

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REORGANIZATION/REGULAR MEETING  
MINUTES  
January 6, 2014**

**APPROVED 3/3/14**

**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 Reorganization and Regular 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  
Christopher Owens, Vice Chairman  
Vernon McKoy  
Matthew Ceplo  
Eric Oakes  
Guy Hartman  
Chris Montana  
H. Wayne Harper (Alt #1)  
Marc Truscio (Alt #2)

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

**ABSENT:** None

**REORGANIZATION MEETING**

**SWEARING IN OF MEMBERS:**

**Chris Montana** Regular Member, 4 Yr. Term, Expiring  
12/31/17

**Guy Hartman** Regular Member, 4 Yr. Term  
Expiring 12/31/17

**H. Wayne Harper** Alternate Member #1, Unexpired Term  
Expiring 12/31/14

**Marc Truscio** Alternate Member #2, Term Expiring  
12/31/15

**NOMINATIONS FOR CHAIRMAN OF THE ZONING BOARD:**

David Rutherford, Esq. called for nominations for the position of Chairman of the Zoning Board.

Upon nomination by Mr. Oakes, seconded by Mr. Owens, with no further nominations, **William Martin was nominated as Chairman of the Zoning Board.**

Upon motion of Mr. Oakes, seconded by Mr. Owens, all ayes, the Board closed the nominations for Chairman. On roll call vote, all members voted yes.

**NOMINATIONS FOR VICE-CHAIRMAN OF THE ZONING BOARD:**

Chairman William Martin requested a nomination for the election of a Vice-Chairman:

Upon nomination by Mr. Oakes, seconded by Mr. Montana, with no further nominations, **Christopher Owens was nominated as Vice-Chairman of the Zoning Board.**

Upon motion of Mr. Oakes, seconded by Mr. Montana, all ayes, the Board closed the nominations for Vice-Chairman. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF ATTORNEY FOR THE ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of an Attorney:

Upon nomination by Mr. Owens, seconded by Mr. McKoy, with no further nominations, **David Rutherford, Esq. was nominated to continue as Attorney for the Zoning Board.**

(ZB 1/6/14 Reorganization Minutes)

Upon motion of Mr. Owens, seconded by Mr. McKoy, the Board closed the nominations for Attorney for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF PROFESSIONAL ENGINEER FOR ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of Professional Engineer for the Zoning Board:

Upon motion of Mr. Hartman, seconded by Mr. Owens, with no further nominations, **Louis Raimondi of Brooker Engineering**, was nominated to continue as Professional Engineer for the Zoning Board.

Upon motion of Mr. Hartman, seconded by Mr. Owens, the Board closed the nominations for Professional Engineer for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF PROFESSIONAL PLANNER FOR THE ZONING BOARD:**

Chairman Martin requested a nomination for the appointment of a Planner:

Upon motion of Mr. Owens, seconded by Mr. Oakes, with no further nominations, **Steve Lydon, Burgis Associates**, was nominated to continue as Professional Planner for the Zoning Board.

Upon motion of Mr. Owens, seconded by Mr. Oakes, the Board closed the nominations for Professional Planner, for the Zoning Board. On roll call vote, all members voted yes.

**NOMINATIONS FOR APPOINTMENT OF RECORDING SECRETARY:**

Chairman Martin requested a nomination for the appointment of a Recording Secretary:

Upon motion of Mr. Owens, seconded by Mr. Oakes, with no further nominations, **Mary R. Verducci** was nominated to continue as Recording Secretary for the Zoning Board.

Upon motion of Mr. Owens, seconded by Mr. Oakes, all ayes, the Board closed the nominations for Recording Secretary for the Zoning Board. On roll call vote, all members voted yes.

**ADOPTION OF 2014 MEETING DATES:**

(ZB 1/6/14 Reorganization Minutes)

Upon motion of Mr. Owens, seconded by Mr. Hartman, all ayes on roll call vote, the Board adopted the 2014 Meeting Dates for the Zoning Board as attached. The dates would be forwarded to the Borough Clerk for publication.

**ADOPTION OF PROCEDURAL RULES & BY-LAWS** - Carried to the 2/4/14 meeting to permit Board Members to review the document, upon motion of Mr. Owens, seconded by Mr. Hartman, and carried unanimously on roll call vote.

**ADOPTION OF THE ANNUAL REPORT OF THE ZONING BOARD FOR 2013** Carried to the 2/4/14 meeting to permit Board Members to review the document, upon motion of Mr. Owens, seconded by Mr. Hartman, and carried unanimously on roll call vote.

**REGULAR MEETING**

**4. MINUTES** - The Minutes of the **12/2/13 Open & Closed Sessions** were approved on motions made by Christopher Owens, seconded by Eric Oakes, and carried unanimously on roll call vote.

**5. CORRESPONDENCE:** None

**6. VOUCHERS:** A motion to approve vouchers totaling **\$8,305.50** was made by Eric Oakes, seconded by Christopher Owens, and carried unanimously on roll call vote.

**7. RESOLUTIONS:**

**1. A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance** - Board Attorney Rutherford read the **Resolution of Approval** into the record. A motion for approval was made by Eric Oakes and seconded by Vernon McKoy. There were no further questions, comments or discussions. On roll call vote, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

**8. PENDING NEW BUSINESS:**

**1. Schaneen - 96/98 Lake Street - Application for Certification of Non-Conforming Use (Section 68)** - Not complete; carried to 2/3/14;

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

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

**1. Ferrara, 53 Crest Street, Block 1805, Lot 5**  
Continued hearing from 12/2/13 - Robert J. Mancinelli, Esq. represented the applicant in a continued hearing. Objector's attorney Michael Kates, Esq. was also present.

The hearing continued with the testimony of the Planners, beginning with the applicant: Brigette Bogart, Professional Planner, Midland Park, NJ was sworn in, previously qualified and accepted. Mr. Kates had no issues. Ms. Bogart was familiar with the Borough's Master Plan and Zoning Ordinances, the application and property. Ms. Bogart gave an overview of the project and surrounding developments. They are very similar to the average frontage on Crest Street. This is a single family home in a multi family district and the only non-conforming use. Ms. Bogart created an exhibit entitled Existing Conditions Analysis, with photographs and tax map. There is one of six properties on Crest Street in the R3 District. Some of the properties have parking underneath. The building on Lot 6 is to the South. The driveway is the East as well as the cemetery.

Mr. Mancinelli distributed an exhibit entitled Surrounding Development Pattern Analysis. Ms. Bogart continued. This analysis compared the types, sizes and details of the six other multi-family properties on Crest Street, #'s 15, 19, 25, 53, 57, 14, and 24, in the R3 zone. There is the only one that is not multi-family. They are the only non-conforming use. This is key to any planning analysis.

Ms. Bogart discussed the proposal and variances. A density D5 variance is needed. Also C variances were needed for impervious coverage, minimum separation of driveways, and parking setback. They are all similar to the surrounding development pattern. She reviewed the Master Plan and two goals pertain to their development, encouraging multi-family dwellings in the appropriate location. To maintain and enhance ... They are a permitted use in this district. Their proposal conforms with the goals of the Master Plan as discussed. Ms. Bogart gave details of all the C2 variances and purposes of zoning that would be advanced with the granting of the variances. They are consistent with the surrounding development patterns. From

all those perspectives the Board has the right to grant the C2 variances they are proposing.

Ms. Bogart discussed the proofs for the D5 variance. Does not require statutory criteria like the D1 variance, but that the density can be accommodated on site. They are consistent with the neighborhood and development pattern. There are no detriments. There are no differences between four units and five units, and the Board has the right to grant the D5 variances.

Ms. Bogart addressed Mr. Lydon's report with Mr. Mancinelli. There were no issues.

Mr. Kates cross-examined Ms. Bogart. With regard to the rear yard setback variance, he asked if they reduced it by one unit, would it reduce the variance. Ms. Bogart stated it would be the same. Mr. Kates asked if it was similar to other lots in the area, and Ms. Bogart stated it was. Mr. Kates distributed a copy of a survey of 56 Crest Street, Lot 5, marked Objector 1 (O1) Mr. Kates showed Lots 6 and 4 were larger than Lot 5. Ms. Bogart commented it was similar with the development patterns on Crest and reviewed the square footage of the lots. The R3 Zone requires 3 acres, and none of the properties have 3 acres. Mr. Kates continued his questioning. Has the applicant offered to purchase neighboring property or sell their property he asked. Mr. Mancinelli objected stating it was beyond the scope of the application. Mr. Rutherford advised it was a legal issue. Ms. Bogart did not have knowledge of whether the applicant made such an offer. Continued a five-unit project made more sense after conferring with the architect and engineer, vs. a four-unit project which made sense strictly as far as planning and conforming was concerned. Mr. Kates asked about sight lines from the units, but she did not do that analysis. He asked the date of the Master Plan, and she responded 1993, with two re-examinations in 2005 and 2011. When did the R3 zone come into effect. It appeared prior to 1993. Mr. Kates had nothing further.

Ms. Bogart was opened to the Board for questions. Mr. Lydon asked to look at Note #3 of Sheet 3 of 6 of Mr. Burns' drawing and read it for the record. Did she disagree with Mr. Burns' number he asked and would she amend her exhibit. Ms. Bogart said his was the more accurate number; hers was from the tax records. Mr. Lydon asked her to recite the C variances, giving details of sections as follows: Impervious coverage; minimum separation of driveways; and parking

setback. The townhouse ordinance does not have a front yard requirement, nor a rear yard setback.

Mr. McKoy questioned if they could eliminate any variances, and she responded possibly density and parking setback. You would lose a unit, but not be consistent with the development pattern. The property is presently under-utilized. Mr. McKoy commented they are putting a building there that is much larger than what is there. Ms. Bogert responded they would be putting a building up that is much more consistent with the street and development pattern than currently. Any properties to be developed there today would require the same variances.

Mr. Oakes asked if there was any way to shift the entrance to the parking lot to eliminate the parking variance, noting there are two open sides. Ms. Bogart responded because of the grading and the property dipping down, it makes more sense to have it on the East side. Also it allows the building to look like a two-story building because of the elevation. Mr. Hartman asked about impervious coverage, and if they reduced the units by one, would it reduce the coverage and parking spaces. Ms. Bogart answered not by much and they would keep the same number of spaces. They would have to reduce the impervious coverage by 20%. Mr. Montana commented he understood if they eliminated one unit, they would have the same variances, but be in a better perspective, 70% vs. 80% for coverage and wouldn't that be better. Ms. Bogart commented if they eliminated two parking spaces, it would eliminate 600 sq. ft., and not bring it down to 70%. She is not sure if it would be a benefit. Mr. Oakes asked since the parking is underneath, eliminating a unit would not make that much difference, and Ms. Bogart concurred.

Mr. Lydon suggested Ms. Bogart put in a Memo that a parking variance for garages is not required per the RSIS and also deferred to Mr. Rutherford. Mr. Rutherford would have to take a look at that. Ms. Bogert stated per the RSIS they did not require garages. Mr. Lydon noted at least one of the developments has underground garage and complies. Lot 4 is the 1.5 acre site and has garage. They do not have enough space on their site. Is a 24' drive aisle sufficient for access. This should be addressed by the architect, and the architect would be recalled.

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There were no interested parties with questions of Ms. Bogart, the Planner.

Albert Dattoli, AIA, previously sworn, continued under oath. Mr. Lydon questioned Mr. Dattoli, who testified if they continued the line of the building they would lose a foot and one-half of the drive aisle. With an 8" masonry wall, they would need about 2'10" for the garage. The inside depth of the garage would be reduced to 18-1/2', which is shallow. With a 19' stall, they have more room. If they were to provided garages, and they could, they would have substandard garages, about 18-1/2, very tight. What are the RSIS standards, Mr. Lydon asked. 18' for parking stalls, with the car overhanging the curb. Mr. Lydon commented they would not have 2' impervious overhang. Mr. Dattoli commented it is very tight.

Mr. Raimondi referred to Sheet 3 of 6, and the only place they have a 24' wide driveway aisle is under the overhang. Mr. Kates had no questions.

Before starting with the objector's witness, the Board took a recess, from 9:45 - 9:55 pm.

Chairman Martin called for eligibility of Board Members for voting purposes. Mr. Rutherford advised his notes indicate all seven Board Members with the exception of the newly appointed members, were eligible to vote. The matter proceeded.

Mr. Kates put his representation on the record. Michael Pessolano, MJV Land Use, LLP, Westwood, NJ was sworn in, qualified and accepted as a NJ Licensed Professional Planner. Mr. Pessolano spoke as to the methodology he used in preparation of his testimony, reviewing the Master Plan materials and zoning ordinances. He performed an analysis the application from a planning perspective and conducted a site visit, including the surrounding areas. The site does not fit with the townhouse definition, but a single family detached housing, not fitting in the district. It fails as a townhouse as there are specific requirements for a townhouse development. Mr. Pessolano described the site and in order to claim something is compatible it should relate to the surrounding properties. What is proposed is a wall-to-wall development and is totally out of character from the Master Plan. The problems associated with the proposed development, and there is a rear yard setback

requirement, the biggest issue. It is only 5' from the rear property line. The view will be imposed on the residents of Lot 6. The applicant does not comport with what the ordinance provides in general.

Mr. Pessolano distributed Exhibit O2, entitled Crest Street Residential Densities, which he described. All units were considered multi-family except for proposed townhouse development, Mr. Pessolano stated. The application does not make any attempt to improve the impact to the rear or find a suitable middle ground. There are developmental constraints on the property. The crutch of his testimony is to show that because the property causes such problems it cannot meet the positive criteria and two prongs of the negative criteria. It does the Zoning Ordinance considerable harm. Mr. Pessolano reviewed the proofs, and stated this application fails to meet those proofs.

Mr. Mancinelli cross-examined Mr. Pessolano and asked is your client's property a flag lot and deficient in the zone that does not conform to many of the requirements, in that it is less than three acres, has three stories, which exceeds what is permitted and is deficient in frontage. There are very similar features of deficiency. His client's property is similar in deficiencies as to what is being proposed here. Mr. Mancinelli pointed out he did not mention townhouses were permitted in the zone. As for his analysis that it does not meet positive criteria, doesn't bringing a non-conforming use into a conforming meet the positive criteria, Mr. Mancinelli asked. Do you feel the aesthetic improvements satisfies the positive criteria, Mr. Mancinelli asked. Mr. Pessolano stated it can. Did he hear any of the engineering testimony about improvements to the drainage. Mr. Pessolano did not. There are aspects of this development that meet the positive criteria, Mr. Mancinelli stated. Mr. Pessolano had stated elimination of three units would be feasible, but then it would be two units and not a permitted use, trading a D5 variance for a D1 variance, a more critical analysis, Mr. Mancinelli stated. Mr. Pessolano had no argument there. Mr. Mancinelli questioned Mr. Pessolano about density.

Mr. Lydon questioned Mr. Pessolano about density. Chairman Martin asked, right now on the property is a single-family house, the last in the zone. The occupant has passed away, and the property sold. Is there any mention of a single family house in this zone in the Master Plan. Mr.

Pessolano did not see it. When the Governing Body reviewed this it chose not to carve out an R1 exception in the zone, to allow a single-family use in an area surrounded by multi-families. Would it be correct to conclude that this property not continue as a single family home. Mr. Pessolano responded the Governing Body probably envisioned something like that. Because it is zoned R3, it makes more sense from a planning perspective to have a multi-family, Mr. Martin commented, and Mr. Pessolano agreed. Bringing it to two would be non-conforming also, Mr. Pessolano said it was to eliminate the density variance. What would you consider appropriate Mr. Martin inquired. Mr. Pessolano a careful analysis would have to be made and something marketable could be achieved. He did not think five units, maybe four, but three is better because the lot is tiny.

Mr. Oakes asked if it were made to be a park, would that comply in the R3 zone. Mr. Lydon commented if it were a municipal park, it would pass as a permitted use. The third permitted use is a municipal use. It was more of a hypothetical question, Mr. Oakes commented, and asked what is an alternate use that could go here besides townhouse that would comply with the R3 zone. Mr. Pessolano said residential. What other residential use, Mr. Oakes asked. Mr. Pessolano said he was not privy to the design elements that went into this. There is one possibility, five units, Mr. Pessolano has three, and he was inquiring if there were any other choices for this R3 zone. Mr. Martin asked Mr. Lydon to follow up on the park question. Wouldn't the Master Plan mention this, if the Borough intended to purchase this property for use as a park. Mr. Lydon stated usually the properties suitable would be identified. He did not see any language in the Master Plan that this site would be suitable for a park.

Chairman Martin continued. We know the minimum acreage is three acres. Many of the bulk criteria is based on three acres. The reality is this lot is much smaller than three acres. The development criteria is based on a much larger lot. It is very difficult to meet those criteria on this lot. So is it a surprise that the dimensional variances are required, he asked. Mr. Pessolano responded and was inclined to agree. Mr. Ceplo asked about a two-family use, but that would require a D1 use variance, Mr. Lydon advised. There were no further questions of this witness and none from the public.

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Summations would follow. Due to the lateness of the hour, 11pm, the Chairman suggested carrying to the 2/3/14 meeting for commentary, summations, deliberations, and a vote. Mr. Rutherford requested both counsel provide a memo or letter setting forth the nature and extent of the variance this project requires. Chairman Martin requested this be provided to the Board Members and Professionals ten (10) days prior the meeting if possible.

The matter was carried to the 2/3/14 meeting with no further notice and an extension of time granted by Mr. Mancinelli.

**10. DISCUSSION:**

Chairman Martin stated the Board should provide thank you Resolutions thanking Mr. Bicocchi and Mr. Bieri for their service to the Board at the February meeting. Mr. Rutherford would prepare them for the next meeting.

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 11:05 p.m.

**Respectfully submitted,**

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