

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
March 3, 2014**

**APPROVED 4/7/14**

**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  
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  
Kathryn M. Gregory, appeared on behalf  
of Steve Lydon, Burgis Associates,  
Board Planner

**ABSENT:** None

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**4. MINUTES** - The Minutes of the **1/6/14 and 2/10/14** were approved on motion made by Christopher Owens, seconded by Eric Oakes, and carried unanimously on roll call vote.

**5. CORRESPONDENCE:**

1. Letter from Brooker Engineering dated January 15, 2014 Re: Goodyear, 39 Kinderkamack Realty, LLC, 39 Kinderkamack Road;

2. Letter from Gregory Associates January 20, 2014, revised to February 11, 2014, RE: Goodyear, 39 Kinderkamack Realty, LLC, 39 Kinderkamack Road;

**6. VOUCHERS:** A motion to approve vouchers totaling **\$1,305.00** was made by Eric Oakes, seconded by Guy Hartman and carried unanimously on roll call vote.

**7. RESOLUTIONS:**

1. **Schaneen - 96/98 Lake Street, Block 705, Lot 15 - Application for Certification of Non-Conforming Use (Section 68)** - 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. On roll call vote, all members voted yes. Alternate Members Harper and Truscio were not eligible to vote.

2. **Ferrara/Crest Realty, LLC, 53 Crest Street, Block 1805, Lot 5 - Site Plan** - 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. On roll call vote, Guy Hartman, Vernon McKoy, Eric Oakes, Christopher Owens, Matthew Ceplo, and William Martin voted yes. Chris Montana and Alternate Members Harper and Truscio were not eligible to vote.

**8. PENDING NEW BUSINESS:**

1. **Murphy, 185 Roosevelt Avenue, Block 1407, Lot 9 - Single Family Addition**-to be listed for 4/7/14 if complete;

2. **Hendricks, 21 Park Avenue - Section 68** - listed for 4/7/14;

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

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**SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS**

The Board Professionals were sworn in.

The Board appointed **Kathryn Gregory, Gregory Associates**, as Professional Planner for the Zoning Board for the following application by Goodyear, 39 Kinderkamack Realty, LLC:

**1. Goodyear, 39 Kinderkamack Realty, LLC, 39 Kinderkamack Road, Block 1805, Lot 1** - John J. Lamb, Esq. represented the applicant. An interested party owner across the street, ETD Tire, was present and represented by legal counsel. The Notice and Publication documents were found to be in order. This is a D1 use Variance, a bi-furcated application, wherein the use variance would be heard first, and if approved, the site plan application would be dealt with at a later time. As far as Mr. Rutherford was concerned, the jurisdictional issues were met.

Mr. Lamb stated he represented 39 Kinderkamack Realty, LLC as a contract purchaser. Presently his client has signed a lease with Goodyear Tire. They intend to submit a site plan application in the next week or so. He planned to have the testimony as to the site plan as an overview, even though they are not presenting the site plan yet.

Mr. Rutherford gave an overview of a bifurcated application for the Board's knowledge and information, pursuant to the Municipal Land Use Law. The bifurcated application allows the Board to hear about the use in the beginning, before hearing the site plan portion of the application. The Board retains jurisdiction over the site plan issues, which would come later, if the use were approved.

Applicant has a higher burden of proof in the site plan aspect of a bifurcated application, as it must also show the lack of substantial detriment.

Alexander Opper, Managing Member of LLC and contract purchaser, was sworn in. He testified he has a 15-year lease with Goodyear Tire.

Marta Villa, employed with CBRE, a national real estate consultant for Goodyear Tire, was sworn in and questioned by Mr. Lamb. She is charged with making sure Goodyear Tire is operating properly at the site. This is a

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corporate store. Currently there is one other store in Englewood. There are over 600 in the Country. Generally they sell and install tires (approx. 40% of their business) and perform maintenance (approx. 60%). About 20 vehicles per day are serviced with about 22 on Saturday. There is an apartment complex in the rear and a cemetery on the side. The windows will be closed to the rear, with primary access in the front. A separate storage room will house the air compressors. No work will be done outside the building. They will have 20 parking spaces, with 14 spaces inside for 8-10 employees and customer cars. The hours will be Monday through Saturday 7am - 7pm and Sunday 9am - 6pm. There will be no body work done. Although the maximum amount of tires on site could be approx. 730, at any given time there might be 500 tires on site, new or used. Used tires are picked up and recycled. Goodyear feels there is enough business in the area for this store.

Mr. Lamb distributed two Goodyear handouts, with required site criteria, marked A1, and photos of other sites/recent growth, marked A2, dated 3/3/14.

Board questions of this witness followed. Mr. Montana expressed concern about oil on site. Ms. Villa responded waste oil is DEP regulated. Mr. Martin questioned whether Sunday hours were permitted under the Blue Laws and expressed concern. Ms. Villa stated all the corporately operated stores are open on Sunday.

The matter was open to the public for questions of the witness.

Attorney Scott Carlson asked about the Englewood store, if it were open on Sundays, and Ms. Villa responded yes.

Michael Meisten, Kingsberry Ave, also inquired about whether it had to be open on Sunday. Will there be any other tenants in the space, he asked, and Ms. Villa responded no. Mr. Meisten asked, will there be any test-driving done. Ms. Villa said she would have to look into it. Mr. Lamb stated there would not be test-driving for just tires, and they would not do any test-driving on Kingsberry.

Vincent J. Cioffi, Architect, was sworn in, qualified and accepted. His Resume was distributed. Mr. Cioffi's

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plans, dated 3/2/14, were distributed and marked A4. Mr. Cioffi described the architectural plans. The main entrance to the building is pretty much where it is now, Mr. Cioffi explained. Just inside the front door, there is a sales area and waiting area, a manager's office, file storage, and restrooms for patrons. To the left is the office area, non-sales. The remaining footprint is slightly larger than Goodyear normally uses, so there is ample room, without spilling outside. There is one, main garage entry from Kinderkamack Road, which is the same as it currently is.

Mr. Cioffi continued describing the plans. There is a parking garage in a lower level, with two garage doors in the rear accessed off Crest Street. Proposed elevations were also included. A colored rendering was displayed for presentation purposes and marked A5. Goodyear has specific colors textures, which were shown. Mr. Martin pointed out for Board Members that this concept could actually change, and Mr. Cioffi agreed this was just the concept. They were trying to tie the project in with the CBD Zone.

Questions by Board Members followed. Mr. Montana commented there was insufficient space for scrap items. Mr. Lamb responded this was on the average, and they could remove the waste and scrap more often. At this moment, they could not give an exact area measurement. Mr. McKoy asked about noise suppression of the hand tools. Mr. Cioffi responded since the building is sealed on three sides, they did not discuss any soundproofing. Mr. McKoy expressed concern since they were open on Sunday. Mr. Hartman asked where the waste oil parts would go, and Mr. Cioffi could not give an exact description but indicated probably where the waste goes.

Mr. Ceplo asked if the car dealership use was permitted. Mr. Lamb stated the car dealership use has not been abandoned. The conditional use would allow a car dealership. You could have an automotive use, but you must have a sales use alongside it. They are not complying with that requirement. Mr. Truscia expressed concern about noise, especially on Sunday. Mr. Harper asked for the approx. size of each service bay. Mr. Cioffi responded 12' x 24'. Mr. Martin commented a fire sprinkler system may be required. Mr. Lamb said they planned for it on both levels. Mr. Martin also questioned signage and commented he was not in favor of Sunday hours.

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The matter was opened to the public for questions of Mr. Cioffi. Mr. Meisten recalled in summer, the doors would be open, and expressed concern about noise. Mr. Lamb said they do have a two-lane highway in front of them (Kinderkamack Road), and the doors would be open. Mr. Meisten asked them to give some sort of consideration to this.

The Board took a recess from 10:10 pm to 10:24 pm.

Peter Steck, Professional Planner, was sworn in, qualified and accepted. Mr. Steck distributed a set of photos and excerpts from RW Zones of the Master Plan Re-examination Report of 12/1/11, which he described, marked A6. Mr. Steck has reviewed the site and surrounding area, ordinances and Master Plan.

The subject property is a fully developed corner lot, with 100% of impervious coverage, built for automotive use. That is the use today. What is unusual is there is a ramp off Crest Street that leads down to a lower level for cars. Mr. Lamb distributed the Resolution of ETD Tire, marked A7.

Mr. Steck referred to the excerpts from the Master Plan Re-examination Report above. The building would be improved by removing the front section of the building and adding green space that was not there before. They are seeking a D1 use variance, and the applicant must demonstrate there are special reasons that one or more purposes of the MLUL are advanced, and the use is specifically suited to the property. They also must show, under an enhanced burden of proof, satisfaction of the negative criteria. There are several purposes of the MLUL that are advanced, which Mr. Steck outlined. The site was specifically designed for automotive use, and this is the use they are seeking. This is not a use you would want in a heavy pedestrian area. These are large, bulky durable items that cannot be carried out, and this building is suitable for it. The applicant intends to close up the rear windows to block out the nearest residential uses. There is history of automotive use at this site. The site can easily accommodate the use in terms of parking spaces and layout. The theme is not to compete with the CBD Zone, and you would never want this located in the center of town. Because of the improvements, and special reasons, and no detriments, this use variance can be granted,

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subject to receipt of a detailed site plan, Mr. Steck concluded.

Questions by Board Members followed. Mr. Oakes asked if hours were posted on the door and if there were Sunday hours. Mr. Steck responded Sunday hours were not posted on the door. If there were an allowance of tire service on a Sunday, that would mean there is a need. They would have to review the Blue Laws, Mr. Steck indicated. Mr. Oakes expressed concern, since the last business was not open on Sunday. Mr. Steck commented Sunday is not the biggest day, and it is just for public service and to be available for people that work on other days. Mr. Montana asked if other businesses were open on Sunday. Mr. Steck did not know. The ETD Resolution stated there were no Sunday hours, it was noted.

Mr. Harper asked if there would be a PA system, but no one could answer. Mr. Martin commented that could be a site plan issue. Mr. Lamb said they would have to submit architectural plans, and that question, along with a number of other issues, would be addressed. Mr. Owens asked if the Blue Laws allowed this, and Mr. Lamb said they are investigating that question.

Mr. Martin questioned Mr. Steck about the negative criteria. If the applicant chose not to open on Sunday, that would be a benefit to the negative criteria. Mr. Steck stated that would be a benefit to the surrounding area. If the Blue Laws allow it, there has to be some public purpose that is advanced. There are so few places that you can repair a tire at on a Sunday. The only negative would be the noise.

The matter was opened to the public for questions of Mr. Steck. Scott Carlson, Esq. questioned Mr. Steck as to noise. Mr. Lamb advised they would have to stipulate as to any noise ordinances. Mr. Lamb redirected Mr. Steck. The distance between this building and the multi-family in the rear is four times larger than the distance between ETD and its neighbor, the child care center.

There were no further questions of Mr. Steck. Mr. Lamb distributed an engineering sheet marked A9. Mr. Lamb advised he would be filing the site plan application before the next meeting.

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Due to the lateness of the hour, 11:15 p.m., the hearing was ended for the evening, and the matter was carried to 4/7/14 with no further notice, and a time extension was granted by Mr. Lamb.

**10. DISCUSSION:** None

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 11:20 p.m.

**Respectfully submitted,**

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