

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
December 2, 2013**

APPROVED 1/6/14

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 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 McKoy
Matthew Ceplo
Eric Oakes
Robert Bicocchi
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
By: Sean M. Moronski, PPAICP

ABSENT: None

Board Members listened to tapes and signed Certifications, as stated below.

4. **MINUTES** - The Minutes of the **11/4/13** were approved as amended on motion 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 **\$2,243.75** was made by Michael Bieri, seconded by Christopher Owens, and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Unique Training Group, 23 Bergenline Avenue, Block 2105, Lot 4 - Change of Tenant/Variance** - 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. There were no further questions, comments or discussions. On roll call vote, Michael Bieri, Vernon McKoy, 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 **Kirk, 66 Kingsberry Avenue, Block 1601, Lot 7 - Section 68 - Withdrawn** - Mr. Rutherford advised a letter was received from the applicant stating they are withdrawing their application. The Board honored that request and dismissed the application without prejudice, by motion of Mr. Bieri, seconded by Mr. Owens and carried unanimously on roll call vote. Alternate Members Mr. Hartman and Mr. Montana were not needed to vote.

Chairman Martin announced that in the event the applicant wished to make another application before the Board they would have to file a new application with notice and publication.

2. **A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance** - Scott Berkoben, Esq. represented the applicant in a continued hearing for a vote by the Board. The hearing was concluded at the last meeting. Mr. Rutherford reviewed what Board Members were eligible to vote. The following Board Members

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listed to the tapes of the meetings for which they were absent and signed Certifications: Mr. Biccocchi - 11/4/13; Mr. Bieri - 8/5/13 and 10/7/13; Mr. Hartman - 10/7/13 and 11/4/13; and Mr. McKoy - 2/4/13 and 10/7/13. Therefore, all nine members were eligible to vote on the application.

The Board reviewed the variances and conditions to be voted upon, with brief discussion, i.e., use variance, bulk variances and site plan approval. There were no further questions, comments or discussions. A motion for approval was made by Mr. Owens and seconded by Mr. McKoy. On roll call vote, Mr. Biccocchi, Mr. Bieri, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes.

The Board took a ten-minute recess at approximately 8:25 p.m.

3. Ferrara, 53 Crest Street, Block 1805, Lot 5 - Robert J. Mancinelli, Esq. represented the applicant. Objector's attorney Michael Kates, Esq. was also present. A communication was sent concerning an objection to the notice. Mr. Mancinelli commented this was addressed at the last meeting. Mr. Rutherford advised an email was received from Mr. Kates, raising another notice issue, which was responded to and copied to Mr. Mancinelli. Chairman Martin stated this was the first time the Board was hearing this and asked for an explanation of the issue.

Mr. Kates explained when they retained their planning consultant, he reviewed the plan as a townhouse development project conforming to the definition of "townhouse" in the Westwood Code, which he read. However, the plan presented does not have rear access per the Code, only front access. Mr. Lydon's report and opinion stated that the RSIS supersedes the Westwood definition and does not make any differentiation between them. Now, Mr. Kates questioned in what definition and category this building lies in, and comes the closest to being one-family dwellings, not townhouses. The R3 Zone permits townhouse and multi-dwelling units, but not one-family dwelling. This not qualifying under townhouse or multi-dwelling requires a D1 use variance.

Mr. Mancinelli agreed the notice did not include a D1 use variance, because there is no D1 use variance. He reviewed this with the planner, and the RSIS controls development in the State. This was looked at as either a multi-family or townhouse application. The Board Planner correctly pointed out that this applied under the townhouse standard. It is almost a hybrid. The

definitions are somewhat inconsistent and confusing, and the Board Planner recommended they go with the townhouse. Their own planner was not yet planner. It is not a single-family development, so a use variance is not required. They are eliminating the one-family, as one-family is not permitted in the zone.

The Chairman with Mr. Rutherford noted this pertains to legal notice and interpretative issues. Mr. Rutherford advised if there is a D1 use variance, certainly the notice is defective. The RSIS is attached multiple-family units and the only separation is vertical, Mr. Rutherford read. Primarily it is a legal issue and comes under the Board's interpretative powers to determine whether it comes under the townhouse, multi-family or single-family definition. He did discuss this with Mr. Lydon, and the RSIS definition does trump the definition in the local ordinance. The site plan standards were taken out of the local governing body, but preserves local, zoning power. Mr. Martin stated it appears the Board has to make a determination, and the Board Planner should advise the Board. Mr. Rutherford advised the Westwood definition is much more detailed. Mr. Martin wanted to obtain an opinion from their planning consultant.

Mr. Moronski advised this does not fall into the single-family definition, and the question is whether it fits into the townhouse or multi-family category, which means the use is permitted in the zone. Mr. Rutherford stated the density variances would still be present. Mr. Moronski read both definitions. In his consultation with Mr. Lydon and review of the plans, it is clear that what is being proposed falls under the definition of townhouse dwelling more accurately than multi-family, due to the vertical separation of the units. The townhouse definition is accurate as far as controlling the density application. Viewing this as a townhouse development, the density limit is more restrictive, Mr. Martin added. The matter was opened to the public for comments on this issue. There were none.

Mr. Kates asked to respond. He stated it does not have a rear entrance and exit and does not have the components of a townhouse. This was taken under advisement. Mr. Mancinelli totally disagreed. That does not make it a D1 variance. If one aspect or physical feature of the definition it doesn't make it a D1 use variance, it would be a design waiver or a C variance. Mr. Oakes commented if it has the vertical separation, it is a townhouse. One or two entrances is not the defining measure. Mr. McKoy asked for clarification about the rear access. Is it

more of a safety issue or definition of space. Mr. Moronski did not know what thoughts went into designing that definition. Mr. Martin commented it was not a recent discussion of the Master Plan. Mr. Mancinelli said they do have rear access; the definition says door. Mr. Moronski said it most closely fits into the townhouse category.

Chairman Martin called for a motion under the Board's authority on the action of whether it is a townhouse, multi-family dwelling, or other. A motion to declare it a townhouse development was made by Mr. McKoy and seconded by Mr. Oakes. On roll call vote, Mr. Biccocchi, Mr. Bieri, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes. The Notice was reviewed once again and was found to be valid. Based on such, Mr. Martin asked Mr. Kates if he had any further notice issues, and Mr. Kates responded no.

Mr. Mancinelli's planning witness had not yet arrived. It was decided that they could not proceed and would carry the meeting. Therefore, the matter was carried to the 1/6/14 meeting, which was a regular and reorganization meeting. No additional notice was required, and Mr. Mancinelli granted any extension of time required.

The Board went into **Closed Session** to discuss pending litigation at approx. 9:15 p.m. on motion of Christopher Owens and seconded by Eric Oakes.

The Board returned to **Open Session** at approx. 9:30 p.m. on motion of Christopher Owens and seconded by Eric Oakes.

10. DISCUSSION:

The Board extended congratulations to Robert Biccocchi on becoming an elected government official. Further, the Board expressed disappointment that Mr. Bieri would not be returning next year. He requested not to be reappointed due to growing demands at work and other areas. Mr. Bieri commented, as an architect that appears before many towns, he sees we have one of the finest Boards, that gives each application a thorough and objective review. It is hard to let experienced Board Members go, Chairman Martin added, but does understand the decision to balance life as needed. The Board thanked Mr. Bieri for his service.

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11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 9:30 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary