

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
October 7, 2013**

APPROVED 11/4/13

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 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
Robert Bicocchi
Matthew Ceplo
Eric Oakes
Chris Montana (Alt #2)

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

ABSENT: Michael Bieri (excused absence)
Vernon McCoy (excused absence)
Guy Hartman (Alt #1) (excused absence)

4. MINUTES - The Minutes of the **9/9/13** were approved as amended on motion made by made by Eric Oakes, seconded by Christopher Owens, and carried unanimously on roll call vote.

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5. CORRESPONDENCE:

1. Memo from Burgis Associates dated 9/17/13 RE: Ferrara, 53 Crest Street;

2. Letter from Lisa Phillips dated 9/13/13, received 9/25/13, RE: Aidan Theatre, 316 Kinderkamack Road;

3. Letter from Brooker Engineering dated 9/24/13 RE: Ferrara, 53 Crest Street;

6. VOUCHERS: A motion to approve vouchers totaling **\$6,182.00** was made by Robert Bicocchi, seconded by Christopher Owens, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Bauer, 508 Fourth Avenue, Block 0902, Lot 47 - Proposed addition and "C" Variance - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Robert Bicocchi. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes. Mr. Montana was not eligible to vote.

2. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484-486 4th Avenue - Dismissal without Prejudice- Board Attorney Rutherford read the Resolution of Approval to Dismiss the Application without Prejudice into the record. A motion for approval was made by Christopher Owens and seconded by Eric Oakes. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Chairman Martin voted yes. Mr. Montana was not eligible to vote.

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. A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance - Scott Berkoben, Esq. represented

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the applicant and requested to be carried. The matter was carried to 11/4/13 with time extension granted by applicant.

2. Kirk, 66 Kingsberry - Section 68 - The plans could not be located and were not received by the Board. Carried to 11/4/13 with no additional notice required.

3. Aidan Theatre, 316 Kinderkamack road, Block 811, Lots 4 & 12 - Carmine R. Alampi, Esq. represented the applicant, Ray Walsh, of Aidan Theatre, LLC, for a use variance, in a continued hearing. Ira Wiener, Esq. of Beattie Padovano, appeared on behalf of Spiro Pappas of the Westwood Theatre, who had concerns, but advised they worked out those concerns.

Mr. Alampi advised the application was closed and carried to tonight for purposes of giving them an opportunity to present more details as to how they could describe the use for a resolution. They sent a letter to the Board and Mr. Rutherford on 9/13/13 with suggested language. A generic movie theatre is not what they presented or what the Board should vote on, Mr. Alampi continued. He was contacted by Mr. Wiener regarding his client's concerns, which were the same issues the Board had raised, and agreed they would not show first run movies, they would not run movies on Mondays and Tuesdays, there would be two evening showings, no Sunday movies, and a maximum of one screen installed. They were careful with language, including no pornographic or x-rated movies. The differences were worked out with Mr. Wiener, and his client already executed the agreement. The Board does not need to be part of a prior agreement. They intend to do exactly what they represented.

Chairman Martin deferred to Attorney Rutherford as to whether this was sufficient. Mr. Rutherford advised yes and stated he had a copy of the agreement, containing seven conditions. They also agreed the applicant would notify any distributors of the movies and pay all licensing fees. Mr. Rutherford was concerned about the Board placing content-based limitations, not only for first amendment reasons, but for the difficulty in defining classic films. Mr. Rutherford outlined the conditions that were properly zoning-based, relating to the use variance. He advised he would incorporate conditions one through five into a Resolution of Approval if the Board saw fit to grant the variance. Mr. Wiener thanked Mr. Rutherford for going through the

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conditions and provided a signed copy of the letter agreement, marked (Interested Party) IP-1 for the file. The Board may conclude its deliberation and come to a conclusion, Mr. Martin and Mr. Rutherford noted. Mr. Oakes commented they were not settled as to where the screen would be placed. Mr. Martin indicated deciding on that detail was separate from what the Board does, and that would be worked out with the Building Department. There were no further questions, comments or discussions.

A motion for approval was made by Christopher Owens and seconded by Robert Biccocchi, with the conditions as discussed. There were no further questions, comments or discussions. On roll call vote, Robert Biccocchi, Eric Oakes, Christopher Owens, Mathew Ceplo, Chris Montana, and William Martin voted yes.

The Board took a brief recess.

4. Ferrara, 53 Crest Street, Block 1805, Lot 5 - Robert J. Mancinelli, Esq. represented the applicant, John Ferrara and his LLC, contract purchasers of the property.

An objector/gentleman came forward challenging the validity of the notice date, identified as Ethan H. Addes, 165 Grand Avenue, Englewood, NJ. Mr. Mancinelli advised as to the MLUL requirements for the method and content of the notice. It does not require them to list the day of the week, only the date, time, and place. They originally were applying to the Planning Board, which meets on Thursdays. They did not change the day of the week in the notice. The day of the week is not required. The objector has received the notice, since he is present, Mr. Mancinelli contended. Chairman Martin deferred to Attorney Rutherford for legal advice. Notice is the toughest thing in the MLUL for the applicant. Normally he would say it's the applicant's call, unless it is blatantly defective. This is a closer call, if the applicant says it is prepared to proceed knowing that any action taken by the Board could be set aside due to the error. Mr. Martin asked if the Board bears any responsibility for accepting this, and further, would the Board be dragged along in Superior Court with the applicant. Mr. Rutherford advised yes. Mr. Martin suggested fixing this issue now. The Board does not have to hear the applicant and can carry the matter to the next meeting.

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Mr. Rutherford asked the objecting attorney if there were any other issues with the notice, and he responded no. Mr. Mancinelli stated he did not know why the gentlemen raised the issue, when the MLUL does not require the day of the week, and he has received signed receipts from all of the property owners. Basically it is a typographical error, and it does not interfere with the content. He is willing to proceed, and his client is willing to take this risk. Is he present as an objector, and what is his motive, Mr. Mancinelli questioned. The objector said the notice should not confuse people. Mr. Mancinelli stated it is not his call to represent or argue on behalf of other people not present. The gentleman was an attorney and a managing agent and owner of Westwood Manor. He is a direct neighbor and has every right to appear as objector or in favor of the application, Mr. Addes stated. He is present as an interested party and believes counsel should correct the notice.

Mr. Mancinelli stated this property owner called him in advance and appeared, and he had no idea he would appear regarding this notice. The man said he called because he was confused about the notice. Mr. Martin stated the Board is now aware of this ahead of time and very concerned about getting the notice right. If Mr. Rutherford advises us we can decide either way, we should ask the Board Members. We do not want to have to burden the Superior Court or taxpayers with something we could correct in advance. There is some risk to the Board and Borough as well, and that is what he is concerned with. He polled the Board. Mr. Oakes commented it is better to err on the side of caution and since we would probably not finish tonight, one month is not a long time. Mr. Mancinelli stated they are a contract purchaser, and time is important.

Mr. Martin would rather not have the possibility of anyone being confused and have any risks involved, and that concerns him. There would be no additional notice if carried, Mr. Montana was concerned about the possibility of confusion as well and would also err on the side of caution, publishing a new notice. Mr. Bicocchi commented it should be carried and renoticed. Mr. Owens and Mr. Ceplo commented they could move forward. Mr. Martin would rather not have any confusion. He asked Mr. Mancinelli to speak with his client, prior to taking any formal action. Mr. Mancinelli asked on what legal grounds. Mr. Rutherford advised Courts have set aside notices due to failure to set forth prior

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information or incomplete information. There is certainly ambiguity in this notice. If the Board feels right in not hearing this application because of that, the Board is certainly within its right. Mr. Martin commented he understands and feels terribly, but does not believe the Board should move forward. Mr. Mancinelli cited the MLUL and advised he did not believe anyone would question it.

Chairman Martin was preparing to call for a vote. Mr. Mancinelli asked them not to proceed to a vote and advised his client would voluntarily ask to carry. The gentleman is an LLC and not the property owner. He must identify himself as whether he is the attorney representing the LLC. Mr. Rutherford directed the man to respond. Westwood Manor is owned by an LLC, and he is the managing member. He would represent the LLC as its attorney. Mr. Mancinelli requested he properly identify himself and in what capacity. The gentleman stated they would consult with their attorney. He is a member of the LLC and the managing member. There were no further questions, comments or discussion. The matter was carried to 11/4/13 with a new notice required.

5. Unique Training Group, 23 Bergenline Avenue, Block 2105, Lot 4 - Change of Tenant/Variance - Holly Schepisi, Esq. represented the applicant gave an overview of the application. The applicant would be moving to a space within the Furniture Bank building. There was a previous request by the owner for a proposed use of Dance Fitness. This application is being resubmitted with a proposed use of an individualized instructional sports training facility in accordance with Section 195-125B, Principal Permitted Uses Allowed in the LM District. The Zoning Official denied the request citing Article 195-111 Section E, stating that only one use is permitted on the lot. The existing use is currently storage/warehouse. The proposed use is a continuation of that use with an additional use of personal training/fitness.

Ms. Schepisi continued. The premises have previously had subtenants, including two dance studios and a retail carpet company. There is ample parking available, and the proposed new use is permitted in the LM District. Mr. Martin stated they needed a drawing of the space and a diagram of the parking to scale, so the Board could evaluate them. Mr. Lydon submitted a report. However, he indicated he did not receive a Notice of Appeal form. Mr. Raimondi commented an updated survey was needed. Parking could be put on top of

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that, drawn by the surveyor, Mr. Martin noted. Further, a diagram of the entire building was needed, showing the name of the tenant and that the remaining portion of the building is the Furniture Bank. There were no further questions. If the items were submitted ten days before the meeting, they would be scheduled for 11/4/13, Chairman Martin stated, and moved to grant the waivers requested, with a second by Mr. Owens. On roll call vote, Eric Oakes, Christopher Owens, Matthew Ceplo, Chris Montana and William Martin voted yes. Robert Bicocchi abstained.

10. DISCUSSION: The Board discussed availability of meeting C/D's for when Board Members miss meetings.

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 9:34 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary