

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES**

**September 10, 2012**

**APPROVED 10/1/12**

**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:** William Martin, Chairman  
Raymond Arroyo, Vice-Chairman  
Michael Bieri  
Robert Bicocchi  
Christopher Owens (departed 10:07 pm)  
Eric Oakes  
Matthew Ceplo (Alt #1)

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

**ABSENT:** Vernon McCoy (excused absence)  
Guy Hartman (Alt #2)(excused absence)

Michael Bieri listened to the C/D of the 8/6/12 meeting and signed a Certification. Eric Oakes and Christopher Owens listened to the C/D's of the 6/11/12 and 8/6/12 meetings and signed Certifications.

**4. MINUTES** - The **Minutes of the 7/2/12 and 8/6/12 meetings** were approved on motions made, seconded and carried.

**5. CORRESPONDENCE:**

1. Report from Brooker Engineering, dated 9/6/12 RE: Niarra;
2. Report from Brooker Engineering, dated 9/7/12 RE: Drake;
3. Memo from Burgis Associates, dated 9/4/12 RE: Niarra;

**6. VOUCHERS:** A motion to approve vouchers totaling \$6,081.25 was made by Mr. Owens, seconded by Mr. Arroyo, and carried unanimously on roll call vote.

**7. RESOLUTIONS:** None

**8. PENDING NEW BUSINESS:**

**1. Vardean - 26 Lake Street - C Variance** (Louis Raimondi Brooker Engineering recused) - Scheduled for 10/1/12 if ready;

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

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

**1. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval** - Carried to 10/1/12 with extension of time granted.

**2. Care One at Valley, 300 Old Hook Road - Variance & Site Plan Approval, Block 2001, Lots 51 and 64** - (Robert Biccocchi recused). Robert Biccocchi recused himself and stepped down from the dais. Mr. Rutherford advised for the record that Eric Oakes and Christopher Owens listened to the C/D's and signed Certifications. Therefore, they were eligible to vote. Donna Erem, Esq. appeared for a review and vote, giving a brief synopsis of the application and variances sought. Board discussion followed. It was discussed that this was an inherently beneficial use. Mr. Lydon gave an overview of the variances and proofs and explained it was a four-part test and the test had to be

balanced. The detriment would have to be pretty incredible for the inherently beneficial use to be non-ranking and to deny the application. With reasonable consideration, the Board may want to impose conditions, such as lighting. Mr. Martin commented and called for a motion, as there were no further discussions. A motion for approval was made by Mr. Owens and seconded by Mr. Bieri, with conditions such as a Developer's Agreement being entered into, and as stated on the record. There were no further questions, comments or discussions. On roll call vote, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

Mr. Bicocchi returned to the dais.

**3. Niarra, 312 Kinderkamack Road; 199 Fairview Avenue, Block 811, Lots 4 & 12 - Variance** - Carried to 10/1/12 at the request of the applicant;

**4. Van Grouw, 27 Ruckner Road - Appeal** - Mr. Rutherford advised the application had been incomplete for some time, and he issued a letter advising it may be dismissed at the next meeting. Mr. Raimondi stated he received a revised site plan and was in communication with their engineer. Mr. Rutherford advised it will be monitored. They should be notified to disregard the letter and that and the revised site plan will be reviewed.

**5. Snyder, 73 Lions Place, Variance Application** - Andrew Kohout, Esq. represented the applicant. His client is looking to convert his two car garage into habitable living space, as a treatment room for his son who has autism. Currently that is done in the family room and is not conducive. Mr. Snyder would testify as to what would happen in the room. Joseph Bruno, Licensed architect would testify as well. There is just one variance where houses are required to have a two-car garage, and they will need a variance for that. It will be justified under C1 hardship. The entire property is in the flood zone. Expanding the property is limited for that reason. They looked at going up but it is not in keeping with the neighborhood and the size is fine. This is a better zoning alternative and promotes the general welfare of the public and provides adequate light and space. Those are the positive impacts and the negative impact is there is no garage for storage. He further noted that the garage doors will remain in tact. Mr. Martin commented this is not based on a personal

hardship. Mr. Kohout concurred. The C1 hardship is the flood zone; C2 is based on promoting the general welfare of the public.

Howard Snyder, owner, was sworn in. He explained why he would be using the space as habitable living space. Mr. Snyder lived there since October of 2005. His eight-year-old son has autism and attends a special school. He receives physical therapy and speech therapy. They have a live-in therapist, who occupies the third bedroom. This will have to continue indefinitely. The family room is used for therapy and his playroom. The therapist advised using the space he has now, where he also plays, is a distraction. The amount of equipment, books and bins takes up a lot of space. This is their only child. They have had two floods in the yard and expanding the house further towards the flood area is not an option. The front section of the garage would be used for storage. They never parked in the garage. The driveway holds four cars adequately. The street is a cul-de-sac. Mr. Kohout had no further questions of Mr. Snyder.

Questions by the Board followed. Mr. Arroyo asked Mr. Raimondi if this was close to the stream and would require approval from the DEP, and the response was yes. Going up may trigger another variance. Mr. Martin questioned where the existing and new walls were. Mr. Kohout explained he started building out the garage due to a flood and there was a stop work order. That is why they were present. Mr. Martin commented they could retain one garage and be conforming with the zone. If we could accomplish your goals and comply with the zoning, they will request him to do so. There were no further questions of the witness and none from the public.

Joseph J. Bruno, Licensed NJ Architect, 29 Pascack Road, Park Ridge, NJ was sworn in, recognized and accepted. Mr. Bruno answered the Chairman's questions about the existing and proposed walls. He came to the project after it was essentially built. He delineated on the plan to the best of his ability as to what the layout was, but he came in afterwards. The plan was dated 6/22/12. The walls are finished with drywall but not painted, and the floors are not finished. Mr. Martin asked, and Mr. Bruno stated plumbing and heating is installed. There were photographs submitted. Mr. Snyder said the plumbing was inspected. He had already started doing the work as a result of Hurricane

Irene, but the drywall was not inspected. Mr. Martin was concerned about it being a safety issue. Mr. Kohout stated if the Board were to render an approval, of course his client would have this inspected.

Mr. Lydon commented the building and impervious coverages were under, and asked if consideration was given to expand upward, keeping the roof elevation where it is and allow the garage space to remain. Mr. Bruno responded he was retained to prepare drawings for approval of what was being built. Could they go up, yes, but it would have to be an elevating footprint. To build an addition on stilts would comply, but there would be a massive house built on columns open and certainly not appealing from an architectural standpoint. That would increase the mass of the house, but not be aesthetically pleasing. The goal could be accomplished without increasing the mass of the house and not having stilts. Mr. Owens asked if he was losing much room by keeping a one-car garage. Mr. Kohout thought he had a denial letter for a two-car garage. Mr. Martin commented with three bedrooms, and an occupational physical therapy room, they could maintain a one-car garage and not need a variance. Mr. Oakes suggested moving the laundry in the garage. Mr. Snyder said they looked at this and need a laundry room. He is not an expert, but the space did not work out with all the equipment. Mr. Martin asked if the applicant would consent to revert back to a two-car garage upon sale. This could be by deed restriction. Mr. Rutherford advised not to give any rights to the public, but if applicant offered that, the Board could include that in the Resolution. Mr. Kohout requested time to discuss with his client.

The Board took a recess from 9:30 pm to 9:37 pm.

Upon reconvening, Mr. Kohout stated they would agree as long as they could reapply to keep it as is. They would agree to convert to a one-car garage without the need to a variance. Mr. Martin deferred to Mr. Rutherford, who advised they would have the Resolution recorded with the Bergen County Clerk. The conversion would have to be done prior to the closing. Mr. Martin asked Mr. Lydon for the rationale behind the approval. They asked for a C1, but in C2 you can get it without hardship. The Board can approve the application with the condition offered and grant the variance under C2. There were no further questions,

comments or discussions. All were in agreement. There were no interested parties in the audience.

On discussion, Mr. Oakes felt the space could be reconfigured for a one-car garage. He was opposed to the condition. Mr. Bieri did not feel the one-car garage would be useful and serve the intent of getting a car out of the driveway. If it is undersized it would never be used, so he did not think there was a benefit. It would be disruption in the way the room was going to be used. Mr. Martin commented it could become a fourth bedroom, so the condition offered could counteract that.

A motion for approval was made by Mr. Owens based on the criteria as discussed and seconded by Mr. Bicocchi. There would be a Deed with the Resolution attached and recorded. Mr. Kohout would draft the Deed restriction. On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes. Mr. Oakes commented he voted yes with an explanation that they provided the deed restriction and there is less of an impact. Mr. Martin commented in voting yes, that we understand your situation and flooding situation in totality. There is value in having a one-car garage on a house for the value of the house. In the future, when you go to convert this back it will be a benefit to you, and hopefully your family will have progressed beyond the need for the therapy room. Mr. Kohout was permitted to draft a letter to Mr. Marini with copy to Mr. Rutherford, to expedite.

**6. Sickinger, 484 4<sup>th</sup> Avenue - Variance and Site Plan Application** - Incomplete; Carried to 10/1/12;

**7. Drake, 177 Woodland Avenue - Site Plan Approval** - Jonathan Hodosh, Licensed Architect was sworn in, qualified and accepted. He prepared a Site Plan and Architectural Drawings, both revised to 8/2/12. A dormer and portico were proposed. They are not going beyond the footprint, and on the second level, they are not going the entire size of the floor. Mr. Martin commented the basement is not calculating into the floor area ratio. A variance is not needed. Mr. Martin asked if the proposed deck could be a patio instead. It would make the yard more user friendly. The hot tub is already up on a deck. Mr. Drake said his wife has always lived in this neighborhood and has always wanted this deck. Most of the other homes have decks.

Louis Raimondi's report dated 9/7/12 was addressed. Mr. Raimondi commented the seepage pit should be moved further back away from the structure. Mr. Martin suggested if they did a patio instead of a deck, they wouldn't need a seepage pit. Mr. Arroyo noted the seepage pit would take care of any runoff from the deck. There were no further questions, and none from the public. It was noted the rooms would be made useful with the addition. Mr. Oakes asked about the deck or patio, and Mr. Martin responded the Board would vote on what is on the plan. If the applicant wanted to change it would be administrative. A motion for approval based on C1 hardship and C2 aesthetic improvement was made by Mr. Arroyo and seconded by Mr. Owens. On roll call vote, all members voted yes.

**8. KMACK North II - Site Plan Approval** - Mr. Lafferty appeared. Mr. Martin deferred to Mr. Rutherford as to issues. The applicant filed a Complaint for Prerogative Writ due to the Board's denial on 5/7/12, later memorialized by Resolution. He conferred with Mr. Lafferty as to the Board's jurisdiction to hear the KMACK North II application per legal research he had conducted regarding the Board hearing the application while the Prerogative Writ was pending. Mr. Rutherford recited the case law and indicated Mr. Lafferty may agree to a stay of the lawsuit. Mr. Lafferty stated they submitted the application and published notice, and MLUL says that once the Board accepts an application it must hear it. He also brought up the case in support of same, with dialogue. The attorneys gave legal opinions relying on case law. Once the appeal of the first application was taken, the Board no longer had jurisdiction, Mr. Rutherford advised. The issue is when there is a piece of property and the matter is before the Court, and they come back with a second application for the same property, the Board does not have jurisdiction to hear it, unless the applicant withdraws its lawsuit. He respects Mr. Lafferty's position and that he has to represent his client, but he must disagree and advise that the Board does not have jurisdiction.

Mr. Lafferty disagreed. His client would dismiss the lawsuit if the second application is granted. That is the reason they brought the second case. They understood the Board's position about the open-ended uses, but now they have two specific uses, and that is why they are back here. If the Board will hear them and grant the approval, they

will withdraw the lawsuit. They have a right to seek a review in the Law Division. Mr. Martin asked Mr. Rutherford if he felt additional research is necessary, delaying this to the October meeting. Mr. Arroyo asked about timing, and what if the Court remands KMACK I and we have two applications for the same property. Mr. Rutherford advised the distinguishing factor is there are two applications for the same property. Mr. Lafferty had recited a case where one application received two approvals. He did not want to carry. Mr. Martin stated they would carry and bar the second application. Mr. Rutherford would read the case. Mr. Martin stated the Board would like to be fair to all parties and give the Board Attorney a chance to review the cases and carry to 10/1/12. The timing would be 120 days from 8/6/12 when it was deemed complete.

**9. Metro PCS New York, 182 Center Avenue - Variance & Site Plan Approval** - Christopher Owens recused himself and departed at approximately 10:07 p.m. Mr. Oakes and Mr. Bieri listened to the C/D of the 8/6/12 meetings and signed Certifications. Gregory Meese, Esq. represented the applicant and reviewed from the prior meeting. He presented a brief history, giving an overview of their efforts leading up to this application. Exhibits 8, 9 10 11 and 12 were marked.

Christopher Olson, Airwave Solutions, Inc., Radio Frequency Engineer, was sworn in, qualified and accepted. Mr. Olson testified as to radiofrequencies. In 12/2008 a site visit to the Westwood Firehouse generated a bid to the municipality with a rejection in 2/2009. In 4/2012 there was another bid, but Metro PCS could not meet the bid specifications. Mr. Olson said it was also customized to one specific carrier.

Mr. Meese said he responded to a letter issued by Russell R. Hunting, Esq., Borough Attorney, dated 8/29/12, and was waiting to hear back. Mr. Martin asked if it were possible to work it out and go on one of the Borough monopolies. Mr. Meese explained we have been trying to work it out since 2008 and would like nothing more that not being before the Board tonight. They cannot release the bid. Only the municipality can release the bid. We are here because we are looking for a site in Westwood since 2008, Mr. Meese explained. As close as they come to the bid, it does not work out. They have found a great site but the Borough will not release the bid.

Questions by the Board of Mr. Olson followed. Mr. Arroyo asked about the bid. Mr. Meese responded they can only place it on the roof, and the bid says no penetration, but they have to penetrate.

Robert Toms, P.E., previously sworn, testified as to the firehouse bid requirements and present site. A five page set of photographs was distributed and marked, showing panel antennas covered by a faux smokestack/chimney. Mr. Martin commented he felt it did not blend and was there anything else that could be done to change the shape and make it more compatible with the architecture. Mr. Toms responded it is possible to go with a flag pole or something more square. There were no further questions of Mr. Toms.

David Karlbach, Professional Planner, of 38 E. Ridgewood Avenue, Ridgewood, NJ was sworn in qualified and accepted. He testified as to photo simulations shown as options. Exhibit A14 was a set of three photos modified by Photoshop. Design "A", was a stealth flag pole, also known as a unipole, with no flag, 26" in diameter; Design "B" was the same with a flag; and Design "C" was a stealth chimney structure, 3.5' x 3.5'. Mr. Raimondi asked how that is mounted on the roof. Mr. Toms responded it is connected at the base and bolted down. Mr. Meese directed questions to Mr. Karlbach testified he reviewed the Zoning Code. The Ordinance states this use is permitted in heavy commercial zones. This is the CBD Zone. It was mentioned the Ordinance states this use could be administratively approved by the Zoning Official. Mr. Martin asked if they were saying they do not belong here. Mr. Rutherford advised the Ordinance also calls for review by the Planning Board and conditional use variance by the Zoning Board. Mr. Meese advised they did apply to the Zoning Official. He opinion was it is a use variance. He could read the ordinance five different times and come up with five different answers. It needs to be redrafted. William Martin asked what the Board was granting a variance for. Mr. Lydon responded whatever the Zoning Officer's letter states, as well as what they noticed for. Mr. Rutherford commented a D1 variance. Mr. Meese stated they certainly submitted the necessary proofs for it. The best way to approach it is a use variance, with no substantial detriments.

Mr. Karlbach testified as to the necessary proofs and four-part test. The height is necessary to execute the use--to achieve the radiofrequency requirements or the system will not function. They investigated all sites, including the Westwood Fire Department. Their bids were rejected twice. The Bank of America building would require a 20' high flagpole structure. No other sites would serve the applicant. On balance, the four elements far outweigh any detriments. It meets all zoning requirement for administrative approval. Mr. Karlbach reviewed the attributes of the rooftops of this site vs. the firehouse - This site is 70.67' vs. 125' for the firehouse. This application complies with the separation criteria; the firehouse site does not. There is sufficient evidence to grant a D1 Use Variance, a D6 Height Variance, and Minor Site Plan approval, Mr. Karlbach concluded.

At that time, 11:20 p.m., Mr. Oakes noted it was twenty minutes past the adjournment time, and they should stop here. Mr. Meese advised he was not authorized to grant any additional time within which the Board has to make a decision. They have been looking to get onto the Board's agenda since March. Chairman Martin stated the Board needs time to deliberate and is not going to stay here another half hour. Mr. Rutherford advised the MLUL calls for a default approval. The time already expired under the Telecommunications Act, per Mr. Meese's letter, but we are not looking at that. He reviewed the Sprint case, and this is very similar. It was determined the Board did not have sufficient time to analyze the proofs and denied the application. On appeal, the court found there was not enough time to analyze the proofs. While default approval can be granted, it is not favored. They did not find any wrongful conduct. Board set aside denial absent an extension of time by the applicant. He would not deny the matter, but the Board indicated it needed time to deliberate. Understanding Mr. Meese and his client certainly have the right to take action, he would recommend the Board dismiss the matter without prejudice. The Board is not in the position to make a decision on the merits.

Mr. Meese advised he did not have any authority to allow an extension. Mr. Rutherford asked if all their testimony was in. Mr. Meese advised all of their testimony was in. The time expired in August. He extended it until tonight. Mr. Martin called for a motion, unless Board Members wanted to deliberate and needed more time. Mr.

Arroyo commented we received additional information tonight, and we need time to deliberate. Mr. Rutherford asked if a special meeting prior to the regular 10/1/12 meeting would resolve any issues. Mr. Martin stated we have no time for a notice. Mr. Rutherford advised we could do a special 48-hour notice. Mr. Meese advised he is not authorized to accept that, but if the Board can schedule them before 10/1/12, he would explain this to his client. Mr. Meese also agreed with the 48-hour notice. Mr. Arroyo noted there were only three weeks prior to the next meeting on 10/1/12. The Board talked about a dismissal without prejudice. Mr. Oakes so moved to dismiss, but there was no second to the motion.

Mr. Meese asked about holding a special meeting on Tuesday, 10/25/12. That date was agreed upon, and all were in favor. The matter was carried to 10/25/12. The two absent members this evening would have to listen to the tape to be able to vote.

**10. DISCUSSION:** None

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

**Respectfully submitted,**

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