms of traffic generated and parking on Westwood Avenue that may create a problem. The evening time does seem to work however. As we review this, he should think about restricting daytime intensity. Mr. Vard said parking is not an issue for lunch, because people are already parked and walk. At night he is a destination for dinner. Mr. Martin was concerned that if this evolves and changes as they say the business has, that this will have a detrimental effect on parking, and perhaps there should be some restrictions imposed. We will hear from Mr. Steck, and we will have to hear more about potentially what will happen during the day. The additional 16 seats needs the Board's approval. Brief discussions ensued. Mr. Arroyo asked if they ever considered requesting a zone change. Mr. Lamb responded for the integrity of the main business district in Westwood, they believe each application should be viewed on a case-by-case basis. Mr. Meisel asked if Mr. Vard received approval for limited lunch time seating, would his business survive, and his response was yes.

Peter Steck, Professional Planner, licensed in NJ, was sworn in and accepted. He prepared the plans and reviewed the application and property. There has been food service on this site for a long time. It has morphed into a restaurant. The site is 1,558 sq. ft. with a 493 sq. ft. dining area, which is less than 1/3 of the total. Patrons come in to sit down at a table to eat, and this use has clearly morphed into a restaurant use. In the evenings there is a maximum of 32 seats, and the applicant is willing to invite no more than 16 seats for lunchtime use. You will not have people waiting outside for a table during dinner. It is a shorter crowd for lunch and tends to be people from the area. This is a destination use in the evenings, and in his opinion there are special reasons for

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granting the variance. The restaurant use can be granted and because of its limited constraints. Mr. Martin asked if Ms. Gregory had any questions and she only had comments. Due to the lateness of the evening, 11:10 the matter would have to be continued at the next meeting; however, Ms. Gregory was not available on 10/4/10. Mr. Rutherford suggested carrying to the 11/1/10 meeting. The applicant agreed, and the matter was carried to 11/1/10.

10. DISCUSSION: Annual Land Use Symposium - Mr. Rutherford advised he was acting as Co-Chair for the event and encouraged the Board Members to attend.

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:20 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary