

BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
February 10, 2014

APPROVED 3/3/14

1. **OPENING OF THE MEETING:**

This meeting was rescheduled from 2/3/14 due to snow.

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  
Vernon McKoy  
Matthew Ceplo  
Eric Oakes (arrived 8:02 pm)  
Guy Hartman  
Chris Montana  
H. Wayne Harper (Alt #1)  
Marc Truscio (Alt #2)

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

**ABSENT:** None

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4. **MINUTES** - The Minutes of the 1/6/14 were carried to the next meeting on motion made by Christopher Owens, seconded by Guy Hartman, and carried unanimously on roll call vote.

5. **CORRESPONDENCE:**

1. Letter from Brooker Engineering dated January 8, 2014 Re: Murphy - 185 Roosevelt Avenue;

2. Memorandum from Burgis Associates dated January 15, 2014 Re: Murphy - 185 Roosevelt Avenue;

3. Letter from Robert J. Mancinelli, Esq. dated January 17, 2014 Re: Ferrara - 53 Crest Street;

4. Letter from Michael B. Kates, Esq. dated January 23, 2014 Re: Ferrara - 53 Crest Street;

6. **VOUCHERS:** A motion to approve vouchers totaling \$11,416.25 was made by Christopher Owens, seconded by Chris Montana and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Thank you Resolutions for Years of Service - Robert Bicocchi and Michael Bieri** - Board Attorney Rutherford read the **Resolution of Approval** into the record. A motion for approval was made by Eric Oakes and seconded by Christopher Owens. On roll call vote, all members voted yes.

8. **PENDING NEW BUSINESS:**

1. 39 Kinderkamack Realty, LLC, 39 Kinderkamack Road, Block 1805, Lot 1 - listed for 3/3/14;

2. Murphy, 185 Roosevelt Avenue, Block 1407, Lot 9 - Single Family Addition - listed for 3/3/14;

9. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

**SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS**  
The Board Professionals were sworn in.

1. Schanegen - 96/98 Lake Street, Block 705, Lot 15 - Application for Certification of Non-Conforming Use

**(Section 68)** Mr. Schaneen, the applicant, was sworn in. He stated he published and served notice for the hearing. The Affidavit of Service is to be provided. Mr. Rutherford will provide the form. The applicant pre-dates the ordinance for non-conforming status of a two-family home. Mr. Owens commented the paperwork appears to be in order. Mr. Rutherford asked, and Mr. Schaneen responded he owned the property since 1972, and since that time, it has been continuously used as a two-family home, a duplex, and he has not expanded it. The matter was opened to the public, but there were no questions or comments. There were no further questions, comments or discussions.

**A motion for approval** was made by Mr. Oakes and seconded by Mr. Owens. On roll call vote, all members voted yes. The Affidavit of Service would be provided by the applicant prior to the next meeting and memorialization of the Resolution.

**2. Ferrara/Crest Realty, LLC, 53 Crest Street, Block 1805, Lot 5 - Site Plan - Continued hearing from 1/6/14 -** Robert J. Mancinelli, Esq. represented the applicant in a continued hearing. Objector's attorney, Michael B. Kates, Esq., was also present on behalf of his client, Westwood Manor Associates, LLC.

Counsel for each side placed their appearances on the record. Mr. Martin recalled they left off with opening and closing comments from the public and would proceed with closing comments from the objector's and then applicant's attorneys. Mr. Kates submitted his summation letter dated 1/23/14 to the Board. Mr. Mancinelli's letters outlining the variances and waivers, with summation, were dated 1/17/14 and 1/21/14.

Mr. Kates presented his summation. What the applicant has chosen to overbuild is five units. Recognizing the property is undersized, they have a problem with this, along with a 5.5' rear yard setback proposed, when 30' is required. Three units would support a 30' rear yard setback. Five units is a self-created hardship, he claimed. The burden is on the applicant to give a site-specific reason to build this density, and they don't see it. They only see self-interest. A precedence he cited in his summation letter was reiterated. Mr. Kates concluded his summation.

Mr. Mancinelli reviewed his summation letter dated 1/21/14 and addressed his legal argument, which was not included in the letter. An overview was given by Mr. Mancinelli. The property is the only single family home in a 200' radius. There is also a Knights of Columbus on the block. Mr. Ferrara intends to construct a five-unit structure. This would remove the current use and replace it with a use permitted in the zone. The lot area required is 130,680 sq. ft., and they have 7,634 sq. ft. The acreage required is impossible to obtain as they cannot obtain property from any of the neighbors, as the neighbors are also non-conforming. The applicant also seeks waivers. Mr. Mancinelli prepared and reviewed summation charts. Mr. Rutherford advised it is permitted as long as the Board understands this is not being presented as evidence. It is not testimony of the facts. Chart #1 showed a three-acre minimum lot requirement, and none of the properties shown comply. The same was shown with the lot frontage requirement. None comply with the ordinance.

Mr. Mancinelli continued. The MLUL permits the Zoning Board to grant the D variance upon showing special reasons and positive and negative criteria by the applicant. The D5 criteria are not strict like the *Medici* standards. The rear yard setback deficiency is created because the objector's property is a flag lot. Mr. Mancinelli addressed the C1 and C2 variances. The separation of driveways-objector's driveway is 20' from their property. Parking was addressed. The granting of the variances provides benefits that outweigh any detriments. There is no substantial detriment to the public good. Five properties on Crest do not have garages and have parking underneath. They satisfy the requirements under the RSIS. Two parking spaces per unit were proposed. Objector has 1.7 and others on the chart have less than two. Applicant is providing more than required. The granting of the variances provides better zoning alternatives. Mr. Mancinelli addressed the objecting planner's testimony. On cross-examination, the objector's planner acknowledged that the proposed development would eliminate a non-conforming use. That is positive criteria. He also said there would be aesthetic improvements and improvements to drainage on the plan. Mr. Mancinelli submitted to the Board that the objector fails to submit any case for a denial by the Board. The Board has to look at the applicant's case and the planner's testimony as to the C1 and C2 analysis, wherein the necessary proofs were established.

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Mr. Mancinelli continued. Both the engineer and architect of the applicant testified in great detail that the site would be developed consistent with the development patterns of the neighborhood and positive site improvements over what presently exists. He believes they addressed all the comments of the Board professionals to their satisfaction. All standards were shown for the granting of the variances. For all of these reasons, Mr. Mancinelli asked the Board to act favorably on this application and thanked the Board for its accommodations.

Mr. Rutherford advised it was now time for the Board to discuss the facts and deliver its decisions and give an extensive legal overview for the benefit of the Board in its deliberation. The density variance is a D variance, which requires special reasons and a super-majority vote of five members. That is why the applicant is before this Board and not the Planning Board. The D5 requires a slightly less burden of proof and does not establish the property as more suitable to more intense development. Positive and negative criteria must be given. Mr. Rutherford referred to Mr. Mancinelli's letter of 1/21/14 in which the variances were set forth in detail. Applicant must show the granting of the variances would not be detrimental to the public good and will not substantially impair the intent and purposes of the zone plan and zoning ordinance. Does the mere request of the variances create a self-induced hardship, no; the elimination of a non-conforming use certainly does advance the purposes of zoning, but that's not the end of the analysis. The burden of the C2 variance must be met.

Board discussion and commentary followed.

Mr. Oakes commented. It is the last piece of the puzzle; the last conforming piece. There is a benefit here. It is the smallest piece and should be less dense. One improvement is they are going to make it 20' instead of 14' on the frontage. He saw a good improvement with this.

Mr. Owens commented and asked for clarification of how far away the rear property was. 32-33' Mr. Lydon explained. Applicant's position is that it is a rear yard. From the prospective of Lot 6, it is a side yard. Mr. Owens saw an issue of it being 5' but did also see the improvement.

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Mr. Hartman commented the variances were a little excessive and could be scaled back. There was detracting from the area with the setback, and a buffer would be a positive. Applicant overdid the bulk of the structure, in his opinion.

Mr. McKoy commented initially he thought the same but thinks the project would be good for the area. He likes the proposed project and thinks it would be an improvement for the area and would eliminate the non-conforming use.

Mr. Hartman added he agrees it would be good for the zone, but the variances were a little excessive and could be scaled back.

Mr. Ceplo asked if the size of the structure did not change, and it was made to be three units, would the density be less. Mr. Lydon stated it would be scaled down and the parking requirement would drop but the density would be same. Maybe the impervious would change with less parking, but he didn't know. Mr. Martin commented the lot is very small and cannot get any bigger. Mr. Hartman commented bulk variances are significant. Mr. Martin commented you will always have bulk.

Mr. Montana commented. The property size is limiting what can be done here and provides the applicant some level of accommodation. He understands the rear setback issue and that it cannot be addressed due to the constraints of the property. He didn't hear anything about how they could better fit a building within the requirements of the zone and questioned this. Mr. Lydon addressed his questions. Mr. Raimondi explained how the three-acre zoning was established. It was sometime in the late 1970's, in response to Mr. Hartman's question. Mr. Hartman asked about testimony regarding how far the cars would stick out when parked. Mr. Montana questioned whether the purposes of zoning would be advanced by this request.

Mr. Martin commented. Reducing the number of units would not change the variance request due to the shape and size of the property. They are eliminating a non-conforming use in the zone. There is an improvement in drainage and some site circulation. There is some decent landscaping. It is unfortunate the neighboring property wraps around this property, but he doesn't think he sees that as a negative. He looks at the property as being small in the R3 zone, and

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if you look at it as an advancement of zoning for a multi-family dwelling, it mitigates some of the variances requested.

Mr. Oakes commented. Looking at the property shrunk down on a scale, whether five or less units, it does not make much of a difference. It would conform and look like the rest of the block. There are many improvements.

Mr. Harper commented if the number of units does not make a difference in density, applicant should be able to maximize the economics of the property. Mr. Rutherford advised economics do not come into play. Mr. Harper commented the objector did introduce the concept of economics with suggesting three units.

Mr. Martin did see a benefit to the site as a conforming use and the benefit of granting some of the bulk variances for this to occur. Reducing the number of units would not reduce the bulk variances.

Mr. Hartman commented he would be more inclined towards single family and that it would fit in with the character of the neighborhood, but was concerned about the bulk.

Mr. Owens and Mr. Montana commented the applicant is starting with a clean slate and agreed we are constrained by the location and size, but not constrained by an existing building that we are trying to convert to another use.

There were no further questions, comments or discussions.

**A motion for approval** was made by Mr. Owens and seconded by Mr. Ceplo with conditions as stated. Mr. Rutherford set forth the conditions and findings of the Board, which were accepted. There were no further questions, comments or discussion. On roll call vote, Mr. Hartman, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes. Mr. Montana voted no.

The Board took a recess at 8:40 p.m.

10. **DISCUSSION:**

(ZB 2/10/14 Minutes)

1. **Procedural Rules and By-Laws** - The Board **approved** the Procedural Rules and By-laws on motion made by Christopher Owens, seconded by Eric Oakes and carried unanimously on roll call vote.

2. **Annual Report for 2013** - The Board **approved** the Annual Report for the year 2013 on motion made by Eric Oakes, seconded by Chris Montana, and carried unanimously on roll call vote.

3. **Status of Pending Litigation** - Mr. Rutherford updated the Board on the status of the litigation in the matter of Jefferson Realty vs. ETD Tire. A Motion for Dismissal of the Complaint was filed and is currently pending.

11. **ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 9:55 p.m.

**Respectfully submitted,**

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