

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REORGANIZATION MEETING**

MINUTES

January 7, 2013

APPROVED 2/4/13

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/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
Michael Bieri
Robert Bicocchi
Eric Oakes
Vernon McCoy
Matthew Ceplo
Guy Hartman (Alt #1)
Chris Montana (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Steve Lydon, Burgis Associates,
Board Planner
Catherine Gregory, Acting Board Planner
for KMACK North/South

ABSENT: None

REORGANIZATION MEETING

SWEARING IN OF MEMBERS: Matthew Ceplo was previously sworn in as reappointed Board Member at the Mayor and Council Borough Reorganization Meeting. Guy Hartman was sworn in as Alternate #1, by the Board Attorney, David Rutherford, Esq. The Board welcomed new Alternate #2 Member, Chris Montana, previously sworn at the Mayor and Council Reorganization Meeting.

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

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

Upon motion of Mr. Oakes, seconded by Mr. McCoy, 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. Bieri, seconded by Mr. Oakes, with no further nominations, **David Rutherford, Esq. was nominated to continue as Attorney for the Zoning Board.**

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

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

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

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

ADOPTION OF 2013 MEETING DATES:

Upon motion of Mr. Bieri, seconded by Mr. Oakes, all ayes on roll call vote, the Board adopted the 2013 Meeting Dates for the Zoning Board as attached. The dates would be forwarded to the Borough Clerk for publication.

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ADOPTION OF PROCEDURAL RULES & BY-LAWS - Tabled to the 2/4/13 meeting to permit Board Members to review the document, upon motion of Mr. Bicocchi, seconded by Mr. Oakes, and carried unanimously on roll call vote.

ADOPTION OF THE ANNUAL REPORT OF THE ZONING BOARD FOR 2012

To be provided

REGULAR MEETING

4. MINUTES - The Minutes of the **11/19/12** were approved on motions made by Mr. Bicocchi, seconded by Mr. Owens, and carried unanimously on roll call vote. The Minutes of **12/3/12** approved on motion made by Mr. Oakes, seconded by Mr. Owens and carried unanimously on roll call vote.

5. CORRESPONDENCE:

1. Annual Meetings Notice for 2013;
2. Review Letter of Louis Raimondi, dated 12/12/12
RE: 484-486 4th Avenue;
3. Revised plans for KMACK North, 39 Kinderkamack Road, dated 12/17/12 from Scott F. Lurie;
4. Revised plans for Niarra, 316 Kinderkamack Road, dated 12/20/12 from Vincent Cioffi;

6. VOUCHERS: A motion to approve vouchers totaling \$9,211.25 was made by Mr. Owens, seconded by Mr. Oakes, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Resolution RE: Ray Arroyo for years of service on the Zoning Board - The Board acknowledged Ray Arroyo, elected as Councilmember, with thanks and gratitude, for his years of service to the Zoning Board. A motion for approval of the Resolution was made by Chairman William Martin and seconded by Robert Bicocchi. On roll call vote, all members voted yes.

8. PENDING NEW BUSINESS:

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1. A Cleaner City/Nail Salon 711 Broadway - Use Variance - Scott Berkoben, Esq. represented the applicant. Mr. Rutherford advised the applicant noticed for the hearing. Waivers were requested from the checklist as to the submission of a site plan. Mr. Martin asked for a description of the waivers requested. Mr. Lydon prepared a review memo and commented based on the provisions of the MLUL, if an applicant requests waivers in writing, that solves the completeness issue. The Board should hear from the applicant and determine whether it will grant the waiver of the submission of the site plan just to be heard. At some point during the hearing if the Board deems otherwise, the Board can request same. 20 copies should be distributed to Board Members for receipt in the February packets, Mr. Martin stated. .

Mr. Berkoben said the property has been vacant for some time. The last time there were tenants at the premises was in April of 2003, when there was a site plan filed, and then in October 2003. The application is related to new tenants in the building, and the building is completely vacant. The configuration and floor plans were drawn out by Mr. Fethes, who was not present.

A motion to approve the waiver to submit the site plan just for the matter to be heard was made by Mr. Bieri and seconded by Mr. Oakes. On roll call vote, all members voted yes. The matter was carried to the 2/4/13 meeting.

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 at request of applicant, pending completion of KMACK North;

2. Niarra, 312 Kinderkamack Road; 199 Fairview Avenue, Block 811, Lots 4 & 12 - Variance - Brian Chewcaskie, Esq. represented the applicant and reviewed from the last meeting. Testimony was complete except for architect Mr. Cioffi's testimony as to the revised plans. As to the operational easement between this property and the property to the West, they addressed this through the neighbor's attorney Scott Berkoben, Esq. The easement

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exists. It is a 12' easement for ingress and egress for this property. It is identified at the property line where there is parking and has been so for years. The written easement and the actual functioning are different, as it is actually 12' over. Therefore, they expect a modification of the easement. Mr. Martin wanted to make sure this was being addressed. Mr. Raimondi commented the way it functions today is there is an exit driveway onto Kinderkamack, and they will change it to ingress from Kinderkamack. Mr. Chewcaskie agreed and added the egress will be to Fairview. They are working on the modifications.

The revised plans, prepared by Vincent J. Cioffi, AIA, revised to 12/20/12, were marked A12. Mr. Cioffi described the changes. The easement corroborates with the ingress and egress and traffic flow. A separate drawing was submitted for lighting and signage details. Mr. Raimondi asked if they were using goose neck fixtures, so they were removed from the drawings. There is a façade to screen the mechanical equipment on the roof. Mr. Martin thought it made the building look massive and would rather not have the screen added. Mr. Cioffi explained the front of the building faces the parking area, and while doing this in the rear of the building, it accomplishes a lot in terms of the presence when the entrance is in the rear. They could address the size differently. Mr. Martin commented he understood why they were proposing it, but was concerned about how much of a visual change it would be. He would like to hear other Board Members' opinions. Mr. Cioffi said it was 5-1/2' and could be brought down a foot or so. It is a mansard roof and is angled back. Mr. Raimondi reviewed the sign posts, and Mr. Cioffi agreed to fix the foundation.

There were no further questions of Mr. Cioffi and no interested parties. Mr. Chewcaskie gave a summary and closing statement. They were present for a use variance for the Big Playhouse use and set forth their proofs. It would be complementary and a service to the downtown. They need site plan approval, and there are not a lot of changes to the site. There will be many improvements made. Ms. Phillips and Mr. Cioffi touched on building coverage and based on testimony, the variance can be granted. They provided signage details. The existing variances are the pre-existing conditions, with no change to the building. The Board can readily grant the variances required here. The site has been vacant for a while and can now be put to use. It will certainly be an aesthetic improvement, and the

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easement in effect can be modified. They do need a parking variance. Even if devoted entirely to retail use, 36 spaces are required, and it is already deficient. There is parking on Kinderkamack and Fairview, and directly across is a municipal parking lot with more than sufficient parking to service the area. If you balance putting this building back to use, Mr. Chewcaskie reasoned, you have a use that is beneficial, and the site plan will address concerns in place for a number of years. He respectfully requested that the Board grant the variance.

Mr. Biccocchi stated it is a very creative use, and it will benefit the Borough; it is a favorable application he continued and made a motion to approve. Mr. Owens commented it will be an improvement, the easement will be addressed, and the ingress/egress will be more defined. He seconded the motion. Conditions as stated were imposed. On roll call vote, Mr. Biccocchi, Mr. Bieri, Mr. McCoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

3. Van Grouw, 27 Ruckner Road - Appeal - Carried to 2/4/13 at the request of the applicant, with no additional notice required;

4. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484 4th Avenue - Variance, Site Plan Application (William Martin recused) - Carried to 2/4/13 at the request of the applicant, with no additional notice required;

The Board took a recess from 9:55 to 10:10 pm.

5. KMACK North II - Site Plan Approval - Catherine Gregory acted as Substitute Planner for the hearing. Mr. Lydon was recused and had departed. Mr. Lafferty represented the applicant and stated he had three witnesses to testify.

Bruce Meisel, Esq. came forward and put his objection on the record as an interested party and advised he would return with an attorney and a planner due to the fact that this does not conform to the Master Plan. His planner is not ready until the 3/4/13 meeting. Mr. Rutherford advised we are not done with the applicant's case and would allow Mr. Lafferty to proceed.

Mr. Lafferty came forward and advised it is late in the proceeding and applicant has put on many of his witnesses and the public was permitted to cross-examine. Mr. Martin

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advised that the proceeding had not yet been open to the public for general questions or comments. Mr. Rutherford advised the orderly proceeding would be for Mr. Lafferty to complete his presentation, and as is the usual order, the public would be permitted to be heard on the application.

Ms. Gregory was sworn in as Planner for this application. Hal Simoff, Madison, NJ was sworn in as a Traffic Expert, and the Board accepted his credentials.

Mr. Simoff's Traffic Impact Analysis dated 2/29/11 was marked A7. Referring to the Table of Contents there was an evaluation and study of the background information and principals of analysis, continuing with existing traffic conditions, projected trip generation at Kinderkamack and Lester and Kinderkamack and Crest, and reanalyzed the composite numbers. They discussed the alternate access design regarding not allowing left hand turns out of the site on the East side of Kinderkamack Road. The traffic count dates and times were listed, peak and non-peak periods, during the week and on weekends. Mr. Simoff gave an overview of the traffic counts per his analysis and stated the application can be granted without any negative impacts.

Mr. Meisten, a member from the public, questioned Mr. Simoff. The development would have no impact. Mr. Oakes asked about the effect of busses on bus routes. Mr. Simoff said he used heavy vehicles, which includes trucks and busses. He used a default range of 2%, but did not believe there would be 30 trucks and busses.

Mr. Raimondi asked for the Saturday peak hours, and he responded 1-2pm. Mr. Raimondi inquired about the inclusion of traffic figures on Lester Avenue, Kingsberry, and was interested in how the whole traffic pattern would develop. Mr. Simoff said he did not have driveway access on Kingsberry. It would be the same today and would not change the level of service. They would add approximately 50 cars, 12 cars in each direction twice a day. Mr. Martin said this site is close to the Westwood border and when people leave ball games, they line up by Kingsberry Avenue to turn left. The figures may have not been reflected in the report. Whatever you have at Kingsberry now is what you will have in the future, Mr. Simoff explained. It is not going to change the analysis or conclusion.

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Mr. Owens asked if the County reviewed this. Mr. Simoff spoke with Mr. Adelsohn, who contacted the County and discussed it with them. They had not finished reviewing it, but did not have any concerns with the no left turn out he recalled. Mr. Owens' concern was the stacking of cars on Crest. He believes they will be blocking the street access, which is very narrow. Mr. Simoff explained it is 30' wide, and in the rare instance where there are more than two cars, the cars will have to wait until traffic clears. That is the balance you have to consider while not allowing left turns out of the driveway. He did the analysis both ways, and the County would probably approve either one. Mr. Martin asked if this was reflected in Tables 10, 11 and 12, and the response was yes. Mr. Lafferty stated they would accept it either way, left turns or no left turns. Mr. Simoff added the difference is a very small number. Mr. Montana asked about the Master Plan and the anchor use, which was the hospital, and did he take it into consideration.

The matter was opened to the public for questions of the witness. Bruce Meisel came forward and followed up on Mr. Montana's question and how he could make a traffic analysis without taking into consideration the hospital when it has not yet been opened. Mr. Simoff was not aware of any traffic study by the hospital, and the traffic is already on the road. Mr. Meisel said they did not have to submit a traffic analysis since they are an approved use, but saying the hospital is irrelevant is not proper. Mr. Simoff responded he did not say it was irrelevant. His opinion was that it would not make a difference. Mr. Meisel asked how he compares this use, traffic-wise, with a permitted use. He used trip generation, and retail is permitted. The ITE doesn't differentiate between types of retail. Big box and car dealerships are permitted, and we are not talking about a significant difference when there are 1,800 cars passing in a peak hour he added. Most of the traffic is existing traffic, where a car dealership is a specific traffic. 7-Eleven is a convenience store. You don't go out of your way to purchase a cup of coffee. It is one step away from a gas station. Mr. Martin said his earlier testimony was that traffic already on the road would stop there. This would be the time for the objector to have his traffic expert question the witness. Mr. Meisel did not have a traffic expert present at that time.

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Michael Meisten, 58 Kingsberry Avenue, Westwood came forward and expressed concern about visibility. There is a retaining wall. Mr. Simoff said it has nothing to do with this application. These constraints are currently on the site today. If his client wanted to come out of Kingsberry, he would advise against it, due to sight distance and visibility problems. He continued. He used a small shopping center in his traffic study. He will work with the applicant and County on the turning restrictions and design of curbing and signage, which must be properly in order to be enforced. Mr. Martin stated the County has jurisdiction over the road. There were no further questions of the witness.

Mr. Rutherford advised this would be the time to hear from interested parties. It was noted Mr. Meisel made statements earlier in the evening and would be bringing his experts on March 4th he stated. Mr. Meisten was asked if he was going to make comments, and he was. Mr. Rutherford asked Mr. Lafferty if they would extend the time to March 4th. Mr. Lafferty had no problem with February 4th and did not see why any objections could not be heard tonight or February 4th. Mr. Rutherford advised it is a balancing act to move applicant's application and for the public to be heard. If he would not consider a request for an adjournment until February 4th that would not be fair. Mr. Martin suggested carrying to February/ 4th and see where we are with objectors.

Mr. Rutherford advised on February 4th, if the applicant did not extend further, the Board could dismiss without prejudice on the grounds that the applicant did not give interested parties the opportunity to be heard. Mr. Lafferty understood about giving that opportunity, but Mr. Meisten has been here every month, and Mr. Meisel is now coming in at the very end to just get started with his case. Mr. Martin said this would be the time to hear from any objector. Mr. Meisel said he would not be available until 9:30 and asked that it held. Mr. Martin said they would continue on February 4th and hear from interested parties and his experts, and we may continue to March 4th. They want to give deference to interested parties the same way they do with applicants. Maybe we will finish February 4th and maybe it will be March 4th. Mr. Meisel will communicate with Mr. Lafferty prior to the next meeting as to experts and how long it will take. Mr. Rutherford stated we are all aware of the issues and will continue the matter on February

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4, 2013, with no additional notice. Mr. Dorf wished to be heard, and Mr. Lafferty would advise and explain. The matter was carried to February 4th, 2013.

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:50 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary