

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
September 12, 2016**

APPROVED 10/3/16

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
Eric Oakes, Vice Chairman
Cynthia Waneck
Marc Truscio
George James
H. Wayne Harper
Matthew Ceplo
Michael Klein (Alt #1)
Anthony Zorovich (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis A. Raimondi, Board Engineer
Steve Lydon, Burgis Associates,
Board Planner, Recused on 7-Eleven
(departed approx. 8:15 pm)
Kathryn Gregory, Substitute Board
Planner for 7-Eleven (arrived approx. 10:10
pm)

ABSENT: None

4. MINUTES: The Minutes of **8/1/16** were approved on motion made by Wayne Harper, seconded by Matthew Ceplo and carried unanimously on roll call vote.

5. CORRESPONDENCE: None

6. VOUCHERS: \$3,355.00 - A motion for approval of Vouchers was made by Eric Oakes, seconded by Marc Truscio and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Schrottner, 72 Benson Avenue, Block 1301, Lot 1 - Variance - Board Attorney Rutherford summarized the **Resolution of Approval**, on the record. A motion for approval was made by Wayne Harper and seconded by Matthew Ceplo. There were for further questions, comments or discussions. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William Martin voted yes.

2. Fowler, 2 McDaniels Street, Block 2203, Lot 1 - C Variance for in-ground pool - Board Attorney Rutherford summarized the **Resolution of Approval**, on the record. A motion for approval was made by Wayne Harper and seconded by Matthew Ceplo. There were for further questions, comments or discussions. On roll call vote, Matthew Ceplo, Wayne Harper, Anthony Zorovich, and William Martin voted yes.

8. PENDING NEW BUSINESS:

1. First dog Training club of Northern NJ, 41 Bergenline Avenue - Carried to 10/3/16 if made complete and notice/publication provided.

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

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

1. 7-Eleven/Boos States Development, LLC, 561 Broadway, Block 802, Lots 1 & 2 - D(1) Use Variance - Damien O. Del Duca, Esq. represented the applicant. John J. Lamb, Esq. represented objectors, a group of owners within 200'. Steve Lydon recused himself and departed at approximately 8:15 pm. Kathryn Gregory substitute planner would be late and would arrive shortly.

Mr. Rutherford advised there were no further notice issues. Mr. Lamb, attorney for objector, stated there was another objection on the notice. Mr. Del Duca represented the applicant. Mr. Rutherford advised he believed there was a resolution of the notice issues at the last meeting. Mr. Lamb advised as to the new issues he was raising, reviewing his prior objections. Today's email with letter to the Board he sent indicated there were other changes in the bulk requirements. Also, Mr. Del Duca forgot to send him revised plans and reports as requested. Chairman Martin stated that is not a notice defect. Mr. Lamb said we have a revised site plan. Essentially, based on the new plans, there is a proposal to consolidate the two lots, Lots 1 and 2, which is a reverse subdivision. Secondly there was no bifurcation application. Further, applicant has not paid the property taxes to date. The last quarter remains unpaid. The signatures on the application are an issue. The trustee did not sign; an attorney signed. For those reasons, they are objecting to the jurisdiction of the notice.

Mr. Del Duca spoke next. He addressed each allegation in turn. They were present on 8/1/16 for the application. Based on objections from Mr. Lamb, they decided to make some revisions to the plan, making it smaller and eliminating some of the bulk variances. Applicants do this all the time and are not required to renotice. They are making it smaller and less complex, and it is done all of the time. Normally they are not required to file those plans 10 days in advance. They submitted them in the exact same way. They did not file with Mr. Lamb or the professionals, as they are not required by law. They sent a revised notice to the Board and Mr. Lamb. Mr. Lamb had no objections with that. They did not forget to send anything. They sent everything the same way they sent the original application in May. There is nothing wrong with the notice. There are no issues with the notice. They are here to prove this use is particularly suitable. Mr. Lamb is not okay with this and wants a delay. This property is two tax lots. They seek to consolidate them because otherwise there will be other bulk variances. There is nothing in the law that says they have to notice when consolidating lots. It is a bifurcated use variance application. This does not prevent the Board from hearing it. It has been a bifurcated application all along. As for payment of taxes, Mr. Lamb is wrong. The law says the exact opposite. The approval can be conditioned upon the payment of taxes. It does not say you cannot hear the application. There is one reason the taxes are not paid. The applicant is a contract purchaser. The

seller is a US Bankruptcy Trustee, and as such, he is not going to pay the taxes. Once the approval is granted, his client will pay the taxes at closing. There is nothing in the law that allows the Board to refuse to hear the application because they are not paid. As for the signature, we as attorneys act as authorized agents for our clients and sign for them all the time. In this case, it is a court appointed attorney. Mr. Rutherford asked if the original application asked for a consolidation of lots. Mr. Del Duca replied yes; it has always been the same. Mr. Lamb objected regarding the payment of the taxes.

Mr. Rutherford advised on the law. 40:5D-7 MLUL defines subdivision. Consolidation of existing lots is not considered a subdivision. A reverse subdivision does not make the notice defective. As for the payment of taxes, the Borough Ordinance gives the Board discretion, and approvals shall be conditioned upon the payment thereof. He does not consider it a ground for the Board to not hear it. The Borough has a number of other tools available to collect taxes. Under the facts presented it would not be a proper basis for Board not to hear it. As for signature of the application by the attorney/Trustee, he is not a bankruptcy attorney but advised in bankruptcy, equitable ownership passes to the Trustee. Mr. Del Duca was the attorney appointed. He is not sure the owner would have the ability to sign anything right now since the bankruptcy is pending. He does not regard that as a proper objection to not hear the matter either. The objections have been addressed.

The revised plans were filed in a timely fashion. Mr. Lamb has them now. He doubts very much the application will not conclude this evening. He did not think the objections raised by Mr. Lamb should prevent the Board from hearing the application this evening. Mr. Oakes asked, and Mr. Rutherford advised, the fact that the taxes are delinquent has absolutely nothing to do with the Board's decision.

Mr. Lamb referred to his letter objection of 7/25/16 regarding the bifurcation, and if the Board wants to allow it. Mr. Rutherford's opinion was that it is correct, and the matter in which the application is presented is sufficient for the Board to proceed at this time. There are not enough facts for the Board to deny the bifurcation. Mr. Del Duca would provide supporting facts and testimony. Mr. Lamb requested a stipulation on the record that Mr. Del Duca would provide any documents transmitted. Mr. Del Duca agreed.

Mr. Del Duca proceeded with an opening statement and presented the revised site plan, for the 7-Eleven application. A use variance is required in the LB2 zone, as the 7-Eleven use is not permitted. This is a bifurcated application, meaning they broke it into two pieces, the use variance presented this evening, and if approved the site plan. The site plan was marked A1, the colored rendering was dated 8/19/16 and marked A2. The 11 x 17 of A1 was marked A3. This site is particularly suitable for a 7-Eleven use in the zone for the size proposed. In the LB2 zone, the ordinance lists the principal permitted uses, which their planner will testify to. The permitted uses are very narrowly focused. It has been 12 years since this property did not have a use, and one of the uses is the ordinance is very specific, unique and limited. If the zone were different the lot may have been developed. We would like to bring 7-Eleven to this lot as it is a particularly suitable use for this lot. Each application has to be decided on its own merit. Evidence will be presented tonight to find that the use should be granted. He asked for any signage variances be addressed during the site plan portion. They meet the size requirements and reduced some of the variances, lessening any impacts to neighboring properties. He recited the names of the professional witnesses, along with his client.

Chairman Martin stated the hearing would proceed with a break at 9:30 and conclude at 11:00 p.m. Mr. Lamb stated the Board should hire a traffic expert and have a review of the report before hearing testimony. Chairman Martin stated they solicited a proposal from a traffic engineer, but as noted at the last hearing, the Board would hear some of the application to start.

First witness: Richard V. Kenderian, Licensed PE & PP in NJ and other states, of Maser Consulting, was sworn in, qualified and accepted. Mr. Kenderian would providing engineering testimony. Mr. Kenderian testified he was familiar with the application, site and surrounding areas, which he described as being a mixed commercial and residential area, giving details. Mr. Lamb objected, stating he was giving planning testimony. Mr. Del Duca asked him to lay out the site plan proposal. Mr. Kenderian testified there would be two access points, kept away from the main intersection so as not to interfere with traffic in que Deliveries would be handled and the full lighting plan was submitted. Mr. Lamb objected. Mr. Del Duca commented they are trying to present

the site to the Board, and the Chairman commented they would like to hear it. Mr. Kenderian continued. They would provide adequate lighting and offer generous landscaping and buffers. He also looked at other permitted uses and most will not fit on this site. Those that may will required the same bulk variances they are requesting. The lot has constraints. The shape is somewhat shallow. Mr. Del Duca requested he discuss the bulk variances. Impervious coverage, 70% is allowed; they are proposing 80.44%. Other uses would also require same. The original plan was marked A4, dated 7/26/16, and they marked it to show the changes. Chairman Martin raised a question that they never heard testimony on this plan so why hear the changes. Mr. Rutherford felt it would not hurt to hear the testimony. Mr. Del Duca would proceed with what was proposed but changed. Mr. Kenderian described the before and after parking, impervious and access. A smaller building would eliminate variances, with easier ingress and egress. Mr. Del Duca had no further questions.

Mr. Lamb cross-examined Mr. Kenderian. Mr. Lamb had questions on parking, landscaping and impervious coverage. Mr. Lamb compared permitted uses and questioned Mr. Kenderian as to same. Regarding banks, did he ever see a bank without a drive-through, Mr. Lamb asked. Mr. Kenderian responded he did not. Mr. Lamb moved on to medical offices. He did not think a medical building would go there. Mr. Lamb suggested drop off dry cleaning stores, interior decorating or dance studio. An indoor ice skating rink would not fit. Mr. Lamb had no further questions.

Questions by the Board followed. Mr. Oakes asked about the permitted uses. The second story of the building they would be up against is residential. Regarding drainage, they did try to make arrangements to retain all runoff on site. Mr. Kenderian stated they represented this on the plans. Ms. Waneck also spoke about permitted uses. Mr. Kenderian responded. All this is predicated on someone making an investment that is not sensible economically for a building that would fit with no variances. The return on investment would not be the same as a 7-Eleven. It would be highly impractical to building one of the permitted use. That is why the site has not been built upon for years. Mr. Lamb stated it totally depends on what the price is. Mr. Rutherford advised one of the basis could be that the property is not developable, and that a hardship is shown. That is the ground this is taking, and is a burden to prove. Mr. Del Duca clarified with Mr. Kenderian that someone could build a use

more compliant, but impractical. Mr. Kenderian explained why it is impractical to build a 1500 sf child care center as they are more like 10,000 sf with a minimum 4,000 playground. Same for medical building, as it is too small and it would not have adequate parking. It would be too expensive to build. Also, he never saw anyone in his 40 + professional years build a free-standing dry cleaner store from the ground up on a site like this. Mr. Lamb objected on the basis of practicability. Mr. Del Duca asked based on building costs and Mr. Kenderian stated the same.

Mr. Raimondi asked Mr. Kenderian if he considered any other layouts. Mr. Kenderian showed what they started with and the superior layout they chose. Mr. Raimondi asked what made it the best layout. It provided a better turning radius, it eliminated all the setback variances, and was safer and more positive. Mr. Raimondi was concerned about traffic coming off Broadway. Mr. Kenderian stated they considered this the safest option. Mr. Klein asked if delivered would cause any noise. No additional noise was the response. Mr. Harper asked for clarification on the 14th space. It is there for an employee Mr. Kenderian answered. Ms. Waneck asked if he was familiar with any other 7-Elevens in the area. The layout of this is better than the other sites they laid out he stated. She was concerned with flooding and would like more attention paid to impervious coverage. Chairman Martin asked if he builds, and he is a consultant. He feels like Mr. Kenderian he is testifying outside the scope. Mr. Del Duca objected stated people ask the engineers for costs all the time. Mr. Martin asked if they did a feasibility study, and he did not. Mr. Martin asked about building height. That would be addressed by the architect. The landscaping proposed is 8' high, but the building is 18' high, the Chairman noted. The County would have to review this. He asked if he could discuss. The traffic engineer would. The Chairman noted traffic backs up when the train gates are down. He had no further questions. The matter was opened to the public for questions of the witness. There being none, the witness was complete.

The Board took a ten minute recess at 9:55 pm. Kathryn Gregory, substitute Board Planner, arrived.

Witness #2: Mr. Del Duca called his traffic expert. Mr. Lamb objected. Chairman Martin asked Mr. Rutherford if this would be an appropriate time to discuss the Board hiring its own traffic engineer. He did not think there would be any

harm in hearing traffic testimony this evening and hearing from the expert at a later time. Mr. Martin wanted to poll the Board. Mr. Oakes felt they could hear the witness and have their own expert listen to the tape at a later time and prepare a report. Ms. Waneck agreed. The Borough and County spent a lot of money on the train synchronization, and she would like a second opinion. Mr. Harper would like an expert now, but agreed. Mr. Martin stated a proposal was submitted from a firm by Mr. Raimondi, and they should proceed. Mr. Del Duca stated he would then hold his traffic engineer's testimony in order to hear from both experts at the same time. A motion for approval to hire a traffic expert for the Board was made, seconded and carried unanimously. Mr. Del Duca would have a set of plans for the Board's traffic engineer. The traffic engineer would have to also listen to the tape. The Chairman asked if they would provide a transcript. The applicant was not planning to do so. Mr. Rutherford advised the MLUL does not require the applicant to provide a transcript.

Witness #2 would be the architect: Perry Petrillo, Licensed NJ Architect, was sworn in, qualified and accepted. Mr. Petrillo described the plans prepared by him. Dated 8/30/16. The elevations were analyzed and provided. The illustrations on Sheet A5 showed a base, midsection and a cap. Front elevation facing Irvington has brick. As you go down Westwood Avenue, many facades have a good amount of storefront. The facade is inviting and comforting and helps the whole scale of the building. The height at the main line is 19'8". At the curve/arch it is 22'. The building materials and height are consistent all around the building. The roof slopes towards the rear. As you face the site from Irvington, you see the side elevation. The trash enclosure will be brick on the East side.

Mr. Lamb cross-examined Mr. Petrillo. He asked who prepared the plans. He sketched them out and licensed architect from his office prepared the actual plans. Mr. Lamb noted he compared how this was laid out with Westwood Ave stores. Mr. Petrillo stated no, he was trying to fit into a vernacular already existing. Mr. Lamb asked if he compared it with sites on Broadway. No he answered, because there is nothing consistent on Broadway. Everyone on Broadway is doing their own element or it's been there a long time and renovated a thousand times. Do any buildings on Irvington or Broadway have an arch, Mr. Lamb asked. The ice rink does he answered. Mr. Lamb had no further questions. Mr. Del Duca redirected.

Mr. Lamb asked what a neighbor might see from Center Ave, and it has nothing to do with the use itself, correct. Mr. Petrillo agreed.

The Board questioned Mr. Petrillo. Ms. Waneck asked about the side wall, and Mr. Del Duca responded the architecture has nothing to do with the bulk relief. She felt it looks too hard. Mr. Del Duca said they brought the plan to show what is proposed as architectural elements. Regarding landscaping, Mr. Petrillo commented they would not want anything blocking the front elevation. Mr. Oakes commented about sound buffering. Mr. Martin asked if he was consulted as to condition of the property and did he do the layout. Mr. Petrillo said he worked with the site layout. Mr. Martin asked for windows on the West side. Mr. Petrillo would have to look at the architectural elements. Mr. Martin asked how the trash would go out of the building and asked why the dumpster enclosure was in that location. Given the size and access for dumpster enclosure, that is the access that works with the site circulation and refuge truck. Mr. Martin suggested it might make more sense to move it closer to the front and put more green area in back with less real estate for the truck. Perhaps the building is in the wrong direction and the glass side should face Broadway. The architect should create the aesthetic of the building. Mr. Petrillo said it would then create more variances. Mr. Martin said yes, but perhaps that may be a better layout, and the dumpster could be located further away from the children and day care and result in a better site layout. Mr. Petrillo disagreed and stated you are taking 60% of the rear facade and positioning it against another blank brick wall, which makes more sense than having a full rear facade facing East. Mr. Martin added and having a windowless wall facing Broadway. If we take it and turn it 90 degrees we would have windows on Broadway and Irvington. The building impact and facade issues could be better served if all worked together instead of piecemeal. The building appears very large because of the high parapet. It would be better to have the higher parapet around the mechanical units. Then the outer one could be lowered down to create a stepped appearance. Mr. Petrillo said it could be looked at, and he didn't think it was very tall. Mr. Martin was just sharing the concerns of Board Members that there are no windows facing the Broadway side. There were no questions from the public of Mr. Petrillo.

The time was 11:00 pm, and the hearing was concluded for the evening. The matter was carried to the next meeting on

(ZB 9/12/16 Regular Meeting Minutes)

10/3/16. Any special meetings could be discussed then. An extension of time was not yet needed, Mr. Rutherford advised. The Board would likely need an extension of time beyond that. The application was deemed complete 6/15/16. The Board's traffic expert would receive the CD and prepare a report.

2. WestMack - 355 Kinderkamack Road, Block 810, Lot 4 - D6 Variance and Site Plan - Incomplete/Carried to 9/12/16 for hearing if deemed complete with notice and publication to be provided;

3. Jose & Laura Robles, 39 Prospect Street - C Variance for Height of Accessory Structure - Complete; Carried to 10/3/16 with notice and publication to be provided;

4. Richard Loncar, 185 Washington Ave - Section 68 - Complete; Carried to 10/3/16 with notice and publication to be provided;

10. DISCUSSION: None

11. ADJOURNMENT - On motion made seconded and carried, the meeting was adjourned at 11:05 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary