

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
MINUTES
January 30, 2012**

APPROVED 3/4/12

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 Special 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
Christopher Owens
Eric Oakes
Michael Bieri
Vernon McCoy (arrived 8:05 pm)
Robert Bicocchi
Matthew Ceplo (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Kathryn Gregory, appeared on behalf of
Steve Lydon, Burgis Associates,
Board Planner

ABSENT: Guy Hartman (Alt #1)

- 4. MINUTES** - None
- 5. CORRESPONDENCE:** None
- 6. VOUCHERS:** None
- 7. RESOLUTIONS:** None
- 8. PENDING NEW BUSINESS:** None

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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 North, 39 Kinderkamack Road, Block 1805, Lot 39-Variance & Site Plan Approval - Kathryn Gregory, Substitute Board Planner, was present for this application.

2. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval - Kathryn Gregory, Substitute Board Planner, was present for this application.

David Lafferty represented the applicant in a continued application, thanking the Board for the special session. They began with the Kmack North site in November, took testimony of their architect and engineer, and listened to comments of Board and professionals. As a result, they made revisions to the North plan and would present the Kmack South application as well.

Per Mr. Rutherford, they are providing a synopsis of the changes. They are shifting the building over to have ingress and egress. The overhaul height has been reduced 2-1/2'. They have drawings of the basement and show private parking for the owner or employees of the building. They are providing at least nine spaces for employee parking and overall increased it by eight spaces.

The architect, Scott F. Lurie, continued under oath, having been previously sworn. The revised architectural drawings were marked Exhibit 7, Drawings 01-05, revised to 1/17/12. They shifted the building to the South, and the only additional areas are the stairwell on the South and North sides, which would be secondary exits to the parking area. There are nine spaces allocated. There is no other exit, and it is for owner's storage and parking. They reduced some of the mass in the back. As for height, there is a 3' parapet around the building, so the height of the roof is 15'. The height has been reduced, and the building is lowered. A colored rendering of the plan was marked Exhibit A8. It was made from the elevations. Mr. Lurie stated the height still requires a variance because of the rear section.

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Questions of Mr. Lurie followed. Mr. Raimondi questioned Mr. Lurie about the labeling of the elevations, which were shown in reverse and had to be corrected. Mr. Lurie agreed. It was the same for North and South plans and would be amended. Mr. Raimondi rendered a new report dated 1/27/12 regarding Kmack North. There will be a doorway at street level to go down to the garage. Mr. Raimondi requested the elevations on Sheets 4 of 5.

Mr. Oakes questioned the signage sizes and measurements. Mr. Lurie would include the measurements and stated it will conform. Mr. Arroyo asked about the type of brick, and it would be a standard 4" brick. Mr. Martin expressed concern about the basement parking. There seems to be space for more than nine parking spaces, and he expressed concern about storage in between the vehicles. Mr. Lurie said they tried to provide a safe parking environment. Mr. Lafferty advised they would accept a condition that the basement would be for parking for tenants, and owner (owner's classic car collection), and storage only for owner. Mr. Martin asked if the storage was counted in the space calculations, and they responded it was. There were no further questions of Mr. Lurie.

The next witness was Richard J. Adelsohn, PE, applicant's engineer, previously sworn and qualified. He prepared a revised site plan and related drawings for the North side, Sheets 1-9, bearing a revision date of 1/20/12. The entire plan was marked A9. He gave an overview of the changes. This was for 39 Kinderkamack Road, Kmack North. They shifted the building, and there are stair towers on each end. They now require 43.3 parking spaces. They have 37 spaces. The handicapped parking was moved toward the center. The Grading Plan shows pretty much the same, running South. Mr. Adelsohn displaced A10, a colored version of the Landscaping Plan, still showing trees along Kinderkamack Road, pending what they hear from the County. There is more room for landscaping along Crest. The fencing material will be board-on-board. The staircase along the East side of the building will be removed.

Mr. Lafferty set forth the variances, besides the use, for which their planner would testify. The variances are required as follows: Front yard setback, reduced from original, side yard setback, rear yard setback, height, impervious coverage, parking setbacks, and parking stall sizes.

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Questions of Mr. Adelson followed. Regarding lighting, Mr. Oakes questioned the height of the lamps. Mr. Martin suggested he review the Master Plan Design Standards to make sure they install the correct fixtures at the right height. They could also contact the Parking Authority. Mr. Oakes asked about the sign, and whether any consideration was given to ground signs. Mr. Adelson said they were seeking a pile-on sign. Mr. Arroyo asked if they had two handicapped, ADA compliant parking spaces, and he responded they do.

Kathryn Gregory inquired about the roof. Mr. Adelson said the back roof did not change. They would have to clarify the height measurements. Mr. Raimondi commented that is why the numerical values of the elevations are important. Mr. Raimondi had technical questions about utility hookups being shown accurately on the drawings, which Mr. Adelson said they would like to address that as a condition. Also, turning out should be tangent not a sharp edge. Mr. Raimondi had a question about the width calculations of the lot, which was answered. The witness reviewed Mr. Raimondi's report and indicated there was nothing they could not comply with. Mr. Owens asked about the numerous openings and doors, and that inquiry was deferred to the architect. Ms. Gregory prepared a Planning Memo revised to 1/30/12.

Mr. Martin addressed the landscaping and trees. Mr. Adelson said they could trim the trees. Mr. Martin felt they would block the pile-on sign, and it would probably not be accepted by the County. Mr. Raimondi agreed. There were no variances associated with the pile-on sign. Mr. Martin commented a different landscaping configuration may work better, and he asked if there were any concerns about fire safety. He recommended the plans be circulated among the various Borough departments and committees for comments back to the Board. Lastly they removed steps but would leave them in, per the Board. There were no further questions of applicant's engineer.

Applicant's next witness was Hal Simoff, PE, Licensed, NJ Engineer, Traffic Engineering, who was sworn in, qualified and accepted. They conducted traffic counts on Kinderkamack, at Crest and Lester and evaluated same. The Saturday peak hour is the highest peak hour, and he measured northbound 979 and southbound 884. He used 11,000 sq. ft. gross lease area. The level of service goes from 32.3 to 32.9, and the average delay

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per vehicle is 15 cars per hour coming out of Crest. Coming out of the site he projected 25 cars. Based on those two ratios, what you have now is what you will have in the future, Mr. Simoff said. The design of the driveway will be per Bergen County's criteria. The position of the two driveways provides there is no dead-end parking, and the parking below will be assigned to the merchants. They require 32-33 spaces. This is a moderate traffic generator and is probably on par with the Chevrolet dealer, mostly all new traffic, where the retail would draw about 40% from cars passing by. He will give a written report, and the final word for jurisdiction of the design of the driveway is with Bergen County.

Questions of Mr. Simoff followed. Mr. McKoy asked if the trip numbers would change in the summer months. Per the ITE, the January numbers were off a small amount, and may change, but in a very minor way. Mr. Oakes asked if there were any bus stops that would interfere with the line of sight. Crest is a level of service D. Mr. Martin commented about the flow of traffic across the site and asked if it was envisioned that there would be a left turn onto Kinderkamack Road. The response was yes. He asked what happens if two cars, directly across from each other on opposite sides of Kinderkamack are both making a left, as there is a conflict, and asked how would that get addressed. Mr. Simoff responded they would have to wait for each other and a gap in traffic. Perhaps a left turn could be prohibited coming out of this project, Mr. Martin and Mr. Raimondi suggested. Mr. Raimondi further suggesting aligning the driveway with Crest. This would alleviate that conflict. Also, Mr. Oakes noted there might be an additional problem when there are events at the nearby Knights of Columbus. Perhaps it could be made safer by making simple changes, Mr. Martin commented. Mr. Simoff will send left turn traffic to Crest and give the calculations. It was noted there is a cul-de-sac at Crest for emergency vehicles. There were no further questions. There were no further questions of the witness.

The Board took a recess from 9:40-9:50 p.m.

Mia Petrou, Fair Lawn, NJ was sworn in, qualified and accepted as a NJ Licensed Professional Planner. Ms. Petrou was familiar with the site and the surrounding properties, prepared a photo exhibit and an aerial photo and reviewed the Master Plan. She described the photos, depicting the subject property

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and the properties across the road. The aerial photo shows the property in the LB-3 Zone. The applicant is intending to demolish the current structure and proposes to build a retail building. The applicable zoning is a limited business commercial zone, which permits a variety of uses, she stated, naming them. However, general retail sales as proposed by this application is not permitted, therefore they are seeking a D1 variance. Ms. Petrou recited the variances required for setbacks, coverage and parking. One of the standards of criteria is special reasons. They are taking a former car dealership use in this economy and proposing a retail use. Many car dealerships are located on the highway. This will not compete with the Central Business District, over a half of a mile away. This proposed facility will serve the immediately surrounding community. It supports the Master Plan.

Ms. Petrou continued. A "D" variance is required for height. All elevations comply except the western elevation, due to the topographical aspects of the building. Being in the rear yard, the applicant is making the best of the situation and providing parking below the building. She explained C1 and C2 variances. Relative to the front yard setback, it would be a both C1 and C2. They are providing setbacks along Crest, which allows a reasonably sized building while still providing a setback. The side yard setback is C2 and is due to the building being pushed back to provide a setback on Crest. She continued with parking setbacks and then provided the positive and negative criteria. This is a private redevelopment of a vacant site. The project actually reduces the building on the site by 30%. This application promotes several advancements of the MLUL.

Mr. Lafferty noted the pile-on sign does require a variance for both height and area. Ms. Petrou reviewed the proposal and the ordinance and provided the criteria. Questions of the witness followed. Mr. Arroyo asked about the application for both properties, and Ms. Petrou stated each property has to stand on its own. Mr. Arroyo noted general retail use was not a recommendation for this zone, per the Master Plan. He asked how that can be reconciled, given the Master Plan Re-examination was completed in December. Ms. Petrou stated they are so far from the CBD zone, and the Master Plan even talked about this zone being far removed from the other zones. A general retail use could still be promoted to provide community services for the area. He asked if they approached the Planning Board to include

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this use in the zone plan. Mr. Lafferty advised they approached the Mayor and Council and Planning Board, and were not met with negativity. They had to procure both properties, or the owner would not have entertained their offer. Ms. Petrou stated the Master Plan talks about other uses, and also noted there is a retail strip mall across the street in neighboring Emerson. Also, people are going to the CBD for a specific reason. Mr. Owens commented we are getting five non-permitted uses, as opposed to the one use going in. Mr. Lafferty advised there is case law on this; it is considered one use--it is general retail.

Ms. Gregory asked for justification for the pile-on sign. Ms. Petrou stated they would be revisiting aspects of the sign, but it is important for identification of the tenants' businesses. The height and area are being revisited. They are not withdrawing, but will present a proposal to the Board. Mr. Martin commented the sign for Trader Joe's was something that was suggested. Mr. Oakes noted they should check the ordinance for the size of lettering. Mr. Martin stated there was a list of uses created for the LB3 zone, but general retail and convenience stores was not included. He asked, and she did not know why it was not included, except that it was near the CBD zone. Mr. Martin stated only certain retail uses were permitted, and is there any way the applicant could comply with the uses permitted. Ms. Petrou responded, in looking at uses in general, it is the same type of use. You just have to look at what is being sold. Many of those uses are no longer locating in these areas. They are looking to redevelop the site, and in order to do so, general retail is included. Mr. Martin asked applicant would consider a use on the list of permitted uses. Applicant responded if they do not have these general retail uses, they are not economically viable properties.

Mr. Martin asked Mr. Rutherford if his being Chairman and a Planning Board member during the re-examination process had any impacts on his voting on the application, and what should be done if anything. Mr. Rutherford advised he did not see any issues, but if it would be part of his decision-making process, he should set it forth on the record. Mr. Martin said it goes beyond the text, as there were discussions at the Planning Board as to permitting a broader range of retail uses in the LB3 Zone, and the Master Plan did not include those uses. Mr. Martin asked Mr. Lafferty if he felt there was a conflict. Mr.

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Lafferty felt the 2011 Re-examination was not adopted by the Mayor and Council yet. They are seeking a use variance; they are not here for the Board to approve their proposal over another. The reality is the state of economy dictates what retail uses survive over others, and the Master Plan mentions this. They feel the criteria exists here to grant those variances. Mr. Martin said the difficulty he is having is with Ms. Petrou's testimony in trying to reconcile the uses. He likes to keep an open mind, and noted the Mayor and Council is now in the process of reviewing the Master Plan Re-examination this month.

Nicholas Aynilian, owner and applicant, was sworn in. He testified they met informally with the Borough and the Borough Planner, who is recused because they have other business dealings with them. He noted the Borough Planner felt it was economically viable, and they should present something they proposed. Mr. Aynilian stated if they do not get general retail use, they will not be able to develop this property. In reality, you cannot run a small appliance store or a PC Richards. Already you have a hair salon, a dry cleaners, and if not general retail, he cannot get started and it will be a failed project. The owners of the car dealership never believed their business would go by the wayside. He believes the Borough is very interested in getting something really nice done for the Borough and the border. He does not believe Kinderkamack Road has anything to do with the CBD zone, except maybe for five corners. It has a great mix of tenants, and he loves what is going on in the town. Kinderkamack Road is not the CBD Zone, and the site will pick up completely different customers.

Ms. Petrou followed up on the Maser Plan. In light of the current economic conditions, a new look has to be taken for this property. She would hope that the Board, in light of the testimony, would look favorably on the application. Mr. Martin commented the economic realities are not something the Board can consider. He is still having difficulty with reconciling what is not recommended in the Master Plan for this site, and perhaps additional information can be provided by Ms. Petrou, especially since it was so recent.

With respect to the owner's testimony, Mr. Rutherford advised that what the Borough Planner thinks about the project has no relevance on this application. There will be no discussions with Mr. Lydon on this application and Ms. Gregory

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is here for this application. The Board will have to decide whether the use can be reconciled with the intent and purpose of the Master Plan. Mr. Aynilian commented he stated that because he felt there was an overall desire to develop the property. Mr. Rutherford said this Board has a role to play, and the Planning Board and Mayor and Council have primary roles.

Mr. Martin requested the Board Planner, as well as Ms. Petrou, take another look at the Master Plan. The plans for North and South will be circulated to the Borough Departments for comments back to the Board in two to three weeks. Mr. Lurie commented about the general flexibility in retail, and there are five spaces available. A business with one use may take more than one space.

The matter was carried to the 2/6/12 meeting for the scheduling a special meeting. Ms. Gregory noted she was not available on that date.

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