

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
May 6, 2019 Regular Meeting Minutes**

OPENING OF THE MEETING:

The meeting was called to order at approximately 7:30 p.m. by reading the 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.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Present: William Martin, Chairman
Matthew Ceplo
H. Wayne Harper
Anthony Zorovich
Beverly Karch, Alt #1
Michael O'Rourke, Alt #2

Also Present: David Rutherford, Board Attorney
Louis A. Raimondi, Board Engineer
Kathryn Gregory, Planner (arrived 8:05 p.m.)

Absent: Eric Oakes, Vice-Chairman (excused)
George James (excused)
Michael Klein (excused)
Steve Lydon, Planner (excused)

MINUTES:

April 1, 2019

A motion to approve the minutes dated April 1, 2019 was made by Beverly Karch, seconded by Michael O'Rourke and carried unanimously on roll call vote by those eligible to vote.

CORRESPONDENCE: None

PENDING NEW BUSINESS:

- Greco-26 Euclid Avenue, Bulk Variance – Incomplete

- Bhatia – 81 Westwood Blvd. – Incomplete – revised plans submitted this evening
- The Andrea & Gatana Bartolotta Irrevocable Family Trust – 252 Fourth Avenue – Incomplete

VARIANCES, SUBDIVISIONS AND / OR SITE PLANS, APPEALS AND INTERPRETATIONS

Swearing in of Board Professionals for Public Hearings:

Board Engineer, Louis Raimondi was sworn in by David Rutherford, Board Attorney. Ms. Gregory will be sworn in when she arrives.

Application – The Chill Factor, LLC - #31 Westwood Avenue – Use Variance

John Lamb, Esq. of Beattie Padavano representing the applicant was present. Mr. Martin commented that his understanding is that in order to accommodate a new tenant, the application is for interior alterations to an existing vacancy. Mr. Lamb advised that after discussing the application with the Construction Official, the application was amended and described as a personal service use as make-up and eyebrow businesses in town have been permitted. When asked if the applicant was pursuing an interpretation or a “D” variance, Mr. Lamb responded we are pursuing both in order to arrive at a favorable decision.

Mr. Martin inquired of Mr. Rutherford if the applicant has the right to make the application a “D” variance. Mr. Rutherford responded that it can be interpreted as a permitted use and if the Board determines that it is; and if it does not fall within permitted use categories then the Board can determine whether the applicant has met its burden of proof.

Mr. Martin explained that the Planning Board is currently reviewing the Master Plan and are in the process of clarifying this very issue. The Master Plan is not adopted but this subject is being presented to be recommended to be placed into the Master Plan.

Mr. Rutherford responded that the Zoning Board can take notice of that but be reluctant to rely on it because it has not been adopted and we don’t know if it will be adopted or not. The applicant needs to meet its burden of proof for the interpretation or the use variance.

Mr. Lamb presented a report from Ed Sneickus, Borough Planner to the Westwood Planning Board dated April 18, 2019, a second memorandum dated April 19, 2019 and a third memorandum dated April 22, 2019 all marked collectively as Exhibit A-1.

Ms. Karch commented that Mr. Lamb stated three times in print that it is cryolipolysis, in the application, as a rider and in a April 1st letter which Mr. Lamb attributed to Mr. Marini and not to himself, the application or the client. Mr. Lamb advised that the

language was corrected in his letter dated April 23 where it indicated it is not a cry lipolysis use but cryotherapy. You will hear from our witness that they don't use cool sculpting. Ms. Karch stated that she needs to know what cool therapy is. Mr. Martin stated that we will hear from witnesses. Ms. Karch comments that we need to keep in mind the way the application came before the Board. Mr. Martin responded yes, that is why he asked Mr. Rutherford to clarify. The applicant can pursue the case the way he wants to pursue it and if we reach a point that we believe it has crossed the threshold to a "D" variance that is how we would proceed providing we have consensus; and the applicant has acknowledged that.

Mr. Lamb called his witness, Kellie Anderson, 18 Jordon Drive, River Edge, NJ was sworn in by Mr. Rutherford, Board Attorney. Ms. Anderson testified that she is proposing to open Chill Factor as owner of the business. She is familiar with the proposed use. Mr. Lamb asked that she speak about cryotherapy; asking if the business is cryotherapy or cry lipolysis. Ms. Anderson responded that it is cryotherapy which is very different than cool sculpting. Cool sculpting is a new alternative to liposuction which is more of a medical procedure where you go to a doctor's office, that's cool sculpting a FDA approved plastic surgery type procedure. Cryotherapy uses a six-foot sauna, you step inside and it exposes your skin to extremely cold temperatures which is a quick way to revitalize sore muscles, blood flow supply and you leave feeling like a million bucks. It helps with anti-aging. It is a one to three-minute process.

Ms. Karch asked if walk-ins were accepted. Ms. Anderson replied yes. Ms. Karch how long does the process last from when you walk in. Ms. Anderson replied it is about a ten-minute process. Ms. Karch stated that the application called for two employees at maximum and asked how many customers can be handled at a time. Ms. Anderson responded that there is a waiting area and that the process is about ten-minutes total. Ms. Anderson asked about the cost of each session. Ms. Anderson responded that an individual session under the welcoming plan would be between \$40 and \$80. Otherwise an individual session would be \$80 accompanied with plans, incentives and membership. Monthly packages that would reduce the costs. Ms. Karch stated that on the plan there is a cryotherapy room. Ms. Anderson explained the design. Ms. Karch asked what is local therapy. Ms. Anderson explained localized cryotherapy. Ms. Karch asked to confirm the store front name. Ms. Anderson responded Chill Factor.

Mr. Raimondi asked Ms. Anderson to explain the machine used to perform the cryotherapy. Ms. Anderson responded that it is a six-foot metal chamber – the inside is padded; it allows very cold air to come in – you step in and step out. Mr. Raimondi asked if the lines indicated in front are steps. Ms. Anderson responded they could be steps, yes. Mr. Raimondi commented that the chamber is sealed while the person is in it. Ms. Anderson responded yes, but the head is exposed at all times. The chamber is plugged in and runs on regular standard voltage. Ms. Anderson is with the participant and in the room the entire time of the procedure. Mr. Raimondi asked if there is a machine in the local cryotherapy room. Ms. Anderson responded yes, but smaller and portable and equipped with a vacuum hose. It is owner operated. Mr. Raimondi asked if the two rooms are also the changing rooms. Ms. Anderson responded yes, there are no lockers, no showers. They use a robe and leave undergarments on. Mr. Raimondi asked about the sauna room. Ms.

Anderson responded that it is a two-person infrared sauna. Ms. Anderson explained the compression room at Mr. Raimondi's request, as a rapid pulse-massage therapy room and explained its use. Mr. Raimondi asked if there is another facility like this in the near-by area. Ms. Anderson responded no, not close; Cresskill and Wayne. Mr. Raimondi asked how long Ms. Anderson has been in this type of business. Ms. Anderson responded this is her first time owning a business but has been involved in the aspect of it for a while. Mr. Raimondi asked if a license is required. Ms. Anderson responded no, you just get training from the company that sells you the equipment from which you receive a certificate of training.

Mr. Martin had comments and questions; commenting so this is not a medical process. Ms. Anderson replied that it is wellness, therapeutic. Mr. Martin asked if this type of business is closer to hair and nail salon or closer to medical office. Ms. Anderson clarified it as for the entire body inside and out; feeling good, looking good. It's been around for decades and is now booming in the United States. Mr. Martin asked how the equipment is generated. Ms. Anderson responded liquid nitrogen. Mr. Martin commented so you will have bottled gas inside this facility. Ms. Anderson responded yes. Mr. Martin asked if a freezer is involved. Ms. Anderson stated that it comes in its own tank that keeps it cold. Mr. Martin asked if there is any other gas involved. Ms. Anderson responded no. Mr. Martin asked how many canisters of liquid nitrogen is Ms. Anderson planning on having in the facility. Ms. Anderson responded two – four and they are about 700 lbs. each. They would be exchanged about twice a week when the facility is busy.

Mr. Martin asked if there has been any investigation of the required codes for handling of such gases within the building. We breath nitrogen everyday but not at minus 250 degrees. Ms. Anderson replied that you would not be breathing it in. Mr. Martin asked if there is any safety provision or safety equipment on here especially for ventilation purposes because a purely nitrogen environment would suffocate someone. Ms. Anderson said there is ventilation. Mr. Martin asked if it would require duct work to the exterior of the building. An answer was not readily available. Mr. Martin said he is concerned with having liquid nitrogen canisters.

Mr. Harper commented that this process is used by professional teams much like the use of massage in order to help athletes get back on the field or court quicker.

Mr. Zorovich asked if there is any waste that is produced from this process. Ms. Anderson replied no.

Mr. Martin opened the meeting to the public

No public comment

The meeting was closed to the public

Mr. Zanetich, 18 Jordon Drive, River Edge, NJ was sworn in by Mr. Rutherford, Board Attorney. Mr. Zanetich called himself Ms. Anderson's silent partner. He stated that they both believe it is a good idea for this area. He testified that the canisters would be big

tanks of nitrogen that would be delivered hopefully daily if we are busy. Currently there would be two to four canisters; we have a separate room in the facility that is basically a two-foot concrete wall that is on a concrete slab because of the weight and we will have holes drilled through the wall into the chamber like you would connect propane to a fireplace. Mr. Martin interrupted stating that Ms. Gregory, Temporary Planner for this application has arrived (8:05 p.m.) and asked that she be sworn in.

Ms. Kathryn Gregory was sworn in by Mr. Rutherford, Board Attorney.

Mr. Zanetich continued with his testimony regarding storage of the liquid nitrogen tanks, concrete walls, concrete floors. The ventilation system is similar to a fan over a stove, there is a shut-off valve. Someone is constantly in the room while the equipment is running. Mr. Martin asked if there is an alarm with the system. Mr. Zanetich responded yes. Mr. Martin asked how it works. Mr. Zanetich responded that the ventilation is on at all times. Mr. Martin asked what happens if the alarm goes off. Mr. Zanetich replied that there is a kill switch that shuts everything down. All rooms are open air. None of the partitions shown go floor to ceiling. Air flows above all the partitions. Mr. Martin commented that there is a duct that will lead from the nitrogen tank storage room to the exterior where will the duct go. Mr. Zanetich replied out the back. Mr. Martin asked how big the duct would be. Mr. Zanetich responded no more than a one-foot square duct. Mr. Martin asked if Mr. Zanetich is familiar with the codes pertaining to bottle gas. Mr. Zanetich responded no. Mr. Martin asked if he learned this from the Chill Factor franchise company. Mr. Zanetich responded that it is not a franchise and advised that the equipment was purchased from a private company and they would be training us. Mr. Martin asked if they physically looked at the space. Mr. Zanetich responded yes. Mr. Zanetich confirmed that there is an exit out the back and front. They also have an architect working with them. Mr. Martin asked about lighting. Mr. Zanetich responded ceiling and decorative bright lighting will be placed.

Mr. Raimondi felt that the manufacturers of the equipment should testify. He asked if there would be room for a rear delivery for trucks. Mr. Zanetich replied that the delivery firm come in to be sure deliveries can be made. Mr. Lamb stated that we have to comply with code enforcement. He said he could get a letter from the manufacturer stating that the equipment was installed in accordance with their design.

Mr. Martin asked Ms. Gregory if she had any questions. She had none.

Mr. Zorovich asked if the ventilation would be safe coming out because it is a gas coming out. Mr. Zanetich advised that you would not see it coming out of the building. It is safe. Mr. Zorovich asked if it is explosive. Mr. Zanetich responded no.

Mr. Lamb made closing statements.

Mr. Martin opened the meeting to the public

No public comment

The meeting was closed to the public

Chairman Martin asked Ms. Gregory, Planner to summarize her report on this application. Ms. Gregory stated that she would not categorize this application under hair and nail salon. She referred to the April 18 memorandum from Burgis Associates; page 2 which she read in part. Ms. Gregory felt that this application would fall under personal cosmetic. Mr. Martin asked for confirmation of Ms. Gregory that she agreed if the Planning Board acts in accordance with the memorandums from Burgis Associates that this sometime in the near future can become a permitted use. Ms. Gregory responded yes. She also agreed with Mr. Lamb that new uses come into play. Based on her history in Westwood Ms. Gregory felt this should be interpreted as a “D” variance.

Mr. Martin felt that based on Ms. Gregory’s input and the presentation by the applicant there is no need for the applicant to produce another Planner. Mr. O’Rourke felt that this is a reasonable application for the downtown area.

Chairman Martin asked if there were any interested parties with questions or comments on the application. There were none.

Mr. Lamb’s comment was that Ms. Anderson would like to open her business as soon as possible.

Mr. Martin asked if there is a consensus on the Board with Ms. Gregory’s recommendation that we take a conservative position and treat this as a use variance.

Mr. Rutherford explained that if you granted the applications interpretation argument then the use is permitted. If other approvals are required, such as waiver of site plan then it would go to the Planning Board.

Chairman Martin summarized that if the consensus of the Board we should move ahead and treat this application as a “D” variance. Ms. Gregory agreed and there were no objections by Board members.

Mr. Martin asked for Board discussion. Ms. Karch felt that the application is sort of a nail or hair salon but her concern is the name of the business and she would like a condition that it will be the Chill Factor and explained why.

There was no further discussion.

A motion by Ms. Karch, seconded by Mr. Harper to approve the application as conditioned on roll call vote, all in favor, the motion carried.

RESOLUTION

Retaining Kathryn M. Gregory, PP, AICP, as Professional Planner with respect to the application of the Chill Factor, LLC Property – 31 Westwood Avenue, Westwood, NJ Block 907, Lot 11

A motion by Ms. Karch, seconded by Mr. Harper to adopt the resolution, on roll call vote, all in favor, the motion carried.

DISCUSSION

Mr. Martin asked Mr. Rutherford, Board Attorney to advise what authority the Board has pertaining to the names of businesses. Mr. Rutherford responded that it is limited but did not think the condition requested is inappropriate.

ADJOURNMENT:

On motions made, second and so carried, the meeting was adjourned at approximately 8:30 p.m.

Respectfully submitted

Sylvia Kokowski, Acting Recording Secretary