

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
MINUTES
March 30, 2015**

APPROVED 5/4/15

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 **Special 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: Eric Oakes, Vice Chair (Chaired Meeting)
Matthew Ceplo
H. Wayne Harper
Marc Truscio
George James
Cynthia Waneck (Alt #1)
Michael Klein (Alt #2)

ALSO PRESENT: Louis A. Raimondi, Board Engineer
Steve Lydon, Burgis Associates,
Board Planner
Michele S. Austin, Esq. Substitute Board
Attorney for MedExpress Application

ABSENT: Guy Hartman (excused absence)
William Martin, Chairman (Recused)
David Rutherford, Esq., Board Attorney
(Recused)

4. MINUTES: None

5. **CORRESPONDENCE:** None

6. **VOUCHERS:** None

7. **RESOLUTIONS:** None

8. **PENDING NEW BUSINESS:**

1. **VRS 40 Kinderkamack, LLC and MedExpress Urgent Care-New Jersey, P.C., 40 Kinderkamack Road, Block 1607, Lots 12, 13 and 14 - Use Variance/Site Plan - Not heard; carried;**

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

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

1. **VRS 40 Kinderkamack, LLC and MedExpress Urgent Care-New Jersey, P.C., 40 Kinderkamack Road, Block 1607, Lots 12, 13 and 14 - Appeal of Zoning Officer's Decision - Michele S. Austin, Esq. acted as Board Attorney for this application. David Rutherford, Esq. and William Martin were recused on the application.**

Carmine R. Alampi, Esq., appeared on behalf of the applicant, VRS 40 Kinderkamack, LLC, the contract purchaser, and Med/Express Urgent Care-New Jersey, P.C., the end user. John J. Lamb, Esq. represented the objector, Westwood Taxpayers Alliance.

Mr. Alampi and Mr. Lamb submitted letters containing legal issues. Mr. Lamb suggested the letters be addressed after Mr. Marini's testimony.

Ms. Austin and Mr. Oakes heard the request. Ms. Austin addressed Mr. Alampi's letter received on Friday, before the Monday's meeting, after the Building Department closed. It was emailed today, and she does not know how many Board Members who are volunteers have had a chance to review it. As far as the 3/27/15 letter is concerned, the Board may not want to consider the request in the letter until after they read and digest and proceed in the matter. She felt it was appropriate to continue with the testimony, and this can be addressed afterward.

Mr. Alampi commented he appreciated the letter with the attachments only went out Friday, and it was not emailed to Board Members until today, although emailed to counsel, he understands and the Court reporter also prepared the transcript on an expedited basis. Mr. Oakes commented he would appreciate having time to read and digest it, not having had the opportunity to do so on the weekend. Ms. Austin wanted to give the Board ample time to review the letter, and the issues can be addressed at the 4/6/15 meeting. Mr. Alampi requested special meetings and was also available at the regular meeting on 4/6/15.

Mr. Lamb suggested hearing Mr. Marini first. Mr. Oakes mentioned a subpoena. Mr. Alampi advised he did not receive it from Ms. Austin—only a revision by Mr. Lamb. Mr. Lamb commented it was attached to his 3/20/15 letter. Ms. Austin emailed a Subpoena to Mr. Alampi; Mr. Alampi advised he was awaiting it, but did not see it. Mr. Lamb did not see it either. Ms. Austin then gave them a hard copy of the Subpoena itself. She did strike other restrictions on sale of stock.

The hearing proceeded with the first witness. Armand Marini was sworn in and gave his credentials and job description as Zoning Official. Mr. Marini is also the Construction Official. Mr. Alampi questioned his witness as to his familiarity with the ordinances and the site. The districts have different permitted uses. He briefly described the LB1, 2 and 3 Zones. So, of these three, is it safe to say the LB3 is the most expansive, Mr. Alampi asked. Mr. Marini replied yes. Mr. Marini had the ordinance with him. Mr. Alampi had copies and marked them into evidence as Exhibit A2. Mr. Alampi asked Mr. Marini to read the uses, i.e., medical office, business... Exhibit A3 was two Sections, Section 195-42 and Section 195-176 that contain definitions A-Z. He asked if these were in effect in September, 2014, and the response was yes. There was no definition of medical office. The sign company for MedExpress called him for the sign ordinance and emailed with questions about regulations, number of signs permitted, etc. Thereafter, there was a discussion between his office and Mr. Alampi's office about the application going before the Planning Board, and if they had the correct forms, followed by a conversation with Mr. Marini and Mr. Alampi that the application had to go through a use variance.

Mr. Alampi continued and asked Mr. Marini he had a letter from him dated 9/4/14 with certain attachments. Mr. Marini acknowledged receipt. Based on the ordinance and definition

or lack thereof, what did you point to in order to draw your conclusion that this was not a medical office, Mr. Alampi asked. Mr. Marini explained he had to go outside because there was no definition for urgent care. As far as doctor's office, he agreed there was no issue. The floor plan was submitted, but he did not remember on what date. On 9/4/14 he did receive the email and attachments and many referred to UCC and State review for a medical facility. Mr. Lamb produced copies of the said 9/4/14 letter for distributions. Ms. Austin marked it Exhibit A4. The letter stated it is licensed as a private practice physician's office, not a 24-hour operation. Mr. Marini went to the clients to see what exactly they were proposing. He also went on line to other towns to check the definition of urgent care. What authority did you use to make a determination of what is and what is not a medical office, Mr. Alampi asked. Basically, from past experience you need an appointment, Mr. Marini answered. Mr. Alampi asked if having appointments or not is the criteria he felt was important in a zoning analysis. Mr. Marini commented it is a walk-in clinic that you can be taken care of for an emergency illness. Did you find anything to de-classify this as a medical office; and the response was no. Mr. Marini added the floor plan was set up like an emergency center, with treatments room around a central main station, and a triage room.

The Architectural Plans were marked as Exhibit A5. A reception area was shown in the center. Typically the examining rooms, supplies and x-rays are in a doctor's office as they are here, it was noted. Mr. Alampi asked if he reviewed the transcript, specifically Mr. Sexton, and if there is anything he found to be different. Mr. Marini reviewed it briefly. Mr. Lamb objected. Mr. Oakes suggested Mr. Marini would need to read it in depth. Mr. Alampi continued with a 9/17/14 letter marked Exhibit A6. Mr. Alampi asked Mr. Marini if he had known specifically what type of medical services would be performed on site. Mr. Marini replied yes. Mr. Alampi asked, what type of medical services he was aware of. Mr. Marini replied x-rays, broken bones, lacerations, stitches, and illness. Mr. Alampi asked what his understanding was of the hours of operation and any emergency vehicles. There were no emergency vehicles. It was not a 24 hour facility. There were no surgeries. The main issue was the review of the floor plan and the background of the walk-in feature and 12-hour, seven day a week operation. Doctors' offices are not usually open for 12 hours a day. Mr. Alampi asked usually there are a few doctors in a practice with a

nurse and paramedic. Mr. Marini agreed. His main concern is the use. There were no emergency rooms, emergency signals or vehicles or stretchers. He noted the extended hours in making his decision and also the size of the hallways. Mr. Alampì asked if there was anything in the UCC stating wide hallways are for emergency rooms, and the response was no.

Mr. Alampì reviewed the list of permitted uses. Would a dental office be permitted he asked. Mr. Marini responded yes. So would a chiropractor's office—anything with an MD after the name. The only thing he would question was therapist and physical therapist. What about a psychiatrist, Mr. Alampì asked. First Mr. Marini responded no, but then yes, because a psychiatrist is an MD. The list of permitted uses listed business, professional and medical (including veterinary) offices. He said this did not fall in office because of the extended hours and no appointments. Mr. Alampì said there was no definition or specifics, and yet he made a determination that this does not comply as a medical office. Mr. Marini said yes. He did not take into consideration medical personnel working at the office. Mr. Marini said he did not have that information at the time. Mr. Alampì asked if he makes decisions without all the information. Mr. Marini said he makes decisions on what he believes is adequate information. Mr. Alampì produced a series of 80 emails.

The Board took a brief recess for Mr. Marini to review same from 9:00-9:10 pm.

Upon reconvening, Mr. Alampì stated he handed Mr. Marini a group of emails marked A1. He only saw one. It was from Karen Hughes, and from that email he guessed the Planning Board was in the process of making definitions. This was before a formal application was filed in this matter. Mr. Alampì asked if he discussed the definitions with anyone, and Mr. Marini said he did not. Would allowing walk-ins be a benefit to the community, Mr. Alampì asked, and Mr. Lamb objected. Mr. Marini responded he did not see it as a benefit, because it can become very busy and intensive. He was not concerned about the number of staff. He felt a walk-in clinic and urgent care facility was the same. Mr. Alampì stated he knew there were no emergency vehicles, but yet the place could get too busy. Mr. Marini said it was different in a doctor's office because it was by appointment. And there is no activity code or regulation, Mr. Alampì stated, and Mr. Marini agreed no. He did agree it was not an emergency room in the sense of a hospital. Mr. Alampì asked if he was

familiar with the Master Plan. Somewhat he said. Mr. Alampi asked if the 11/18/11 re-examination report was the most recent. He responded yes. Did that re-examination report address the LB3 zone, Mr. Alampi inquired. Mr. Marini was not aware of it.

Mr. Lamb cross-examined Mr. Marini and asked if he was a construction code official in Ridgefield and also a zoning board member in Wayne. Mr. Alampi objected, as he did not specifically ask questions in that capacity and would have to. Mr. Lamb continued with questions as to the zone. Section 195-111 was marked Exhibit O4, Regulations applicable to all districts. Mr. Marini indicated basically, when he gets a use, he checks the list of permitted uses. Mr. Lamb referred to Mr. Alampi's 9/4/14 letter, requesting he read the second sentence of the second paragraph, stating their clinic operates 8-8pm and is not a 24-hour operation. Was this characteristic of a walk-in clinic or urgent center. Mr. Marini stated yes. Mr. Lamb referred to A5, sent to him in a pdf. On A5, he asked him to circle the triage room. Westwood has a lot of medical offices, and does Westwood have one plan that has triage on it. Mr. Marini responded no. Mr. Lamb referred to A3, showing three elevations. Is urgent care shown by way of signage, he asked. Mr. Marini noted yes, over the doors. He was also sent the Site Plan O2, which contained the name MedExpress Urge Care Facility on all pages. Mr. Lamb asked if Mr. Alampi mentioned a laboratory facility, and did he send in a license for a laboratory facility. Mr. Marini recalled the license. Mr. Lamb distributed Section 195-125 Light Manufacturing District as Exhibit O5 and Section 195-128 H Hospital District, Exhibit O6. Was he aware the emergency room treatment is permitted in the H Zone but no other zone. Mr. Marini agreed. It was indicated that in his opinion he looked elsewhere for what was proposed. Mr. Lamb asked for the letter dated 9/16/15 wherein Mr. Marini advised Mr. Alampi he would be reviewing the application in the next few days, but it would require a use variance, as walk-in clinics were not permitted and he would review it. He offered to meet with Mr. Alampi. They met on 9/18/15. Mr. Alampi indicated Mr. Marini handed him the letter at that meeting.

Mr. Lamb continued and recalled Mr. Marini said he went on the MedExpress website, and did he recall it said urgent care. Mr. Marini responded yes. Mr. Lamb offered it to be marked Exhibit O7. It showed a circle with a doctor's office, retail mini-clinics and emergency rooms. He reviewed all this

before he issued the denial letter. Mr. Lamb distributed it. Mr. Oakes commented to verify this is actually on the website, the URL should be provided. Mr. Lamb stated Mr. Marini had a smaller version, which would be 07a and this would be 07b. Mr. Lamb stated clinic and walk-in were not listed as permitted; Mr. Marini agreed.

Mr. Alampi asked if CVS was considered a medical clinic. Mr. Marini said they give flu shots. Mr. Alampi noted CVS's have clinics. Mr. Marini commented he was not sure if it was a clinic, but it was Board-approved. Mr. Lamb said he visited the facility for a flu shot, but they did not have a clinic there and referred him to Northvale as a CVS that has a clinic. Mr. Alampi asked Mr. Marini if he knew of a doctor's office that does not have a lab, and he referred to Section 195 and what type of labs it refers to. Mr. Marini responded a science lab. Mr. Marini said he knew of a doctor that took blood and had a lab for urine. Mr. Lamb asked if the lab in MedExpress would fall in the H zone for laboratories or the LB3 zone, and Mr. Marini responded the H zone.

The witness was open for questions by Board Members. Mr. Harper commented he was struggling with the various definitions and with respect to doctor's office, he thought it indicated that doctors work there, and you must make appointment. For an urgent care the only consideration the extended hours, triage and walk-in. Mr. Marini agreed. Mr. Harper asked if this was the diagram he looked at with the three circles being brought together. One is a doctor's office that falls in his definition. Do you think the mini clinic is more within the walk-in category than a doctor's office he was asked and responded yes. Does emergency care fall within the permitted services. No was the response. Mr. Harper asked, who would attend to the emergency services, would that be physicians. Mr. Marini stated this is not an emergency room. Mr. Ceplo asked who filled the form out when the application came in. Mr. Lamb stated Mr. Alampi. Mr. Alampi said we do not know what you are referring to. Mr. Ceplo did not either. Ms. Waneck asked when he saw the laboratory on the plan and if it was before the denial. Mr. Marini stated he did not see a lab on this plan. Ms. Waneck asked, when looking at the website and then these plans, did you see how the plans had contradicted the ability to have an emergency room, and Mr. Marini responded that was correct.

Mr. Oakes called for opening up to the public. Mr. Alampi advised he did not feel these procedures were subject

to public participation. Mr. Oakes announced there was no public, so this portion would be closed. Ms. Austin believed Mr. Alampi was correct. The public can be called for comments but not questions. She would double-check. Armand Marini was dismissed.

The matter was carried to 4/6/15. The remaining Mondays for special meetings were not good for witnesses, and they would discuss on 4/6/15 as to whether a day other than Monday could be accommodated in the chambers.

John W. Kornick, PE, Licensed Professional Engineer in New Jersey, Maryland and Delaware, was qualified and accepted. His office does work for MedExpress. He reviewed the corporate office and the site to see if it would fit with the zoning of the site. He prepared the Site Plan, marked Exhibit A7, a Site Rendering, dated 8/12/14. Mr. Alampi distributed reduced copies. The purpose is a drawing and an aerial view of the site. Westwood Avenue is to the North, and it is in the LB3 Zone, roughly a 32,000 sf lot, and a 4,717sf building proposed. Mr. Lamb objected, stating this is not a site plan review. Mr. Alampi redirected and asked how many of these Mr. Kornick prepared. The response was five. There was nothing unusual here compared with the others, and it is consistent with them as well. Mr. Lamb objected to reference to other towns. Mr. Oakes asked them to bring it back to what is permitted for this site and use. Mr. Kornick provided details of the protocol and their review. They reviewed 16 uses in July, 2014 and advised the use was appropriate for this property. There is nothing different about this layout for the other medical offices they prepared. The size is not unusual. As for parking, they looked at the size of the building. The parking was appropriate for the number of treatment rooms. Ambulances were never contemplated in this design. The circulation on site is passenger vehicles and no emergency vehicles. There are no features different from any other medical office.

Mr. Lamb cross-examined Mr. Kornick. He asked him to read the title. It says MedExpress. Mr. Kornick stated that is the name of his client. Mr. Lamb asked him to read the exact name of his client. MedExpress Urgent Care of NJ PC. Mr. Lamb said it says urgent care. Mr. Kornick responded that is a trade mark. Mr. Lamb asked if he worked on O2, last revised 12/24/14. It says MedExpress Urgent Care facility. Mr. Kornick states that is the trademark like Chili's. Mr. Lamb distributed Exhibit O8, one sheet, List of Variances &

Waivers for MedExpress Urgent Care Facility. Mr. Kornick said yes, consistent with the client's trademark name. Mr. Lamb asked who he sent the site plan to after preparation. Mr. Kornick indicated the client. Did they make any changes, Mr. Lamb asked, and Mr. Kornick said he would have to look at his notes.

The matter was opened to the Board for questions of Mr. Kornick. Mr. Harper commented he found it interesting he referred to his client's name as a trade mark. He asked for his professional opinion as to the classification of this facility. Mr. Kornick responded, when they take these jobs they are classified as a medical office. Mr. Lamb said we would have to see what other towns permit in the zone. Mr. Harper asked if in his opinion there was a difference between doctor's office and urgent care. Mr. Kornick said in his opinion they provide the same service, and there is no difference. Mr. Lamb asked if he has looked at the website, and he indicated yes. Mr. Lamb asked if he saw reference to urgent care. Mr. Kornick had an excerpt from the website indicating what they treat. This was marked Exhibit A8, from MedExpress.com indicating what they do and treat. It would be distributed tomorrow, since there was only one copy. It was consistent with what is treated in a typical medical office. Mr. Kornick read the list. He takes this and looks at traditional medical offices and they do the same. Mr. Lamb distributed Exhibit O9, from the MedExpress website, talking about urgent care. So there is no difference between medical office and clinic. Mr. Kornick responded no. Mr. Lamb started to ask about traffic and intensity; Mr. Alampi objected. Mr. Oakes stated we are not doing traffic now. We are staying in the appeal portion of the case. There was nothing further.

The matter was also scheduled for a special meeting on 4/20/15. The matter was carried to 4/6/15 with no further notice. The time was extended to the end of April by Mr. Alampi.

10. DISCUSSION: NONE

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:00 p.m.

Respectfully submitted,

(ZB 3/30/15 Special Meeting Minutes)

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary