

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
April 6, 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 **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 (departed 8:35 pm)  
Eric Oakes, Vice Chairman  
Guy Hartman  
Matthew Ceplo  
H. Wayne Harper  
Cynthia Waneck (Alt #1)  
Michael Klein (Alt #2)

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

**ABSENT:** Marc Truscio (excused absence)  
George James (excused absence)

**4. MINUTES:** A motion to approve the Minutes of the 3/2/15 Regular Meeting and 3/16/15 Special Meeting was made by Eric Oakes, seconded by Matthew Ceplo, and carried unanimously on roll call vote.

**5. CORRESPONDENCE:**

1. Memorandum dated 3/31/15 from Steve Lydon RE: Athanastopoulos;
2. Report of Louis A. Raimondi, dated 3/31/15 RE: Athanastopoulos;
3. Letter from Carmine R. Alampì, Esq., dated 3/27/15 RE: MedExpress;
4. Letter from John Lamb, Esq., dated 3/27/15 RE; MedExpress;

**6. VOUCHERS:** Upon motion of Wayne Harper, seconded by Michael Klein, all eyes on roll call vote, **the Board approved Vouchers totaling \$3,570.00.**

**7. RESOLUTIONS:**

**1. Cameron, 10 Lewis Place - Section 68 Certificate -** Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Wayne Harper. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, and William Martin voted yes.

**2. Bartlett/Clarke, 447 Fairview Avenue, Block 709, Lot 1 - Variance -** Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Wayne Harper. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, and Cynthia Waneck voted yes.

**3. Pinto, 460 Fairview Avenue, Block 708, Lot 14 -** Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Wayne Harper. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, and Cynthia Waneck voted yes.

**8. PENDING NEW BUSINESS: NONE**

**1. VRS 40 Kinderkamack, LLC and MedExpress Urgent Care-New Jersey, P.C., 40 Kinderkamack Road, Block 1607, Lots 12, 13 and 14 - Site Plan/Use Variance -** Carried to next meeting;

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

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

**1. Vassallo, 71 Sixth Avenue, Block 902, Lot 5 - "C" Variance** - Incomplete; Board Attorney Rutherford forwarded a letter as directed advising applicants that unless the matter is brought into completeness, the application would be dismissed without prejudice. Applicants had a month's notice to bring it to completeness; however, it is still incomplete. Therefore the Chairman called for a motion to dismiss without prejudice. **A motion to dismiss** the application without prejudice was made Eric Oakes, seconded by Wayne Harper. On roll call vote, Eric Oakes, Guy Hartman, Matthew Ceplo, Wayne Harper, Cynthia Waneck, Michael Klein, and William Martin voted yes.

**2. Bogush, 43 Sullivan Street, Block 2110, Lot 22 - Use Variance** - Mr. Rutherford sent a similar letter his applicant and was advised the matter will be complete by 5/4/15. Carried to the 5/4/15 meeting with notice.

**3. Fernandez, 125 Lake Street, Block 710, Lot 21 - Site Plan** - Mr. Rutherford advised the matter would be complete by the next meeting; Carried to the 5/4/15 meeting;

**4. TSI Westwood/NY Sports Club** - Carried to 5/4/15 with additional notice required.

**5. 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** - David Rutherford, Esq. recused himself and stepped down from the dais. Michele S. Austin, Esq. took his place at the dais as Board Attorney for this application. William Martin, recused on the application, departed. Eric Oakes chaired the meeting for this 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.

(ZB 4/6/15 Regular Minutes)

Carried from the 3/30/15 Special Meeting. A Special Meeting was also scheduled for 4/20/15. Mr. Alampi advised their Planner, Brigette Bogart would testify. At the next meeting Ted Sexton would continue. Mr. Lamb advised he would have Mr. Maris on the 20th and finish with Ms. Bogart tonight. Mr. Lamb's planner, Mr. Steck, was not available on 4/20/15.

Mr. Alampi advised he has not received the Subpoena formally, a copy of which he received from Ms. Austin at the Special meeting. He represented he would comply and forwarded it to his client. Mr. Lamb had emailed there was no response from Mr. Alampi, but Mr. Alampi advised he forwarded it to his client to obtain the information following the 3/30/15 meeting. The holiday weekend followed three days later. Chairman Oakes commented to err on the side of caution, perhaps Ms. Austin should serve it officially. Mr. Alampi deferred his motion to transfer the matter to the Planning Board. He would address this on 4/20/15. Ms. Austin directed the Board to advise as to any questions.

Mr. Lamb advised on 3/30/15 Mr. Alampi acknowledged receipt of the Subpoena. He feels it should be officially served. Ms. Austin had no problem with same. Also, Mr. Lamb advised he responded to Mr. Alampi's motion, and Mr. Alampi is proceeding with his planner tonight. Mr. Harper requested clarification from Board Counsel. Ms. Austin and Mr. Oakes advised. Mr. Lamb clarified if the Board upholds the Zoning Board's decision, the matter proceeds as a use variance application before this Board. If you overrule Mr. Marini then the Board has decided this use is permitted in this zone, and then it would not hear the use variance portion. Mr. Harper asked about the motion of Mr. Alampi. That would be addressed on 4/20/15. Also, the transcripts will be provided, so that any absent Board Members could become eligible to vote.

The matter then proceeded with testimony of applicant's Planner. Brigette Bogart was sworn in. Prior to testimony, Mr. Lamb requested to question Ms. Bogart. Mr. Alampi qualified the witness. Mr. Lamb stipulated as to her qualifications, and the Board accepted her qualifications as a licensed, NJ Professional Planner. Mr. Lamb asked if she was a principal at Burgis Associates. Ms. Bogart acknowledged yes, from 2003-2012. He asked Burgis the Board's Planner during that time, and she responded yes. Mr. Lamb asked to mark Exhibit O-10 - Memo of Ed Snieckus dated 2/25/11 Re-examination of the 2005 Master Plan Report. Mr. Lamb asked

Ms. Bogart asked if she reviewed the Master Plan and Zoning Ordinances and the response was yes. Did she review the 2011 Re-examination. She responded not the interpretation. Mr. Lamb stated Ms. Bogart was a member of the Board's Planner. During that time amendments to the zones all came up. She is giving planning testimony where her former company advised the Board, indicating this was a conflict. She cannot give testimony relating to the zoning, planning or re-examination report.

Mr. Alampi advised that is not the law. There is a State law governing local officials. There is a one-year cooling off period. The legislature determined after a reasonable time, for most professionals, it is a one-year period. Likewise for planners there is a one-year hiatus for serving the Board and appearing. She acknowledges she was a principal of Burgis, but did not serve the Borough directly. Mr. Lamb stated the Local Government Ethics Law provides four standards. It is a prior business interest. The law may allow it if it is unrelated. However, it is not after one year that you can address it. Burgis Associates was the planner during the re-examination, and in this case it is related. He made his objection on the record. Mr. Oakes asked when she left Burgis. The response was 5/21/12, three years ago. Ms. Waneck commented Mr. Snieckus was the one who sat at the dais and prepared the Memos and was intimately involved with the Westwood Master Plan Re-examination. He was the go-to person involved in the discussions. Ms. Bogart stated never once in her 15 years associated with Burgis did she have anything to do with Westwood.

Ms. Austin reviewed the law, and found two sections from the NJ Rules of Evidence. An expert can deliver any information at or before the hearing, but if there were any fact-finding meetings prior to testifying, it must be disclosed. Ms. Bogart testified she was not the person involved with the Westwood account. She did not have a problem with it, but it was up to the Board whether it is a conflict. Mr. Lamb clarified the 2011 re-examination covered the H and HSO zone. Mr. Alampi commented we are not talking about the H or HSO zone, but we are dealing with the LB3 zone. Mr. Harper commented the Chairman recused himself on perception, Ms. Bogart has not. Mr. Alampi clarified the difference is that Mr. Martin would be voting as a voting member; Ms. Bogart would not be voting. That is the basis for the recusal. His witness does not cast a vote. Ms. Austin advised when an expert gives testimony, the Board determines how much weight

to give that expert. As far as an appearance of impropriety, she believes there is a difference because Mr. Martin is a voting member, and Mr. Martin was able to make that determination himself. He decided not to go forward. Here, with Ms. Bogart, it is not her decision to say, that is a decision that the Board can make. She does wish to remind them that the weight the Board gives her testimony is up to the Board. With that, Mr. Oakes asked the Board if it wanted to proceed with this witness or does it appear to be a conflict. Ms. Waneck made a motion to proceed with Ms. Bogart's expert testimony, with a second by Matthew Ceplo. On roll call vote, Guy Hartman, Matthew Ceplo, Cynthia Waneck, Michael Klein, and Eric Oakes voted yes. Mr. Harper abstained.

Mr. Alampi questioned Ms. Bogart. She was familiar with the LB3 zone. Our applicant is very similar to the prior ordinance as of 9/17/14. They operate very similar to a medical office and veterinary office. They are licensed as a medical office, with the same parking requirements and similar hours of operation defined for medical offices. The staff is similar to medical offices. They are exactly the same and based on patient volume. They allow patients to make appointment and services are very similar to doctors' offices. Ambulances are not expected and they are not operating as an emergency room. The illnesses are all common illnesses like a private doctor's office, and they also perform and fall under medical offices under the ITE (Institute of Transportation Engineers) definitions, what the traffic engineers rely upon. They have fallen under the medical and dental definitions. She has familiarity and works for four municipalities as a planning consultant and is familiar with the code of ordinances and definitions as well as master Plan and Re-examination reports. She has worked on other MedExpress facilities in NJ for the past year and a half and was familiar with all of the background information and the application process. Mr. Lamb objected to comparing with other municipalities unless their zoning ordinances are brought in.

Mr. Alampi asked Ms. Bogart if she was familiar with the various definitions under the ITE. Exhibit A9 was marked, ITE - Land Use: 720 - Medical-Dental Office Building. This was an excerpt from the trip generation manual. Ms. Bogart explained the ITE provides definitions for all of the uses. If the use fits in with a certain definition, then the traffic engineer sees how the use fits in. Mr. Lamb objected. Mr.

Alampi opposed. Ms. Austin advised as to an opinion. Mr. Oakes noted she based her testimony on the exhibit. Ms. Bogart continued. They have used this document for MedExpress and relates to what they are proposing tonight. This is provided for use by other land use traffic engineers. Ms. Bogart read from Land Use - 720 and how they are similar. The next page was Land Use 630 - Clinic and showed the differentiations. They do not fall within the new ordinance. He was able to distinguish a medical office from a clinic. The biggest difference is they do not have a full on-site lab facility or pharmacy. They operate similar to a private doctor's office.

Mr. Alampi questioned Ms. Bogart, and she provided details of the operation of doctors' offices and THE similarity to their operation. Is medical office permitted in the LB3 zone, Mr. Alampi asked, and she responded yes. In Section 195-124, under b.13, it states medical, dental and veterinary office. Does Mr. Marini's letter of denial state how he denies this as a permitted use, Mr. Alampi asked. Ms. Bogart read from the letter 195-124 Section b - urgent care facilities are not permitted in the zone... Mr. Alampi asked if there was any definition for urgent care facilities. She was not aware of any. Mr. Alampi asked if she was familiar with site plan, and she responded yes. Was there anything unusual about the size, location or parking at the building that distinguishes this from a doctor's office. There was none Ms. Bogart responded. The fact that they allow walk-ins, is that a deterrent in the zoning ordinance. Not in any zoning ordinance she saw. The hours of operation are very similar to other doctor's offices. The fact that it is operating seven days a week does not change anything. From a planning perspective, it is similar to a doctor's office. Does she disagree with Mr. Marini's decision. Yes, she responded, they are not an urgent care facility, but a medical office, which is permitted. Was she aware there has been an additional definitions in the updated ordinance. Yes, she answered. The fact that there is additional language is that important to you. Yes, and it does not apply to them. She looked at the definitions to see how their proposal fits in with those definitions. Her conclusion is the medical office definition, which she read in its entirety and compared it to their use, and how it was similar to medical office. She read the urgent care definition in the new ordinance and compared it to their use, which they do not meet.

Ms. Bogart concluded they are operating like a medical office, a primary care office, a twin sister to a medical office. For all of the reasons stated the Board should see

them as a permitted use in the LB3 zone. Mr. Marini did not take into account all the land use aspects. He testified to that and did his own research.

The Board took a recess from 8:47-8:57 p.m.

Mr. Lamb cross-examined Ms. Bogart, asking if she recalls him stating if a term is not defined in a zoning ordinance it takes on a common meaning. She indicated yes. If very similar to a medical office, is it similar he asked. Ms. Bogart testified she believes it is the same. He said her opinion is based on the fact that it is not an urgent care center. She said it is similar to a medical office, but her opinion is it is the same. Her job is to say it is very similar, but it is the Board's job to determine that. Under the land use characteristics and definitions, it is a medical office. He asked if she was aware of the American Academy of Urgent Care Medicine and if MedExpress announces they are now a member. She responded it is a brand name, as the engineer has also said. Is it fair to say, Mr. Lamb asked, that MedExpress lists every facility as a member. She did not know, adding, we are focusing on the Borough of Westwood ordinance, not other states or municipalities, and how their site plan is similar to a medical office.

Mr. Oakes directed Mr. Lamb to keep the questioning to a planning perspective. Mr. Lamb questioned Ms. Bogart on the different types of health care that can be addressed by ordinances, such as for urgent care. This is the first municipality that calls out urgent care. Mr. Lamb was directed to keep on point. He asked if there was such a thing as a clinic and if it were different from a medical office. There is a clinic and a medical office, and this was discussed earlier. Mr. Lamb asked if she was aware of any doctor's office that has a triage room. Her doctor's office had such a type of room. Did she hear Mr. Sexton's testimony about ambulances. Ms. Bogart asked what he meant from a land use perspective, as she did not understand what provisions he was referring to. Mr. Lamb brought out the big circle illustration he produced earlier and asked her if she saw it. She said yes, but her testimony was about land use proposals. She cannot talk about other applications. Mr. Lamb asked if she agreed the circle says there is a retail clinic. Ms. Bogart again read from the ordinance as to definitions for medical office and clinic. If you look at your own ordinance, we would meet the ordinance for primary care facility. Mr. Lamb

questioned Ms. Bogart about an unrelated site, Roxbury. Mr. Alampi objected.

Mr. Lamb attempted to introduce Exhibit O-11, the first page of the use variance application submitted by the applicant. Mr. Alampi objected, stating it undermines the appeal. There has been a change in definitions, and it is not proper for the Board to consider this and make a decision based upon it. Ms. Austin advised it is not proper to use the language in the use variance application in the appeal. It could be marked for identification purposes only, but not as evidence.

Mr. Lamb continued questioning Ms. Bogart as to hours of operation in relation to medical offices. Ms. Bogart responded, but also commented that it was hard to answer his questions that do not deal with planning perspectives. Mr. Oakes commented there are various medical offices that have extended hours and if she does not know the answer to the question she doesn't know. Ms. Bogart responded at Valley Medical Group and others she mentioned you can walk in, and they have extended hours. It was 10:45 pm and Mr. Oakes asked if Mr. Lamb was almost complete so the Board could ask questions. Mr. Lamb still had more questions asking about surgeries. There were no surgical procedures Ms. Bogart responded. Mr. Lamb asked about laboratories. The lab function in this facility is accessory to the medical office use she stated.

The matter was completed for the evening and carried to 4/20/15 as a Special Meeting and the Regular Meeting on 5/4/15.

**10. DISCUSSION: NONE**

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 10:55 p.m.

**Respectfully submitted,**

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