

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
September 9, 2013**

APPROVED 10/7/13

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
Christopher Owens, Vice Chairman
Robert Bicocchi
Michael Bieri
Matthew Ceplo
Vernon McCoy
Eric Oakes
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: None

4. MINUTES - The Minutes of the **7/22/13 Open Session** were approved on motion made by Michael Bieri, seconded by

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Christopher Owens, and carried unanimously on roll call vote.

The Minutes of **7/22/13 Closed Session** were approved on motion made by Michael Bieri, seconded by Robert Biccocchi, and carried unanimously on roll call vote. These Closed Session Minutes would not be published on the website and would be kept separately.

The Minutes of **8/5/13** were approved on motion made by Matthew Ceplo, seconded by Vernon McCoy, and carried unanimously on roll call vote.

5. CORRESPONDENCE:

1. Letter from L. Scott Berkoben, dated 9/6/13 RE: 711 Broadway, withdrawing nail salon designation;

6. VOUCHERS: A motion to approve vouchers totaling **\$8,023.75** was made by Eric Oakes, seconded by Christopher Owens, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. ETD, 22 Kinderkamack, Block 1608, Lot 14 - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Michael Bieri and seconded by Robert Biccocchi. There were no further questions, comments or discussions. On roll call vote, Mr. Biccocchi, Mr. Bieri, Mr. Oakes, Mr. Owens, Mr. McCoy, Mr. Ceplo, and Mr. Martin voted yes. Mr. Hartman and Mr. Montana were not eligible to vote

2. Kennedy, 665 Ward Avenue, Block 1202, Lot 8 - Checklist Waivers with "C" Variances - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Robert Biccocchi and seconded by Eric Oakes. There were no further questions, comments or discussions. On roll call vote, Mr. Biccocchi, Mr. Oakes, Mr. McCoy, Mr. Ceplo, Mr. Hartman, Mr. Montana, and Mr. Martin voted yes. Mr. Bieri and Mr. Owens were not eligible to vote.

3. Dickens and DeFeo, 479 Center Ave., Block 708, Lot 9 - Variance-(William Martin recused) - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by

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Matthew Ceplo. There were no further questions, comments or discussions. On roll call vote, Mr. Biccocchi, Mr. Oakes, Mr. McCoy, Mr. Ceplo, Mr. Hartman, and Mr. Montana voted yes. Chairman Martin, Mr. Bieri and Mr. Owens, were not eligible to vote.

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. A Cleaner City/Nail Salon, 711 Broadway, Block 701, Lot 8 - Use Variance - L. Scott Berkoben, Esq. represented the applicant and advised they were amending their application, per his letter to eliminate the nail salon use and replace it with an undesignated retail use, along with the dry cleaner use. Revised plans by Andrew Fethes were submitted, and their planner was present. However, the plans were not submitted to the Board. Chairman Martin deferred to Mr. Rutherford, as there were no plans. Mr. Rutherford advised that the plans were required 10 days in advance; however, their witnesses were present, and they could proceed and determine what was required. Mr. Lydon stated the revised plans were dated 9/9/13 and noted the number of parking stalls was reduced. There were previous drawings dated 2/28/13 and 5/6/13, Mr. Fethes stated, and those were the last drawings seen by the Board. Only Mr. Raimondi and Mr. Lydon received the 9/9/13 drawings. Mr. Martin was unsettled with the lack of documents and called for the Board's opinion as to whether to proceed. Vice-Chairman Owens indicated the Board should have the documents before proceeding.

The Board was polled. Board Members commented the documents were required before moving forward. As for taking testimony without the documents, Board was in agreement that the documents must be present to rely upon. Mr. Bieri and Mr. Oakes commented the Board should not proceed without documents. Mr. Ceplo commented if only the nail salon portion was omitted, they could proceed. Mr. Lydon stated the parking changed. Mr. Biccocchi commented the architect and planner were present, but they would have to come back anyway to testify. Mr. Montana agreed with the Board. Mr. Berkoben addressed the Board. Mr. Rutherford advised the

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plans were to be submitted 10 days in advance. They brought a plan to the meeting, but did not bring extra copies for the Board Members. Mr. Martin asked Mr. Rutherford if he could call for a motion to proceed with the witnesses or not, and as such, he was advised he may do so. Mr. Martin stated we never proceeded without plans and moved for a vote to carry the matter or proceed; stating a yes vote was a vote to carry. On roll call vote, all members voted yes to carry the matter to 10/7/13 with time extension granted by Mr. Berkoben. It was then clarified that copies of the plans would be submitted to the Board Office for the Board Members and to the Professionals directly. Mr. Martin requested Mr. Fethes to call him when the plans are at the Building Department.

The Board took a recess from 9:20-9:30 pm.

2. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484 4th Avenue - Variance, Site Plan Application (William Martin recused) - After brief discussion and no appearance by applicant, a motion to dismiss the application without prejudice was made by Christopher Owens and seconded by Eric Oakes. A provision was added that the escrow account is to be made current, and any new application filed would require new escrow monies to be posted. There were no further questions, comments or discussions. On roll call vote, all members eligible voted yes. Mr. Hartman and Mr. Montana were not eligible to vote.

3. Kirk, 66 Kingsberry - Section 68 - Not noticed; Carried to 10/7/13; Mr. Rutherford would advise applicant to serve notice and publish for the next meeting.

4. Bauer, 508 Fourth Avenue, Block 0902, Lot 47 - Proposed addition and "C" Variance - Applicant, Mrs. Cori Bauer, was sworn in. Applicant's architect, Douglas Radick AIA, was sworn in, qualified and accepted. His plans were dated 6/17/13. A second revised sheet A2 was submitted dated 7/10/13. Mr. Radick presented the application for a two-story addition to the rear of the existing, one-family home. It was explained that applicant could not climb stairs. A bedroom and bathroom would be added upstairs. The side yard setback variance is due to the 50' width of the lot. All the lots on the block are 50' wide and 150' deep and are all in violation. They should be 75' as required. They worked with the lot as best as they could.

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Referring to the plan, Mr. Radick continued, you can readily see the narrowness of all the lots. They are proposing to remove the deck and replace it behind the house. In so doing, there is a tree they do not want to cut down, so they will angle around it. The variances are described in the rejection letter by Mr. Marini: Minimum side yard setback variance of 9' where 3.3' is proposed; Maximum permitted building coverage is 22% where the proposed is 23%; Front yard setback is a pre-existing, nonconforming 19.1' where 22' is required; and Right side yard setback is a pre-existing, nonconforming 19.1' where 22' is required; Minimum setback of the shed is 5', where the existing is 1.7'. The dwelling does not have a garage. These are existing conditions. They are taking out the narrow galley kitchen. Mr. Radick circulated photos, marked Exhibit A1. The second revised sheet A2 showed the proposed new basement.

Questions by Board members followed. Mr. Owens asked how many bedrooms there were, and Mr. Radick responded three. Mr. Montana asked if they addressed any drainage issues. Mr. Radick responded they are putting in ample footings and they have a very flat lot. They were recused from submitting a topographical survey. Mr. Raimondi recommended installing a drywall at the rear of the lot. Mr. Radick indicated they were willing to do so. Mr. Raimondi addressed his report of 6/25/13. His first question was about receiving a signed and sealed survey from 2007. He would need to see this. That would be provided, Mr. Radick stated; however, Chairman Martin stated the survey would have to be submitted prior to the Board taking any action. An original survey made by Ernest Myrhen was then produced. A sealed original would be provided. The side yard setbacks would be added to the plan. Mr. Oakes asked if there was any thought of adding a garage, and applicant responded no. Chairman Martin stated they are not adding any bedrooms, so this would not trigger a requirement for a garage. The Chairman had questions on the basement. The opening would be from inside the existing basement. The stairs are just interior.

Mr. Lydon reviewed the variances. There were no further questions, comments or discussions. A motion for approval was made by Mr. Oakes, subject to receipt of a sealed survey, and adding dimensions to the site plan as directed by Mr. Raimondi, including drainage calculations, and seepage pit. The motion was seconded by Mr. Bicocchi.

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On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. McKoy, Mr. Oakes, Mr. Owens, Mr. Ceplo, and Mr. Martin voted yes. Mr. Hartman and Mr. Montana were not needed to vote.

5. Aidan Theatre, 316 Kinderkamack road, Block 811, Lots 4 & 12 - Carmine R. Alampi, Esq. represented the applicant, Ray Walsh, of Aidan Theatre, LLC, for a use variance at the property address, currently occupied by a medical office and child's playhouse. Proper notice was served and published. They are seeking to install a small neighborhood movie house within 1,987 sq. ft. of space in the building, with one auditorium having only 96 seats. Approximately last year, Mr. Walsh had applied for the theatre and then withdrew the application. Further, they were not proceeding with any changes to the LED lighting system signage approved; it just may be sufficient.

Mr. Alampi gave an overview of the application, for a boutique movie theatre, showing older films. It is exactly the same as the previous application. He attached the prior Resolution of Approval to the application. Ray Walsh, applicant, was sworn in, confirmed the overview and testified as to the hours, open Wednesday through Saturday and possibly Sundays, primarily in the evening around 7:00 p.m. Mr. Martin noted last time there were objectors, and at the present hearing, there were no objectors present.

Vincent Cioffi, Licensed NJ Architect, was sworn in and accepted. Mr. Cioffi testified he was involved in the renovation of the entire building and prepared a plot plan, consisting of three drawings, dated 4/1/12, revised to 7/30/13, marked Exhibit A1, which he described. The site plan and building will not change from the last application. As for the floor plans, Mr. Cioffi clarified 96 seats in the theatre were proposed. There were no changes to the façade. Mr. Alampi questioned Mr. Cioffi on the floor plans.

Questions and comments by Board Members followed. Mr. Bieri noted the variances would be for parking and use. Mr. Oakes suggested adding lighting in the theatre for the restrooms. Mr. Montana asked if any additional safety egress was necessary and if sprinklers were required. Mr. Cioffi responded it was in compliance. Sprinklers were not required. Chairman Martin commented spots for wheel chairs were necessary, so seats would be reduced from 96. He was concerned that the seats in front were very close to the screen and perhaps they are seeking a lower number to

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eliminate some parking needs. Chairman Martin noted lighting was needed to get to the restrooms, and he did not see how this would function as a theatre. Mr. Cioffi expressed they are confident the space works as far as size, but it may change on the interior with these issues being brought up. As we review the use variance, the viability of the space should be examined, the Chairman commented. Mr. Cioffi agreed and stated some adjustments may be needed. The projector would be ceiling-mounted. Mr. Lydon asked, and it was confirmed the entrance would be on Kinderkamack Road. The rear exit was for emergency purposes.

Gary Dean, Licensed NJ PE, Traffic Engineer and Licensed Professional Planner was sworn in, qualified and accepted. Mr. Dean described his report dated 8/23/13. He reviewed the traffic report, site plans by Mr. Cioffi and consulted with Mr. Alampi as to the nature of the use and the history. It doesn't use shared parking, which is typical of movie theatres. Most of the businesses are closed when this theatre is in operation. They are not open on Sundays. The medical office is not open in the evening. Therefore the parking allocated to those businesses is available to this theatre. The peak day and time is Saturday, mid-day. From his review, there is ample parking immediately surrounding the site. The photo plan on the easel was marked Exhibit A3 is prepared by Ms. Phillips, Project Planner, dated 9/9/13. There is metered parking even for a Saturday matinee. This satisfies the proofs for the parking variance. Mr. Dean further reviewed the ITE data for Saturday matinee theatre parking requirements. There were no questions of Mr. Dean from the Board and no interested parties in the public.

Mr. Alampi's final witness, Lisa Phillips, of Oakland, NJ, Licensed NJ Professional Planner, was sworn in, qualified and accepted. Ms. Phillips was the planner for the prior application and gave testimony as such. The purpose was for a use variance and parking. They were improving the façade and providing coverage for over the doorways. There was also a coverage variance. Currently, 90% of the work has been done on the site. One of the photographs was aerial, showing the property. The remaining photos were taken last summer, but now the building looks fresh and vibrant, with the signage installed. For quite a few weeks the site was being paved, so she was unable to take the newest photos. The property is striped for parking, and there is also parking on Kinderkamack Road. As for the

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use, typically there were downtown theatres, and the Pascack Theatre does not have its own parking. We are not doing first-run movies, and in the evening there is adequate shared parking and parking on the street. Ms. Phillips testified she reviewed the Master Plan. There are goals to improve the buildings and facades, which they have shown. It also talks about establishing joint access easements for shared parking agreements. This is a perfect example of that, and she testified on such at the time of the last application.

Further, Ms. Phillips testified as to Master Plan Goals being met. The Big Playhouse and this theatre are both a destination use. The positive and negative criteria were addressed by way of parking. There are no detriments to the public good or zone plan. They have addressed some of the Goals of the Master Plan. The parking would fall under C1 and C2. Special reasons and particular suitability comments in Mr. Lydon's report were covered. Mr. Lydon noted as particular suitability Ms. Phillips testified the use was closed until 7:00 p.m., so if this use were on Westwood Avenue, it would be not be as suitable as this location, since there would be less activity on Westwood Avenue where all businesses are open during the day.

Questions and comments by Board Members followed. Mr. Montana inquired if they were seeking or any additional signage as to films playing. Mr. Walsh stated no, the films would be promoted in the windows. Mr. Hartman asked if there would be any film festivals or special events. Mr. Walsh stated there probably would be. Chairman Martin commented he liked the use, and it worked in his view. It would draw people into Westwood. He needs Ms. Phillips to define this very clearly as to type of movies shown. The use variance goes with the building. If the applicant sells the business, there needs to be provisions in place, with movie types, ratings, and content specified. These terms must be clearly defined as he is concerned as a Board Member and from a planning prospective. Ms. Phillips suggested language in the Resolution, stating "first-run movies are not permitted". Mr. Walsh stated he would not show anything after approximately 1980. Mr. Martin asked for something in writing defined by the applicant, so Mr. Lydon, the Board Planner is comfortable that situations cannot develop in the future.

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Mr. Rutherford advised we have to define the details that fit in with the principles of the zoning and use. Mr. Alampi commented this is a single screen auditorium and limiting it to this criteria is probably the strongest restriction, along with restricting first-run movies. Mr. Martin suggested carrying the matter to 10/7/13 to be able to explore the proper language to be defined before concluding the matter and voting. Mr. Rutherford advised he would have to write a Resolution defining the use. Mr. Martin wanted the two attorneys and Board Planner to review this in the coming month. Mr. Oakes also commented the ultimate arrangement of the space by Mr. Cioffi was also to be completed. A discussion ensued. Mr. Rutherford and Mr. Martin advised there was no need for the witnesses to return at the next hearing. There were no members of the public present. The matter was carried to 10/7/13 with no further notice.

10. DISCUSSION: The Board discussed availability of meeting C/D's for when Board Members miss meetings.

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:20 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary