

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
November 4, 2013**

**APPROVED 12/2/13**

**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  
Michael Bieri  
Vernon McCoy  
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:** Robert Bicocchi (excused absence)  
Guy Hartman (Alt #1) (excused absence)

**4. MINUTES** - The Minutes of the **10/7/13** were approved as amended on motion made by made by Christopher Owens, seconded by Eric Oakes, and carried unanimously on roll call vote.

(ZB 11/4/13 Minutes)

**5. CORRESPONDENCE:**

1. Memo from Ethan Addes dated 10/28/13, RE: Ferrara, 53 Crest Street;

**6. VOUCHERS:** A motion to approve vouchers totaling \$6,646.25 was made by Michael Bieri, seconded by Christopher Owens, and carried unanimously on roll call vote.

**7. RESOLUTIONS:**

**1. Aidan Theatre, 316 Kinderkamack Road, Block 811, Lots 4 & 12** - Board Attorney Rutherford read the **Resolution of Approval** into the record. A motion for approval was made by Christopher Owens and seconded by Eric Oakes, with the conditions as discussed. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Christopher Owens, Mathew Ceplo, Chris Montana, and William Martin voted yes.

**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. Kirk, 66 Kingsberry Avenue, Block 1601, Lot 7 - Section 68** - Applicant John Kirk appeared and stated he owned the property as a two-family home since 1984. He was present for approval of a pre-existing, non-conforming use. There are two businesses on the property, a retail shop and a garage occupied by a pool company. The commercial property has two separate addresses. Chairman Martin advised the burden of proof is on the applicant to verify the two-family use. The tax records do not support his claim. Mr. Kirk stated the property was always operated as a two-family house since he purchased. The tenants were there when he purchased. He received letters from the town regarding it being a two-family. Mr. Martin asked if it were possible it were converted without permission. Mr. Kirk said he did not see how it could've been. It was made for an apartment.

Chairman Martin commented the records show a one-family house with a commercial use. Mr. Kirk stated the commercial uses are at 80 and 86 Kinderkamack. They had fire

(ZB 11/4/13 Minutes)

inspections that always classified it as a two-family home. Mr. Owens asked if there were renovations, and Mr. Kirk stated everything was and still is original from when he bought it. Perhaps some photos may assist with the time frame, Mr. Owens suggested. Mr. Martin commented the units should have separate utilities, and applicant had stated the utilities were not split. Mr. Rutherford asked for clarification where the pool service business was at 86 Kinderkamack Road, the retail at 80 Kinderkamack, and two dwelling units were at 66 Kingsberry. Mr. Kirk responded yes. Was the commercial units present in 1984, and if so, what type, Mr. Rutherford asked. Mr. Kirk responded an upholstery shop and video store were there. Did applicant have any knowledge of the use prior to 1984, he questioned. Mr. Kirk recalled it as being a couple of years prior to 1984. Mr. Montana asked if any type of income statement from revenue from rentals could serve as verification.

Mr. Rutherford advised the 1967 date is the time frame from which the two-family use must have been in effect. The burden of proof is on the applicant. There must be testimony that the use was not abandoned. The date of use must be established as well as what ordinance was in effect at that time. Chairman Martin advised the applicant he may want to hire legal counsel for his case, since any decision by the Board is binding upon his property, and there does not appear to be sufficient evidence to support the two-family use. Also, there was an animal rescue tenant that had a prior approval, and perhaps there may be some additional information in that file. Mr. Owens suggested obtaining testimony from neighbors as to the use.

Chairman Martin called for any interested parties to come forward. Michael Meisten came forward and was sworn in. Mr. Meisten only lived in the property since 2006, but wanted to ask a question. He did say there have been no issues with residential tenants. He was just concerned with safety and proper zoning as he is raising his family next door. Mr. Martin stated the application was not before the Board for a variance. Applicant must provide the necessary documentation. He advised the applicant it may be in his best interest to hire legal counsel.

Karen Kirk came forward and was sworn in. Ms. Kirk testified she resides at 47 Crest Road, Ramsey, NJ and advised they purchased the house as a two-family. She was told things were flooded in Westwood and maybe documents

(ZB 11/4/13 Minutes)

were lost. Also, if not approved tonight, she asked, could they make an application for a two-family use, because a one-family would be difficult without yard space, etc., and the two-family is a far better use.

Mr. Rutherford advised they must meet the burden of proof, and if the Board finds they did not, they would have to file an application for a D1 use variance, which is a difficult variance. He recommended retaining legal counsel, because the decision is binding. Mr. Martin stated they are giving them every opportunity to make a binding case. The Resolution for the C.A.T.S. use is somewhere in the Borough's records, and there may be fact-finding documents within that file. Mr. Owens suggested searching all three addresses in the tax records and finding a neighbor on the block that could testify as to the two-family use. Mr. Martin advised they should hire an attorney. Applicant requested to be carried to the next meeting.

The matter was carried to the December meeting, 12/2/13.

**2. A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance** - Scott Berkoben, Esq. represented the applicant in a continued hearing. Andrew Fethes, Architect, continued under oath and testified as to the latest set of drawings, revised to 9/9/13. The only revision was changing the nail salon to a non-designated retail space. Mr. Martin advised when they obtain a future tenant, that tenant would have to come before the Board. It is only the dry-cleaners they are seeking approval for. He wants to make it clear. Mr. Rutherford confirmed they are seeking a use variance for the dry cleaners, but they are not seeking approval of retail use in the abstract or general term---is that correct he asked Mr. Berkoben. Mr. Berkoben confirmed they are simply proceeding with the dry cleaners.

Mr. Fethes asked if the Board had any questions on the plans. Mr. Martin asked about parking. Mr. Fethes stated the parking does not change; 28 spaces are required and 14 are provided. There is additional parking on Broadway. Mr. Lydon commented there are two components and requirements. Based on other dry cleaners, none have 20' parking stalls. In this particular instance, he did not envision the situation where there would be a need for 24 vehicles to serve the front facility of dry cleaners and storage, and

(ZB 11/4/13 Minutes)

with the rear portion as it would be used, the full complement of parking spaces would not be necessary.

Questions by Board Members followed. Mr. Montana asked if there was a better location for the handicapped space closer to the entrance and ramp. Mr. Fethes stated there was a 6" step up, and they would have to put in a ramp, so the location of the space is probably the safest place and equally as close as they would construct in the front of the building. There were no further questions of Mr. Fethes, and none from the public. Mr. Fethes' testimony was complete.

Brigitte Bogert, Professional Planner, continued under oath. In her previous testimony, her argument focused on the fact they were redeveloping the site. She testified as to proofs under the Medici case. The use was appropriate for this site. It is 80% storage facility and 20% retail and generates a lower parking requirement. It is particularly suited for this site and does not warrant a market study. They are bringing in a use that is permitted in the LB District, and they are redeveloping the site. The building is in a flood zone, so it is not suitable for many uses. The Board is in its right to grant the use variance without a market study. There were no questions from the Board and none from the public. Ms. Bogert's testimony was complete.

Mr. Berkoben summed up with closing comments and asked the Board for an approval. There were only five members present eligible to vote.

The Board Secretary was requested to email the four Board Members absent from hearings and request that they listen to the meetings that are necessary to have them become eligible to vote in December and copy the Planning Board Offices in the Building Department. The Members and dates were as follows: Mr. McKoy, 2/4/13, Mr. Bieri 8/5/13, Mr. Biccocchi 11/4/13, and Mr. Hartman, 11/4/13.

Mr. Berkoben agreed to be carried for a vote at the next meeting for a fuller complement of the Board and also consented to an extension of time. The matter was carried to 12/2/13.

The Board took a brief recess.

**3. Unique Training Group, 23 Bergenline Avenue, Block 2105, Lot 4 - Change of Tenant/Variance - Holly Schepisi,**

(ZB 11/4/13 Minutes)

Esq. represented the applicant. The application was deemed complete by Mr. Lydon, and they submitted their publication documents, which Mr. Rutherford found to be in order. Two of the supplemental items provided were a survey by Mark Martins Engineering, LLC dated 10/28/13 and an Architectural Site Plan and Proposed Plan by A. Caputo Architecture and Design, LLC dated 10/22/13. The Zoning Officer denied the request for the proposed use of an individualized instructional sports training facility 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 the additional use of sports training facility. There is ample parking on site, currently three spaces, including two handicap spaces. The proposed use is permitted in the LM District. The proposed business is an existing business currently operating across the street from the proposed site as a subtenant of Fred Astaire Dance Studios.

Tamir Greenberger, owner of Unique Training Group, LLC, currently operating at 41 Bergenline Avenue for two years, as a professional training and weight loss facility. They train up to six people simultaneously and most of the time they don't have that many people at once. The hours are from 5am to 12 noon and then 3:30pm to 9pm, Monday through Friday and Saturday 7-12 and Sunday 8-1pm. The total number of employees is currently two with a plan for three. The most parking spaces needed are about 10 and not all day.

Questions by Board Members followed. Mr. Martin asked if the parking was ample at his current site, and he responded yes. They have never exceeded six spaces. The early morning hours are busier than later hours.

A series of five photos taken at approximately 1pm on a Friday afternoon were shown and marked Exhibit A.

Mr. Lydon asked how this differs from a health club. Mr. Greenberger responded they need to reserve a time with an instructor for a specific session. Mr. Montana asked, and he responded there are no showers or stalls, just restrooms. His busy hours are generally before the Furniture Bank store. There were no further questions of Mr. Greenberger and none from the public.

The next witness was Mark Martins, Licensed Engineer and Land Surveyor in NJ, of Mark Martins Engineering, LLC,

(ZB 11/4/13 Minutes)

who was sworn in and accepted. Mr. Martin testified as to the restriping of the parking lot and addition of parking spaces, and he described his plans dated 10/28/13. The lot was recently restriped, seal-coated and resurfaced as stated. Mr. Lydon asked if they and handicapped parking signs. Mr. Martin responded if missing they would be installed. Ms. Schepisi advised the owner of the building would comply with any handicap requirements. There were no further questions of Mr. Martins and none from the public.

The remaining witness was the owner of the Furniture Bank, Mr. Bansinger, who was sworn in. He owned the Furniture Bank since 1983. Since that time there were other subtenants, such as a dance studio and retail home and carpet store. Their hours are 10am - 6pm Monday through Saturday and Thursday until 9pm. The 42 spaces on site would have 30 open stalls for the subtenant. He was familiar with the architectural plans and indicated the location of his spaces, known as Tenant B, and the subtenant's space, known as Tenant A spaces. There will be a 10' wall put in to separate the tenancies. The wall was up for the previous tenants. He never had a parking problem and he doesn't anticipate a parking problem with this tenant. There were no further questions of Mr. Bansinger and none from the public.

Ms. Schepisi summed up their application for approval of the training facility. There will be no detriments. It is consistent with the Master Plan and surrounding uses. She asked for an approval. Mr. Rutherford confirmed the application was before the Board for two permitted uses on one site, a "C" variance request, requiring a majority vote.

There were no further questions, comments or discussions. A motion for approval was made by Mr. Owens and seconded by Mr. Bieri with the conditions as stated. On roll call vote, Mr. Bieri, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, Mr. Montana, and Mr. Martin voted yes.

**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. Mr. Oakes questioned whether any Board Members that are member of the Knights of Columbus, which is within 200' of the subject site, should be recused. Mr. Mancinelli advised the Knights, a neighboring property owner is not part of this application, nor is it present as an interested party or as an objector.

(ZB 11/4/13 Minutes)

Michael Kates, Esq. represented Westwood Manor Associates, a property owner within 200', by Ethan Addes, Managing Member. Mr. Kates also did not see an issue.

Mr. Mancinelli advised he renoticed for this evening and provided the publication documents, which the Board Attorney found to be in order. Mr. Kates had no issues with the new notice.

Mr. Mancinelli gave a brief outline of the application. The property is located at 53 Crest Drive, in the R3 medium density zone, which has a 3 acre minimum, and they have .175 acres. It has a home currently on it. The applicant is currently the owner, seeking preliminary and final site plan approval to remove the non-conforming structure and construct a five-unit, multi-family townhouse development.

Richard Burns, NJ Licensed Professional Engineer, was sworn in and accepted. He prepared the site plan dated 7/11/13, last revised to 10/18/13. He also prepared the Stormwater Management Plan dated 9/17/13 and revised to 9/27/13, and Seepage Pit and Design dated 7/11/13 and revised to 9/18/13. He was familiar with the site, the surrounding area and the Westwood ordinances. He gave a brief description of the subject property. Access is from Crest Street. The site is located on the South side of Crest Street opposite and slightly East of the Knights of Columbus and to the West of the cemetery.

Mr. Burns reviewed the R-3 Zoning Schedule on Sheet 3 of the plans, based on the Townhouse section of the Code: Existing conditions: 3 acres is required; they have .175 acres; minimum lot width and lot depth. Variances are required for minimum front yard, minimum side yard, minimum rear yard, maximum project density, maximum impervious coverage and maximum building height. The ordinance permits seven units, and they are only proposing five units. They are correcting stormwater runoff and providing four seepage pits. He did not believe any of the improvements would interfere with the objector's property. They also did a soil test in the presence of Mr. Raimondi, and there were sandy soils.

Mr. Burns testified as to landscaping and lighting details specified on the plans. Access to the building will be by stairs, with designated parking, and handicap parking

(ZB 11/4/13 Minutes)

is not required per State regulations. Soil moving activity was addressed. The calculations were provided on the site plan. 317 cubic yds. would be imported on site. They will comply with Borough regulations as to clean soils. There is a C1 waterway the Musquapsink Brook, and they are located within 300' of same. Upon approval by the Board, they would submit the approval to the DEP. Mr. Mancinelli questioned Mr. Burns, who testified they are consistent with other developments in the area and there are no negative impacts.

Questions of Mr. Burns followed. Mr. Raimondi reviewed the plans and communicated with Mr. Burns. He requested a clean out and utilities be placed on the plan. Because the two driveways are close together, he asked for specific signage with a proper curb. Mr. Oakes asked if the height of the buildings would be the same on each side. Mr. Burns responded yes, but with a slight slope.

Mr. Kates questioned Mr. Burns if any attempts were made to acquire additional property. Mr. Burns had no knowledge. With regard to the soil to be elevated slightly, Mr. Kates asked about water flow, landscaping and plantings. Mr. Kates further inquired if any units will be affordable units. Mr. Burns did not know. There will be five two-bedroom units. The governing issue is the width of the lot. There were no further questions of Mr. Burns.

Albert Dattoli, NJ Licensed Architect, was sworn in, qualified and accepted. Mr. Dattoli was familiar with the subject site, surrounding area and ordinances. Mr. Dattoli described his Architectural Drawings dated 8/20/13 and gave an overview of the building. There will be ten spaces—two spaces per unit, under the building. The grade is higher on one side. Columns support the upper floors and will have a stone finish. The first and second floors will have horizontal vinyl or Hardiplank siding. The building will have aesthetic appeal. By barrier-free codes, they are described as townhouse units. Each unit has a powder room on the first floor level and 1.5 baths on the bedroom level. Square footage varies by unit, ranging 1,014 - 1,312 square feet. The height is 36.16' at the highest ridge beam. The building will be fully sprinklered per Code.

Mr. Mancinelli questioned Mr. Dattoli. The zone permits townhouse development. He reviewed the Board Planner's reports. The parking required is 9' x 18'. They have 9' x 19'. The parking is extended past the building

(ZB 11/4/13 Minutes)

line. They do not have enough depth for a parking garage and would only have 16.5' in depth. That is why they have open parking vs. garage parking. Mr. Mancinelli asked if they considered reducing the number of units. Mr. Dattoli stated they actually reduced the number of units from six, as they would not have gotten anywhere near adequate parking, so they are proposing five units. It is consistent in character with the surrounding properties, which are multi-family. This is the only single family dwelling left. The Knights of Columbus is the only other non-multi dwelling property.

Mr. Oakes asked about snow removal and trash management. Mr. Dattoli would have a fan to draw the odors out with a concrete slab ceiling. That and the entire building will be sprinklered. Mr. Oakes asked for clarification about building height. Mr. Mancinelli added there are details listed as Note 10 on Mr. Burns' plan. Mr. Martin commented this encourages sloped roof plans. Mr. Lydon asked about emergency generators, and they did not have any at this time. Mr. Lydon asked where they could be put. Mr. Dattoli said they did not have any plans for them, and these would be rental units. Mr. Kates questioned Mr. Dattoli.

There were no further questions of Mr. Dattoli and none from the public.

The time being 11:00 p.m., the matter was concluded for the evening and carried to the 12/2/13 meeting.

**10. DISCUSSION:** None

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

**Respectfully submitted,**

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