

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
MINUTES**

June 11, 2012

APPROVED 7/2/12

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 Special 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: Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Michael Bieri
Vernon McCoy
Robert Bicocchi (Recused on Care One)
Matthew Ceplo (Alt #1)
Guy Hartman (Alt #2)

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

ABSENT: Eric Oakes (excused absence)
Christopher Owens (excused absence)

4. MINUTES: The Board approved the Minutes of 5/7/12 upon motion made by Mr. Bieri, seconded by Mr. Arroyo and carried.

5. CORRESPONDENCE: None

6. VOUCHERS: None

7. RESOLUTIONS: None

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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. Care One at Valley, 300 Old Hook Road - Variance & Site Plan Approval, Block 2001, Lots 51 and 64 - Special Meeting Hearing - Donna Erem, Esq., of Wolf and Samson, Esqs., represented the applicant, for preliminary and final site plan approval, in a continued hearing from 3/29/12.

Mathew Ceplo stated he was absent for the 2/27/12 Special Meeting and would listen to the C/D.

Mr. Bilocchi recused himself and stepped down from the dais since his father is currently a patient at Care One. Mr. Rutherford and Ms. Erem concurred.

Ms. Erem, Esq. reviewed from the prior hearing and advised they secured the title report for the subject property. There was no access easement for the neighbor, but there was a deed restriction, restricting the property owner from making an application for a variance, which is of no force and effect and not in the Board's jurisdiction. Mr. Rutherford advised the jurisdiction of the Board is statutory and does not deal with enforcing the deed restriction and has no bearing on this application. It is totally irrelevant and is not to be relied upon in any way. The restriction had to do with a transaction between the Borough and a predecessor in title.

In addition to pulling the building back and eliminating a front yard setback variance, they are going to merge the lots, thereby eliminating the side yard setback requested for the R1 Zone and the rear yard setback in the HSO zone. That necessitated a change in the pitch of the roof, thereby dropping the height, and they are under the "D" variance by two-tenths of an inch. The architect would give a brief explanation, followed by their engineer, who would describe the changes to the engineering drawings.

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Mr. Rosenberg, applicant's architect, was previously sworn. His Exhibit was marked A13, Drawing A5, last revised 4/27/12. The new height is 39'7". It is taken down to a "C" variance design. Mr. Raimondi asked whether this was the final design, and it was confirmed and would be stated in the Resolution. Mr. Rosenberg commented it was a good suggestion to rethink some of the elements. There were no further questions of Mr. Rosenberg.

Mr. Fowler, applicant's engineer, continued under oath. He discussed the changes to the site plan on the easel, revised to 4/27/12. They modified the front yard setback, eliminating the variance, and added a sidewalk. The easterly parking lot area was revised to provide more of a turnaround area, so that a utility or garbage truck could turn around easily. The landscaping plan was modified to allow large trees to remain. They tied in the Old Hook Road expansion into their detention facilities. An additional catch basin would be installed. Runoff from the easterly parking area would be piped eliminating over land flow. Lastly, vehicles cannot traverse to and from Hudson Street. Mr. Raimondi asked for the side yard setback and Mr. Fowler responded approximately 50'. Mr. Raimondi suggested a foundation location survey be obtained prior to construction, as a condition of any Resolution, to make sure the foundation is in the right place.

Paul Phillips, applicant's planner, was called to testify for a use variance for an inherently beneficial use, which is different for an office building. Mr. Erem advised, as mandated by our Supreme Court, when you are dealing with a variance for an inherently beneficial use, it must be shown there is no detriment to the public good or Master Plan, and there is no requirement for an enhanced burden of proof. Mr. Phillips was sworn in, qualified and accepted.

Ms. Erem questioned Mr. Phillips. He reviewed the application, site and architectural plans, reports of the Board's professionals, zoning map, visited the site and conducted a survey/investigation of the surrounding uses and neighborhood and consulted with the team that is part and parcel of this application. Mr. Phillips described the lots in question and gave a summary of the application. There are a total of 197 beds. There is a "D" use variance in the R-1 zone. Further, there is a second "D" variance for floor area ratio in the HSO zone. They are requesting 52%, where 40% is allowed. The height

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variance is within the "C" variance parameters. They are proposing to extend parking areas consistent with the current conditions.

Mr. Phillips continued. Positive and negative criteria were provided. Under positive criteria, they are an inherently beneficial use per State Code, which relieves the applicant of providing the enhanced burden of proof under Medici. In Sica vs. Wall Twp., in evaluating a inherently beneficial use, a Board should take a four-part balancing test. The location of this building is in close proximity to Pascack General Hospital. There is clearly a need for skilled nursing homes. They are generally limited in a single municipality. There is tremendous support for this application in the Master Plan. The number one issue is the closing of Pascack Valley Hospital. A full service hospital is a goal and is critical in the H and HSO zones. It acknowledges the aging of the senior population. It is clear Master Plan policy for this application. He would classify this proposed use as having high ranking. No traffic or parking would occur in the R1 zone. The applicant meets the coverage requirements. It is a Ranch-style design and would blend in with the other homes. It is relatively a benign use. There is green space and landscaping. It does not affect the use and enjoyment of the area.

Mr. Phillips discussed the FAR variance. The expanded use is not very intensive in terms of the amount of activity generated. The only new activity would be employees and visitors, which would be in the non-peak hours. There are no adverse impacts to the adjacent uses. The addition of height would be an improvement over a long building. He sees no issues that need to be mitigated. There are a number of "C" variances, which he discussed, followed by an overview and questions by Board Members and Mr. Lydon. Mr. Martin asked for the FAR figures. Story above grade definition was read and discussed. There were no further questions of the witness.

Deliberation and procedures for a decision were discussed. There were five eligible Board Members present. The Board took a brief recess from 9:15 to 9:25 pm.

Upon reconvening, Ms. Erem stated since there are five eligible votes, and there were two absent members that would be eligible to vote if they listened to the tape, they would like

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to seek a more complete Board. The next meeting is July 2nd, and although she has another meeting that night, Ms. Erem indicated she would have an associate cover for her and appear that evening.

Summation by applicant's counsel was heard. Ms. Erem emphasized the State mandates that Zoning Boards put an enormous weight on inherently beneficial uses. She read a short quote from the Sica case. This is for the general welfare and will be needed one day. They have presented a complete and thorough case that warrants an approval, and the application meets all the requirements of the State. Ms. Erem thanked the Board for the special meetings.

The matter was carried to the 7/2/12 meeting as first on the agenda. Mr. Rutherford would circulate an email as to which members had to listen to which C/D in order to make themselves eligible to vote.

Eric Oakes and Christopher Owens would have to listen to the C/D from tonight's meeting. Mr. Ceplo would have to listen to the C/D from the 2/27/12 meeting.

10. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 9:33 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary