

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
MINUTES
July 20, 2015**

APPROVED 8/3/15

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 **SPECIAL Meeting** of the Westwood Zoning Board of Adjustment.

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
Eric Oakes, Vice Chairman
Guy Hartman
Matthew Ceplo
Marc Truscio
H. Wayne Harper
Cynthia Waneck (Alt #1)
Michael Klein (Alt #2)

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

ABSENT: George James (excused absence)

4. MINUTES: None

5. CORRESPONDENCE:

1. Report of Kathryn Gregory, dated 7/13/15 RE: Westgate/Madison Realty;

6. VOUCHERS: None

7. **RESOLUTIONS:** None
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. **West Gate, Madison/Irvington, Block 806, Lots 2 & 4 - Amended Site Plan** - John J. Lamb, Esq. represented the applicant. Carmine R. Alampi Esq. represented VRS 40 Kinderkamack, LLC and Vanick Properties, LLC, of which principals were present. Mr. Lamb requested to voir dire the representatives as to standing. Mr. Alampi reiterated the names. Mr. Alampi stated he participated in a lengthy hearing with an ongoing interest in 40 Kinderkamack Road, wherein VRS was a contract purchaser. Mr. Lamb stated he received a letter in May from Mr. Alampi that the contract was terminated. Mr. Rutherford asked about Vanick Properties, and what property they own. Mr. Martin asked if this process is necessary to establish standing by interested parties. Mr. Rutherford advised yes, per the MLUL, the definition of interested parties is very broad as to interested parties being able to participate in an application, and it is pretty easy to establish standing. Mr. Lamb could be given the right to ask a few questions to satisfy himself or make legal argument.

Vanick Properties was first. Nicholas Aynilian, residing in Ridgewood, owner of 1 Westwood Avenue, Westwood, was sworn in. Mr. Aynilian testified he is involved in real estate holdings and leases in a number of other properties. Mr. Lamb asked if that entity has ownership in Westwood. Mr. Aynilian responded yes, at 1 Westwood Avenue. Mr. Lamb continued his questioning as to Westwood Hills and Westwood Shopping Center. He owns 100% interest in Vanick Properties. Mr. Lamb asked what property interest was affected by this application. Mr. Alampi objected, stating the questions are far in excess of what is required to establish standing in NJ. Mr. Lamb said the MLUL talks about property interest so he is asking what property interest is affected. Mr. Aynilian responded 1 Westwood Avenue. He feels he is affected by it. Mr. Lamb continued. Mr. Martin asked Mr. Rutherford if there is enough to establish standing. Mr. Rutherford advised Mr. Lamb should be given an opportunity, but not go to motivation,

etc., as it is not in the statute. Mr. Alampi commented Mr. Lamb has probed beyond what he has ever seen in such a situation. Mr. Martin instructed on the manner of the questions and answers. Who is the Managing Member of the 1 Westwood Avenue, LLC, Mr. Lamb inquired. Mr. Aynilian responded he is. Mr. Lamb asked if he has a percentage interest. He does not due to estate planning. Mr. Lamb asked if he declared bankruptcy. Mr. Alampi objected, stating this is an outrage. Mr. Rutherford agreed. Mr. Martin declared this a legal manner and asked Mr. Rutherford how we can proceed in an orderly fashion. Mr. Lamb asked if he was involved in the funding of the objection. Mr. Oakes asked if this should be settled outside the Special Meeting. Mr. Martin said we need to address this, since the issue of standing directly relates to the participation. Based on the factual record and law, this is a Board decision. Mr. Martin asked how to proceed in an orderly fashion. Mr. Rutherford advised a factual record needs to be made, and the Board needs to make a decision. Mr. Lamb stated he had only one question, to provide a copy of the Lease between Vanick Properties and 1 Westwood Avenue, LLC and the Board to issue a subpoena. Mr. Alampi said he does not need a subpoena; he will submit it. Mr. Rutherford advised they could submit a redacted lease, and it was helpful that he is providing the lease. The questioning can happen during the normal cross-examination. That witness was completed. Mr. Aynilian stated for the record he is not here personally, and he takes the bankruptcy comment as insulting.

VRS 40 Kinderkamack, LLC. Rich Steier, residing in Closter, NJ was sworn in next. Mr. Lamb asked if his contract for 40 Kinderkamack Rd was terminated, and he indicated yes, and then if he has any property that VRS owns in Westwood, and the response was no. Mr. Alampi questioned Mr. Steier. He is directly involved in self-storage areas in his business. Mr. Lamb asked where the facility is, and the response was North Bergen. What interest does he own, he asked. The response was approximately 50%. The entity is SS Storage. He is here for his interest in the facility.

Mr. Lamb stated VRS does not own property in Westwood and has a storage facility in North Bergen. They are not a contract purchaser in Westwood—the contract was terminated. VRS does not have any interest. Mr. Lamb asked if there was a tenancy of 3,600 sf by Vanick Properties. He would like to see the lease. The law states they have to show how the tenancy is affected. Therefore, he is going to object to the

standing of Vanick Properties, but request Mr. Alampi be permitted to participate until he sees the lease based on the proffer he has a lease and sees how it is affected. VRS does not have standing.

Mr. Alampi stated VRS does have standing. It was a contract purchaser and has a right to give an opinion on a development. The statute states "may be affected". A case was cited surrounding two different districts, and standing can cover how an interested party is affected by community.

Mr. Rutherford advised it appears Mr. Lamb wants to proceed and reserve his rights to establishing standing pending his review of the lease. Mr. Rutherford advised this needs to be resolved early on, and he would like to review the case laws that Mr. Alampi and Mr. Lamb presented. He recommends this would be a prudent way to proceed with legal memorandum from counsel, and he would advise the Board at the next meeting. Mr. Martin clarified we would proceed and hold the standing issue in abeyance pending the review of the lease and cases and memos. The Board would vote on whether either party has standing. We should proceed since it is a special meeting and would be a good use of time. Mr. Lamb said he would like to get a transcript of the HUMC application before the Planning Board that Mr. Steier appeared at.

Mr. Alampi stated Mr. Lamb did not file a stand-alone, free form of application, but rather sent a letter suggesting that the application stand in for a formal form. He is not sure if this is permissible. This is not just a minor tweak, like changing something 3-4 inches. There was no application filed utilizing the proper forms. He will give Mr. Lamb an opportunity to speak to this. Mr. Alampi said Mr. Lamb provided plans on July 8, but they were stamped as received on July 13, which is not the prescribed 10 days for the materials to be on file. It does say hand delivery, but he only knows it is received on Monday the 13th. Mr. Martin asked if there are any other issues. Mr. Alampi has an issue on notice. Mr. Martin commented his understanding is it is an amendment of a previous approval. Mr. Rutherford raised two issues--one is a lack of an application being a jurisdictional use. He finds it is not a jurisdictional issue, and proceeding without that does not prejudice the Board in any way. The second question deals with the July 13th receipt. That is an issue, because there was a submission on June 23rd. We should hear from Mr. Lamb as to the July 8th submission. Mr. Lamb said he was on vacation, and an

associate delivered it. He can address it, but certainly we can proceed with all other documents. Mr. Rutherford questioned the fact that the letter says hand delivered on July 8th but the receipt is stamped July 13th. Mr. Martin stated if they presumed it was received on July 8th, and it was not, the Board could be in error. Mr. Martin asked if he has a transmittal from someone in the Borough. He did not. Mr. Waneck asked if the stamp can affect the days when the public can view the documents. Mr. Martin said his understanding is they stamp things in as they receive them, and he wants to make sure they follow the statute. Mr. Lamb asked Ms. Gregory when she received the plans. She submitted report on July 13th, so she did receive the plans in advance, but she does not know the exact date. Mr. Raimondi's report is also dated July 13th. Mr. Alampi received the self-storage set of plans before the 13th. Mr. Martin commented we are receiving information in different stages, so how do we figure out the 10 days--should we err on the side of caution. Mr. Rutherford states the MLUL states all plans and applications are to be received 10 days in advance, but the stamp states the 13th, so how do we proceed. Mr. Rutherford stated it is not factual that the plans were in 10 days in advance. Can Mr. Lamb affirm as officer of the Court, Mr. Martin asked. Mr. Alampi stated he is not doubting Mr. Lamb's word, but there is no proof it was received prior to July 13th.

Mr. Rutherford advised, as a practical point of view, the bulk of the application was filed 10 days before. Part of it may or may not have been received 10 days in advance. We do not know. We are not going to finish tonight, and Mr. Alampi was given opportunity to have additional time if needed. Mr. Alampi asked to have the exhibit marked Exhibit 01. Mr. Martin asked if the Board should vote. Mr. Rutherford said it is not necessary. We have all the facts and circumstances. Mr. Martin asked the Board. Mr. Oakes commented we could proceed with respect to the applicant, but we still have one more objection as to notice. Ms. Waneck asked why the additional correspondence that was received on the 13th was not listed on the agenda. The question would be asked of the administrative assistant in the Building Department.

Mr. Alampi brought up the issue of notice. The notice is quite lengthy, but misleading. The objection is with respect to the parking variances and parking. Somewhere in the middle it talks about narrow spaces, and additional residential units. He reviewed the application from last

summer, and some of the parking spaces are tandem. In the multiple dwelling portion of the application, it shows seven tandem spaces. He went through the ordinance, and it states all parking spaces must be constructed with no obstructions. There are really only 21 parking spaces. Last year's Resolution makes no mention of tandem parking. Given the gross deficiency in parking, he is objecting. There are a couple of other typo errors in the lot numbers, Mr. Alampi added.

Mr. Lamb stated in the Resolution it states 28 parking spaces. The Board approved 14 parking spaces with seven sets of tandem spaces. Mr. Lamb also advised his associate emailed that he delivered everything on July 8th. Mr. Rutherford advised the notice appraises members of the public of the matters to be considered, and this notice does that. The term tandem may be lost on the layperson. He advised the Board may proceed. Mr. Lamb stated when it is an amendment, a full application is not necessary. There were no further objections.

The Board took a recess from 9:15 - 9:25 pm

Mr. Lamb opened with a brief overview. After approval, there were environmental conditions that did not permit the use in a practical manner. They had to find a way to still do the project and keep within the same confines as what was approved.

Bruce Meisel, 263 Center Avenue, Westwood, was sworn in and gave an overview of this necessity due to environmental conditions that were discovered, i.e., site contamination, restricting the size of the lower level of the self-storage. The DEP requires the previous industrial fill to be removed. The cost became astronomical, and the project became uneconomical. However, he feels this project is very important for Westwood. They looked at it in the framework of the environmental issue. As an amended project this is far better than the original application. They eliminated the basement under the space except for the self-storage area. They decreased the setback by 10'. They are still over-parked as they were before, and their parking people will testify. As for the mixed-use building, the garage will now be for the apartments only and two employees in the commercial store. When they modeled the building, they were too close to the self-storage facility. They shifted the residential floors above the storage area 5' to improve the light and air. The mixed-use is a costly project, and the architect straightened

the lines out by the railroad tracks, and they were able to get one more apartment per floor. They have not only preserved the aesthetics, but enhanced them as well. In conclusion, they started out with a very difficult project, experienced environmental issues, solved their projects and improved the project. They took over the environmental work from the seller, with a credit, but that is nowhere near the cost.

Mr. Alampi questioned Mr. Meisel. He does not presently own the property. He is still a contract purchaser. Mr. Alampi did not see a signed authorization by the owner. Mr. Lamb responded the owner initially signed an authorization. Mr. Alampi said in his experience, the owner must execute an authorization each time. The Owner's Consent was reviewed and marked. Mr. Rutherford never had an occasion where the owners signed off on every amendment. Mr. Alampi stated this is after the Resolution. He thinks they are treating this amendment too lightly. This is an entire demolition of the site and significant changes to the plan. He has many questions. Mr. Lamb commented the owner did let them knock down all the buildings and take over for the clean-up. Mr. Martin expressed concern they do not have all their ducks in a row, and this is a procedural issue. Should we proceed with these issues, the Chairman asked. Mr. Rutherford said the only outstanding issue is standing. Also, it was discussed the plans may not have been received 10 days in advance.

Chairman Martin expressed concern there were several jurisdictional issues that should be cleaned up before proceeding. Mr. Rutherford asked if they should conclude this evening at 10:00 p.m. and what is Mr. Alampi's request--will he call for a dismissal. Mr. Alampi said he was not interested in wiping out the two hours on the record. Mr. Lamb believes he submitted the proper consent, backed up by Mr. Meisel's testimony. He thinks we should proceed, and Mr. Meisel can cross-examine Mr. Meisel. Mr. Rutherford advised Mr. Alampi wants questioning of Mr. Meisel as to contractual relationship. Mr. Lamb said he is getting an owner's consent re-dated, between now and the next meeting. Mr. Martin asked Mr. Alampi to proceed with his questions.

Mr. Alampi questioned Mr. Meisel. Mr. Alampi requested environmental reports. Mr. Lamb objected, and he does not have environmental witnesses. Mr. Alampi advised that the application refers to extensive environmental issues that require them to amend the plan, and they state this is a

fundamental reason. Mr. Rutherford commented he takes Mr. Meisel's testimony as being factual. In this case the amended site plan should not be granted based on environmental issues or costs. The conditions that caused them to come here do not validate an approval. Mr. Alampi asked for the basis of the application and noted their attorney has pages and pages of environmental issues causing them to come back to the Board. The letter memorandum that substituted for an application form, along with the testimony, brought upon these questions. Mr. Alampi was asked by the Chairman to move on with his questioning. Mr. Meisel gave details of the changes and why they were before the Zoning Board. Mr. Alampi asked besides excavating why are you coming back and feel it is a better utilization. It is a balance between design and cost Mr. Meisel responded. Mr. Alampi continued. Mr. Lamb objected, stating Mr. Meisel can only answer questions he has knowledge on. Mr. Alampi explained he is trying to get to the reason why they are excavating the full lower level. Mr. Meisel said he thinks the design is better. He is not an engineer or environmental expert. The engineer can answer Mr. Alampi's questions. Mr. Alampi would ask for Mr. Meisel to be on recall.

Mr. Martin asked about the basement and the property line. It allows them to have a clean lot line, Mr. Meisel explained. Mr. Martin will also ask the engineer. We no longer have a basement that extends over to another lot. Mr. Meisel said that was correct. Mr. Lamb advised the complication noted in the Resolution is now eliminated with this amendment and keeps the lots separate. Mr. Martin asked if any Board Members had questions, but they would hear more from the engineer. Mr. Lamb distributed A2 the prior Resolution. Also the Permit Extension Act covers this Resolution. Ms. Waneck asked if we are to decide if the changes have a positive effect vs. negative effect, do we take the environmental issues into consideration. Mr. Rutherford advised it has nothing to do with environmental issues. There are a number of variances for the Board to determine. Mr. Ceplo asked if the Board is to review this as a minor or major application or because of the DEP. Mr. Rutherford advised there could have been a number of other issues dealing with design; the applicant has the right to bring an amended application. The cost is irrelevant to the Board. The Board cannot base its opinion on costs or environmental issues. We heard background on why they are here, and that's as far as we take it. We review the variances under "C" and "D" of the MLUL. So is it basically like a new

application Mr. Ceplo asked. It is just changes to the site plan, Mr. Rutherford advised. Mr. Martin commented it is not a new application because the use variance was granted last time. Mr. Alampi disagreed with the distinction of what is being said. The basis of the use variance was based on the set of circumstances in place at the time. Now it has changed significantly. Mr. Martin responded they will take everything into consideration. Mr. Meisel was concluded.

The next witness was Kevin Webb, NJ Licensed Civil Engineer since 1977, of Lawrenceville, NJ. He was qualified and accepted. He prepared the site plan and the amended site plan. Mr. Alampi had no questions about his qualifications. Mr. Lamb questioned Mr. Webb on his plan, which was marked Exhibit A3. A4 is a composite of A3 the site plan, dated 7/20/15. Mr. Webb described the changes to the self-storage facility. They are now proposing a four-story building vs. three, but the square footage is the same. The area of the basement that protruded beyond the lot proposed many complications and removal of that space affords them to use the building in a more beneficial and efficient way. It is limited to the size of the facility. The setback for the top floor is now 10' vs. 4'. He described the variances which have been reduced. Parking was reviewed. Mr. Webb described the changes to the mixed-use building. There were a total of 16 apartment units vs. 13, and 28 spaces. He described the effect of the changes on the variances previously approved. The matter was completed for the evening at 11:00 p.m.

Mr. Lamb requested a special meeting. Chairman Martin suggested various dates, but it did not work out in August. **The matter was carried to the 8/3/15 meeting.**

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:00 p.m.

Respectfully submitted,

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