

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
December 3, 2012**

APPROVED 1/7/13

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.

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
Raymond Arroyo, Vice-Chairman
Michael Bieri
Robert Bicocchi
Christopher Owens
Eric Oakes
Vernon McCoy
Matthew Ceplo (Alt #1)
Guy Hartman (Alt #2)

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

ABSENT: None

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4. MINUTES - The Minutes of the **11/19/12** to the next meeting **were tabled** on motion made by Mr. Arroyo, seconded by Mr. Biccocchi, and carried unanimously on roll call vote.

5. CORRESPONDENCE:

1. Letter from Donald Rubin, Architect, dated 11/28/12 RE: Puentes Variance Extension, 60 Wheeler Avenue; Mr. Rutherford advised the letter relates to an approval from 2009, and on 1/5/10 Mr. Rubin was concerned about the expiration and requested a two-year extension. The Permit Extension Act does indeed toll the running of the period of approval through December 31, 2014. There is no need for action by the Board. The Governor and legislature extended all permits through 12/31/2014.

6. VOUCHERS: A motion to approve vouchers totaling \$6,073.75 was made by Mr. Bieri, seconded by Mr. Owens, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Vardean, 26 Lake Street, C Variance - The Board Attorney read a summary of the Resolution of Approval into the record. A motion for approval of the Resolution was made by Mr. Owens and seconded by Mr. Arroyo. There were no further questions, comments or discussions. On roll call vote, all Members 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. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval;

2. Niarra, 312 Kinderkamack Road; 199 Fairview Avenue, Block 811, Lots 4 & 12 - Variance - Brian Chewcaskie, Esq. represented the applicant in a continued hearing. Lisa Phillips, Professional Planner, Oakland, NJ, was sworn in, qualified and accepted. Ms. Phillips testified as to the variances, which included a "D" variance for the playhouse use, and "C" variances for rear yard

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setback, lot coverage and parking. The Photograph Exhibit was marked A3. For parking, they are only under by eight spaces and provide adequate parking for the use. They submitted their plan to the Parking Authority. There is no substantial detriment in the zone plan, zoning ordinance or to the public good. The use is unique in a downtown setting. It is beneficial for use by parents and children, like a "Mommy and Me" or "Tumble Bee" without having to leave Westwood. This building can accommodate the use due to its substantial size.

Questions by the Board followed. Mr. Oakes asked about aisle width and if emergency vehicles would have an ample turning radius. That question would be saved for Mr. Cioffi, the architect. Mr. Arroyo asked if there were any recommendations in the Master Plan for promoting this type of use. Ms. Phillips responded it is not necessary that every single use is mentioned. There is always some new type of use.

Mr. Lydon noted the property is in the CBD zone, promoting a variety of retail uses. Ms. Phillips said it permits dance and child care centers and in terms of service, it is not that much different. This use would service the other stores. It is nice to have an overall mix. The community center and health centers do not offer birthday parties. Mr. McCoy asked about the parking shortage. Ms. Phillips said many parties will be on a Saturday, an off-peak time when parking is shared. Mr. Hartman asked for a proposed occupancy number. Mr. Chewcaskie recalled Ms. Barratta estimated 20-30 children per hour, accompanied by parents. At most it could be about 40-60 people. That would mean 20-30 cars at peak hour.

Mr. Martin noted testimony that there is sufficient on-street parking as well as off-street parking to offset the eight spaces. Ms. Phillips stated it is a good shared situation, as the doctors are usually not there on Saturdays when most of the birthday parties take place. Mr. Ceplo expressed concern about parking in the lot with small children. Ms. Phillips did not see a safety issue at all, as parents walk their children from their cars. There were no further questions of Ms. Phillips.

Vincent Cioffi, Licensed Architect, continued under oath from the last hearing. His drawing was about to be marked A5, dated 11/30/12; however, this drawing was not yet

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submitted to the Board. Mr. Martin stated they could not proceed, since the Board did not have the document in advance to review. Mr. Chewcaskie stated it was last heard on 11/19/12 and the drawing was modified accordingly. The matter was carried to 1/7/13, with no further notice, an extension of time granted, and the drawings to be submitted to the Board office for distribution to the members at the next meeting.

3. Van Grow, 27 Ruckner Road - Appeal - Carried to 1/7/13 at the request of the applicant;

4. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484 4th Avenue - Variance, Site Plan Application
William Martin recused himself and stepped down from the dais, as his office is within 200' of the property in question, and his landlord has an interest in the application. Raymond Arroyo acted as Chairman for the application. James D'Elia represented the applicant.

Mr. D'Elia presented the application and explained the house is a two-family home, and it has been used and built that way, as a side-by-side duplex. They are present for a two-lot subdivision approval, with a non-conforming use. The house was built in the early 1950's. Mary Sickinger has always lived in Westwood and has resided in the premises, paying taxes as a two-family home. Richard Eichenlaub, RL Engineering, has prepared the plan. A lot depth variance, rear yard, lot area, and maximum impervious coverage variances are required. There is also a series of photographs that were provided by Wayne Henderson. Mr. Arroyo asked the Board Attorney if any documentation was required for the two-family use. Mr. Rutherford advised we do not have a Section 68 Certificate, but he does not see any reason why they could not proceed tonight. Mr. D'Elia could also provide any additional proofs at the next meeting. The notice clearly indicates they are dealing with a two-family home. Mr. D'Elia stated his notice states they are seeking a variance for a non-conformity "D" variance, and Mr. Rutherford advised they could always renote for a Section 68 Certificate.

Wayne Henderson, 1 Winthrop Terrace, Wayland, MA, was sworn in. He testified he is married to Mary Sickinger, now Mary Henderson, for 35 years. She grew up in Westwood. Her family moved into Westwood in 1950 and lived on Clairmont Avenue. In the early 1970's they had purchased the premises

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in question for their other daughter to live in, renting out the other side. Their death triggered the family trust. The trustees live in Florida, and he manages the trust. The series of photos were marked Exhibit A1 and described by Mr. Henderson.

Mr. D'Elia asked him to explain why they brought their application to the Board. Mr. Henderson explained the lot has always been oversized for this structure. The rear portion has not had any particular use and is almost the size of a building lot. Their intention is to create a building lot to sell. Questions by the Board followed. Mr. Oakes asked if the house proposed to be built would be a one-family, and the reply was yes.

The matter was open to the public for questions of the witness. Dan Pave of 5th Avenue came forward. Since he only had a comment not a question, he would return at the end of the hearing. George Mulhauser, 664 Taco Avenue, business, MKM Properties, is immediately West of the property. He asked Mr. Henderson if he was aware of the flooding that happens in the neighborhood. Mr. Henderson responded he was not. Bill Murtagh, 480 4th Avenue, came forward and stated he had pictures of the flooding, but was kindly directed to ask questions only, not make comments. He repeated Mr. Mulhauser's question. There were no further questions of the witness.

Richard Eichenlaub, RL Engineering, 24 Wampum Road, Park Ridge, NJ was sworn in, qualified and accepted. Mr. Eichenlaub prepared a plan dated 10/1/11, signed 5/18/12, consisting of three sheets. Page two was revised to 11/16/12. The plan was marked Exhibit A2. Exhibit A3, a one-page of the proposed subdivision, was distributed. Mr. Eichenlaub testified all surrounding dwellings are one-family homes and are in the R1, zone, with the R2 and R3 zones represented. There is another two-family dwelling two lots to the North and a three-family five lots to the North. There is also a two-story office around the corner. That is Mr. Mulhauser's property. The lot consists of the dwelling itself, driveways, lawn and substantial tree plantings. The new lot would be deficient approximately 858 sq. ft. in lot area. The lot line is supposed to be perpendicular, but they created it the way it is shown so both lots would have equal back yards.

Mr. Eichenlaub discussed the variances. Two patios encroach in the rear yard setback, which would be a new

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variance created by the new lot line. The minimum front yards on Fourth Avenue and Boulevard are less than the 22' required, i.e., 14.2' on Fourth and 20.2' on Boulevard. The lot depth on both lots is below the required 100', i.e. proposed Lot 10 is 78.2' and proposed Lot 10.01 is 79.28'. On proposed Lot 10.01, 7,500 sq. ft. is required, and they are proposing 6,736 sq. ft., so a variance for lot area is required. Maximum impervious coverage requirement is 40%, and they are proposing 47.77% and 31.83% on proposed Lots 10 and 10.01 respectively.

Mr. D'Elia questioned the witness. Mr. Eichenlaub continued and discussed their obligations concerning drainage. He has not observed any flooding. They are proposing to take additional runoff and pipe it into an underground seepage system. The only runoff going out would be from the driveway itself, which can be channeled to that catch basin. There is an approximate 15' inlet to the West of them. They do not have to submit an Environmental Impact Statement because it is a developed site. The existing lot is 14,235 sq. ft. in a 7,500 sq. ft. zone. They are proposing to make Lot 10, with the existing two-family dwelling, 7,500 sq. ft. and Lot 10.01 6,735 sq. ft. There are a number of undersized lots in the zone. They would still have two lots that are larger than others in the neighborhood. There are no negative impacts. The remaining home will continue to be used as a two-family, with no expansions. It is a well-maintained neighborhood and many houses in the neighborhood pre-date the 1950's era, with non-conformities. Mr. D'Elia asked if there were any negative impacts to the zone or the zoning code, and the response was no.

Eve Mancuso, on behalf of Mr. Raimondi, reviewed his report dated 7/12/12, and noted there were many items addressed in the subsequent transmission. However, there were questions concerning the tributary to a main stream that has an associated flood plain. The rear yard is part of the tributary that is piped. She asked if he could evaluate this. Mr. Eichenlaub indicated he would have to review this. He was not sure this came up in his discussions with Mr. Raimondi. Mr. Lydon commented regarding his report and variances associated with the application. He questioned how they are providing the required air, lot and open space. The ordinance does require a 7,500 sq. ft. lot. The impervious coverage is significantly greater than is allowed, and the rear yard should be 30', but is 21'. More

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importantly, according to the zoning ordinance, the density should be increased not decreased. He asked if there was any thought to separating the two family home, and there was not. Mr. Eichenlaub did not know of any other two-family dwelling approvals when asked. Also, Mr. Lydon noted, the three-family on the block is on three separate lots.

Questions by Board Members followed. Mr. Owens pointed out corrections needed to the zones on the plan. Taking into consideration the flood zone, Mr. Owens expressed concern about water being pushed to the neighboring property during flooding. Mr. Eichenlaub responded he has not seen that occur. Also, he would be leveling the lot, out and it could be adjusted. Mr. Oakes asked about the multiple driveways and was concerned about parking, how many driveways and garages, and where they would be located. Mr. Bicocchi asked about the proposed parking area to be paved and what type of garage there would be. Mr. Eichenlaub indicated it was a two-car garage. Mr. Hartman had questions regarding the new lot and why they did not make it conforming. There would always be a variance for that property owner. He would rather see more non-conformities on the non-conforming property. Mr. Bieri commented that most of the properties in the area have deeper yards that compensate for coverage issues. Mr. Eichenlaub said currently the existing building has a front yard setback, non-conformity off Fourth due to the porches, and side yard setback on Boulevard.

Since there were other applications to be heard, and it was 9:30 p.m., Mr. Arroyo said he would allow ten more minutes of questions, since Mr. Eichenlaub would be back at the next hearing anyway. Dan Pav came forward and asked how he said they would reduce coverage. Mr. Eichenlaub explained and stated they were increasing coverage. There were no further questions.

The matter was carried to 1/7/13, at which time the February date would be announced and the matter carried to that date as requested by applicant, with time extension granted. The applicant would renote and include the Section 68 Certificate.

The Board took a five-minute recess at 9:40 p.m.
Chairman Martin returned to the dais.

5. KMACK North II - Site Plan Approval - Catherine Gregory acted as Substitute Planner for the hearing. Mr. Lydon was recused and departed at 10:25 p.m. Mr. Lafferty represented the applicant and stated he had three witnesses to testify.

Jeffrey Dorf, the owner of the property with his family since 2003 was sworn in. In 2001 they purchased Westwood Chevrolet site, which was in bankruptcy, and they moved their Tenafly business there. They closed the site because it was just not profitable, and it did not make sense to continue putting money into the building. Chevrolet paid them to shut it down, and then the company went bankrupt. Based upon his family's experience, it is unlikely that another car dealership will relocate to this site.

Scott F. Lurie, Licensed Architect, was sworn in. Drawings revised to 2/14/12 were distributed. Signs were addressed. The current building is roughly 15,000 sq. ft., with split-level uses. Overall, the building is run down. The inside is pitched in every direction. There is no use that can go in without substantial reconstruction. The grade drops off in the rear. There is no direct access to the retail portion from the rear. Signage was proposed with this being the gateway to Westwood in mind. There would be a "Welcome to Westwood" sign. Ms. Gregory noted they needed to add a dimension to the bottom of the building sign per the Ordinance to avoid a variance. They must identify all the variances associated with the pylon sign, and the variances have changed. Mr. Oakes commented he should include the size of the letters. Ms. Mancuso asked if they analyzed the sidewalks to see if there was clear ADA access, so when the door swings open there is adequate space. Mr. Lurie would review this.

Maria Petrou, Licensed Professional Planner, was sworn in and testified as to the use variance and surrounding uses. An aerial exhibit was distributed. Ms. Petrou stated the standard of proof for the "D" variance is the Medici proofs. Ms. Petrou reviewed the Master Plan. This location would meet the basic needs of people and would not serve as a downtown destination that people would walk to taking business away from the CBD zone. She believes it is a suitable use. She reviewed the C1 variances. She reviewed ITE analysis for commercial parking spaces. They would be able to accommodate all parking spaces on site. There are no substantial detriments. They are improving front yard

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setbacks. There is a setback for the pole sign of 10.82'. The larger sign allows motorists better visibility of the site.

Questions of Ms. Petrou followed. Mr. McCoy from the public asked about hours of operation. Mr. Arroyo comparing the two applications, asked about proofs and wouldn't the Mayor and Council have included a convenience store in the list of permitted uses. In terms of positive criteria he asked if she could say this is the only site that is particularly suitable and key to advancing the general welfare. All these goals can be served by a conforming use as well. Ms. Petrou responded she feels the retail store and the retail use are the catalysts for this site. It would advance the public interest with providing something that is not an eyesore. Mr. Owens expressed concern about disturbing residential neighbors. Ms. Petrou stated all activities will be oriented towards the front of the building, and the building acts as a buffer or shield. Mr. Martin commented a convenience store is retail, and he would assume this is the only location suitable. Mr. Ceplo asked if a convenience store was located anywhere else. She did not have it listed. Any convenience store would have to come before the Board.

The matter was opened to the public for questions of Ms. Petrou. Michael Meissen, a member of the public asked about restriction of hours. Ms. Gregory responded it would be in the ordinances, and she would check on his inquiry.

There were no further questions, comments or discussions. The matter was carried to 1/7/13.

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:40 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary