

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
August 5, 2013**

APPROVED 9/12/13

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
Robert Bicocchi
Eric Oakes
Matthew Ceplo
Vernon McCoy
Guy Hartman (Alt #1)
Chris Montana (Alt #2)

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

ABSENT: Michael Bieri (excused absence)
Christopher Owens, Vice Chairman
(excused absence)

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4. MINUTES - The Minutes of the **7/1/13** were approved on motion made by Eric Oakes, seconded by Robert Bicocchi, and carried unanimously on roll call vote.

5. CORRESPONDENCE:

1. Report from Brooker Engineering dated 6/25/13 RE: Bauer, 508 4th Avenue;

2. Memo from Burgis Associates dated 7/3/13 RE: Bauer, 508 4th Avenue;

3. Report from Brooker Engineering dated 7/23/13 RE: Aiden Theatre, 316 Kinderkamack Road;

4. Memo from Burgis Associates dated 7/24/13 RE: Aiden Theatre, 316 Kinderkamack Road;

6. VOUCHERS: A motion to approve vouchers totaling **\$4,640.00** was made by Robert Bicocchi, seconded by Vernon McCoy, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. **ETD, 22 Kinderkamack, Block 1608, Lot 14** - Carried to the next meeting;

8. PENDING NEW BUSINESS:

1. **Bauer, 508 Fourth Avenue - Proposed addition and "C" 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. **A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance** - Scott Berkoben, Esq. represented the applicant in a continued hearing. Andrew Fethes, Licensed Architect, was present. The planner would be arriving at 9:00 p.m. Mr. Martin inquired whether the information missing from the drawing was provided. Mr. Fethes responded 20 sets of the drawings were submitted on 6/3/13. The Chairman noted they were not distributed to the Board Members. Mr. Fethes described the plan in detail,

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identifying the parking spaces proposed. Mr. Raimondi had questions pertaining to the parking and easement, based on the current plan dated 2/28/13, revised to 5/8/12 as stated, specifically whether the site in question had the right to park on the neighboring property. Dates of the plan needed to be clarified, as a date at bottom was shown as 5/20/13. The easement was in their favor, Mr. Berkoben, explained, affording them the right to park there. It is a recorded easement. Mr. Raimondi asked if it included the easement on the East side of the building. Mr. Fethes responded there is no easement along that side where they would park. Mr. Martin asked if there was an easement along that side that allows access to the property in the rear. Mr. Fethes did not believe so. Mr. Berkoben advised they are not aware of a recorded access easement along the rear of the property. Mr. Berkoben added his client could testify as such.

Mr. Martin inquired, and Mr. Rutherford advised a title search could be ordered to ascertain and disclose whether the property has any rights to any easements or any easements upon it. Mr. Berkoben stated he did a title search on this property, but not on the adjacent property. His recollection is that there are no easements. Mr. Martin noted if there is an easement, parking that is being relied upon for this applicant may not be permitted in the future if an owner exercises its right to use the easement itself. Mr. Berkoben advised he has not done any other title searches on all accessible properties and they would not be able to obtain an insurable interest. Mr. Rutherford advised they could search for the grant of an easement to this owner or a prior owner of this site. Mr. Berkoben advised he could have the owner testify there is no such easement. Mr. Rutherford advised the Board could decide to accept same or not. Mr. Martin asked to hear from the owner of the property, but would also like to get to the planner.

Helen Bernacker, of The Bernacker Family Trust, was sworn in and was questioned by Mr. Berkoben. Ms. Bernacker testified that since she has owned the property, no neighboring properties have any rights to use any of her property. There was one lawsuit, which she won, allowing her to use Harold Street. There were no further questions of Ms. Bernacker.

Mr. Raimondi reviewed his report dated 4/1/13 stating flood elevations should be shown on the plan. Mr. Lydon reviewed his report 3/6/13. Mr. Martin questioned the use

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variance, looking at the parking being provided, and if a significant deficiency, it could affect the Board's decision. Can a portion of the building be removed to add parking, he inquired. That could be studied. He has that question for the planner also. There were no further questions of Mr. Fethes, and none from the public.

Brigitte Bogert, Licensed Professional Planner, was sworn in and accepted. There is an oversized building right in the middle of their site, with a number of retail uses, without a place on site for required parking. It is difficult to meet zoning criteria, necessitating a number of variances. Photos of the site with tax map were marked Exhibit A7, and described by her. The tax map and photos of the street were marked Exhibit A8. The photos go right to the heart of the Master Plan, where this corridor is struggling with constraints and flooding. The industrial buildings need to be reoccupied. The Master Plan talks about this area being revitalized. The permitted uses are not reflective of what currently exists there. The Board should consider use variances in connection with revitalizing this area. She gave the positive and negative criteria. She was not aware of any permitted uses that would have sufficient parking, reviewing those uses. The building is over 10,000 sq. ft. in area. This application is unique and is dividing up that area. They are not asking for parking for the entire 10,000 sq. ft., as a majority of that is going to storage and warehousing. The largest portion that they are looking to rehabilitate has low parking requirements. Their proposal is very unique in that respect. Dividing it up allows for more efficient use of the site. From a planning perspective, that is unique. They have a number of non-conforming uses. They are looking to improve conditions. It is unique that to see a dry cleaners facility next to a nail salon. In this situation, this proposal allows for the unique situation and justification of the variance.

Question by Board Members of Ms. Bogert followed. Mr. Martin asked if she believed parking was sufficient, and Ms. Bogart responded yes. Mr. Martin pointed out there were 17 spaces, and even if employees would be driven in to the site, how would the parking be sufficient to serve both uses. Ms. Bogert advised she was informed by her client that three employees would start and follow one or two customers at different seats. It will not be used to full capacity. All the seats will not be occupied at once. They have 14 spaces on site, and 13 on Broadway, for a total of

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27 spaces. They are shared, Mr. Martin pointed out. Also, at some point the salon will be fully operational and have more employees than three. He further inquired about removing a portion of the building for parking. Ms. Bogert stated, you have eight feet in front, back and on each side, so what portion would you remove she asked. Mr. Martin responded it would have to be evaluated and noted there would be more parking and less flooding.

Mr. Oakes suggested taking down the stations to 14, so you at least have a parking space for each station. Ms. Bogert stated there is a 10,000 sq. ft. building that no one is developing, and there is a good opportunity for rehabilitation at this site. Mr. McCoy asked for the hours of operation. Most nail salons, the proposed operator said, are 11-7, and theirs would be 11-5. Her dry cleaners is open 11-7. Peak time for a dry cleaners is early morning before work, and after 5pm. Peak time for a nail salon is lunch time, up until 3pm. Mr. Montana asked what the average number of services per customer she anticipates. The response was from two to three. She never sees a nail salon completely full, and in this case, would not expect 17 clients in all at once.

Mr. Lydon asked Ms. Bogert to recite the special reasons she identified. Goals and objective of the Master Plan were identified, specifically with redeveloping the site, in accordance with the Master Plan and Zone Plan. By granting this variance, retail use, will contribute to the well being to the neighborhood. The zone Plan encourages the redevelopment of this area. The combination of uses are appropriate for this site. You will not see this in other use variances. It will improve the parking condition, the building and façade, taking away the loading docks and eliminate the vandalism that has occurred over the years. By utilizing the current building, they are creating a more desirable effect. They also further a number of uses and goals of the Borough's Master Plan. They further the Master Plan and Municipal Land Use Law, and have special reasons. Mr. Lydon asked her to address the need for a nail salon, the proposed use. Mr. Berkoben asked if the need was for development. From the Borough's perspective, it would be for rehabilitation, she stated, but she was not aware of having to provide that proof. *Medici* talks about the suitability, but she was not sure about the need. There are no market studies for a nail salon. They would not be proposing a nail salon if there wasn't a need.

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Ms. Bogert spoke next about suitability. Mr. Lydon asked how this use ties in with this location in light of the parking variance. Ms. Bogert stated for a number of reasons. Their proposal deviates and divides the building into two uses and storage. They are creating an active retail site, promoted by the zoning ordinance. One use is low intensity and one high intensity use, and they are providing a redevelopment project as a whole. It is suitable because they are redeveloping this as a whole. The two uses are suitable for the site. It is adjacent to retail uses, and considering the uses as a whole, makes them suitable. There were no further questions of the planner, and none of the public.

The matter was carried to the 9/9/13 meeting. Mr. Lydon and Mr. Raimondi would review the 5/20/13 plans, to be submitted and distributed. Mr. Berkoben consented to an extension of time through the next meeting. Mr. Berkoben also noted there would be no further witnesses.

2. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484 4th Avenue - Variance, Site Plan Application (William Martin recused) - Carried to 9/9/13 at request of applicant;

3. Kennedy, 665 Ward Avenue, Block 1202, Lot 8 - Checklist Waivers with "C" Variances - Scott Berkoben, Esq. represented the applicant. Mr. Berkoben provided the Notice and Proof of Service. The publication documents were in order, as advised by Mr. Rutherford.

Andrew Fethes, Architect, was present, sworn in and accepted. The architectural plans were marked A1. The property is in the R1 Zone. The application was for a one-story addition to the home, in order to enclose an existing open deck, wherein a side yard setback would be required. The setback from the existing accessory structure, a shed, is also deficient. The single new variance is a side yard variance, where 9' is required, and 7.80' is proposed. All other variances are pre-existing, non-conforming. He is amending the application to state the concrete area adjacent to the shed is being removed, per comments made by Mr. Raimondi. Chairman Martin inquired if the shed could be moved, as it needs to be 5' off the property line on both sides, where it is currently approximately 3'. Mr. Fethes responded not easily; it would have to be taken down in its

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entirety, removing the foundation, and putting in another foundation.

George and Vincenza Kennedy were sworn in and stated the shed has been there before 1970, as it was already existing when they purchased the house. The deck was also there. Mr. Martin explained that predated the ordinance, and those items were grandfathered. Mr. Rutherford asked what the dashed lines on Mr. Fethes' plan represented. Mr. Fethes presented photographs, marked A2, which he described, noting the dashed line represents the step.

There were no further questions from the Board or its professionals, and none from the public. A motion to approve with the conditions of no seepage pit, removal of concrete pad and conformance with plans and testimony given was made by Mr. Bicocchi, seconded by Mr. Oakes and carried unanimously on roll call vote.

4. Dickens and DeFeo, 479 Center Ave - Variance -

(William Martin recused) Chairman William Martin recused himself, as he was situated just within 200' of the subject property. Christopher Owens, the Vice Chairman, was not present, therefore the next most senior member, was Eric Oakes, who presided as Chairman. Ira Wiener, Esq., of Beattie Padovano, represented the applicant.

Brian Callahan, Callahan Architecture, 333 Fairview Avenue, Westwood, NJ, was sworn in, qualified and accepted as a NJ Licensed Architect. Mr. Wiener questioned the witness. He was hired in connection with removal of a one-car detached garage and construction of a new, two-car, attached garage, and his plan was marked A1 consisting of sheets A1-A6, dated 7/25/13. Photos were marked A2. Mr. Callahan described the plan, noting the current detached garage is dilapidated and brings the structure in conformance with a two car garage. They are pulling the new garage a few feet up to be in line with the house. There would be single garage door for the two bays. The height would be 16'. This also frees up space in the driveway and makes it easier to traverse.

Mr. Wiener noted there were minor variances required. Mr. Callahan reviewed the side yard setback variance would remain, but they were not moving the wall any closer to the property line, and they are eliminating a variance for the accessory structure. The other pre-existing, non-conforming

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condition was the building coverage. They also require a impervious coverage variance. They are now making the garage conforming, since the ordinance now requires a two-car garage. The variances required are occasioned by the home's location, retaining wall, Mr. Callahan stated, and there is really no other place to put a garage on the property. Aesthetically and from view standpoint, this is an improvement. This is a better alternative than the current condition. Mr. Wiener also noted they submitted an updated survey, prepared by Bulls Eye Surveying, dated 1/14/13, showing the buildings on adjoining Lots 8 and 10.

Questions by the Board followed. Mr. McCoy asked, and Mr. Callahan stated the configuration of the garage would remain the same. Mr. Raimondi requested clarification of the rear yard setback measurement. Mr. Wiener indicated he would ask the surveyor to put a dimension on the survey, as a condition of approval if approved. As far as impervious area, Mr. Raimondi asked if there was any layout to come out with their calculation. Mr. Callahan responded the calculation came from the surveyor and what he measured at the house.

Julie Dickens, owner, 479 Center Avenue, was sworn in. When completed, she can turn into her garage. The purpose is to have a usable garage, and the plan is to put the car in the garage. They share a driveway with the neighbor, and neither is permitted to park their cars in that shared area. This will make it better for both of them.

The matter was opened to the public for comments. David Colehatcher, 35 Lake Street, Westwood, was sworn in. His house is just to the East, and he has lived there fore 12 years. It would make it easier for him and his driveway as well. He can, in one swing, get into his garage and make his life much easier. Mr. Hartman stated it will be an improvement for that community. There were no further comments from the public or Board.

A motion for approval was made by Mr. Hartman with the condition that the surveyor would add the dimension on the plan as stated, and Mr. Rutherford added it will allow them easy access to their garage, as well as make it easier for Mr. Colehatcher as well. The motion was seconded by Vernon McCoy. On roll call vote, all members voted yes.

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6. **Kirk, 66 Kingsberry - Section 68** - Carried to 9/9/13 per difficulty with notice; Mr. Rutherford would reach out to and assist applicant;

10. **DISCUSSION:** None

11. **ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 10:35 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary