

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
December 7, 2015**

APPROVED

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
Guy Hartman
Marc Truscio
H. Wayne Harper
George James
Cynthia Waneck (Alt #1)
Michael Klein (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis A. Raimondi, Board Engineer
Steve Lydon, Burgis Associates,
Board Planner & Edward Colling,
Substitute Board Planner for Kathryn
Gregory on the Westgate Application

ABSENT: Matthew Ceplo (excused absence)

4. MINUTES: A motion to approve the Minutes of the 11/9/15 was made by George James, seconded by Eric Oakes, and carried unanimously by those eligible to vote. **The Minutes of 11/30/15 were carried to the next meeting.**

5. **CORRESPONDENCE:** None

6. **VOUCHERS:** None

7. **RESOLUTIONS:**

1. **Fernandez, 125 Lake Street, Block 710, Lot 21 - Site Plan** - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Guy Hartman. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Wayne Harper, Marc Truscio, George James, and William Martin voted yes.

2. **Hernandez, 211 Westwood Boulevard, Block 2001, Lot 20 - C Variance** - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by George James and seconded by Wayne Harper. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Wayne Harper, Marc Truscio, George James, and William Martin voted yes.

3. **Von Bradsky, 6 Elm Street, Block 913, Lot 5 - Section 68** - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Wayne Harper and seconded by Eric Oakes. There were no further questions, comments or discussions. On roll call vote, Eric Oakes, Guy Hartman, Wayne Harper, Marc Truscio, George James, and William Martin voted yes.

4. **Thank you Resolutions for Year of Service to Vernon McCoy and Chris Montana** - Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Eric Oakes and seconded by Wayne Harper and carried unanimously.

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. **Westgate - WW Madison Realty, LLC, and 11 Madison Realty, LLC, 11 Madison Avenue, Block 806, Lot 4, and 37 Irvington Street, Block 806, Lot 2 - Amended Site Plan and**

Application for Amended Approval - Edward Colling appeared for Kathryn appeared as Substitute Board Planner for this application. John J. Lamb, Esq. represented the applicant. Carmine R. Alampi, Esq. represented an interested party/objector. The matter was continued from the 11/30/15 Special Meeting for discussion and a vote.

Chairman Martin requested instruction from Attorney Rutherford on the law and the Planner on the "D" variance.

Mr. Rutherford reviewed the Board heard the matter a year ago and approved a self-storage facility, retail, and residential uses on the second floor. The applicant sent in an amended application on the same property and the variance relief needed is a D1 where one of the issues is whether or not this is an amended or revised application or a new application. Applicant argued the features of the plan are essentially the same, except for height, setback bulk and in retrospect 2 residential units a deed. The objector has stated the applicants have submitted a new application and should be held to the proofs for the self-storage retail and 2 additional apartments. If the Board considers it a revised application a D1 variance is needed because the residential units have increased, i.e., 16 proposed vs. 14 approved a year ago. Also a D6 is required because the heights have increased. There are also C bulk variances set forth in Ms. Gregory's reports dated 6/30 revised to 10/5/15 comparing the variances approved and those sought. There is also a subdivision involved as well as site plan approved. If the board finds amended or revised, the D6 refers to 16 vs. 14, and d1 refers to the height and C variances per Ms. Gregory reports. If considered new, the Board would have to decide based on the evidence whether the applicant has met all its burden of proof for the self-storage, retail and residential, height and all bulk C1, or C2 variance relief. The Board is aware of all the proofs that must be demonstrated and proved by the applicant, which Mr. Rutherford briefly reviewed in an overview. The Board heard argument on the Grasso case. The prior application still remains in full force and effect. He considers this to be an amendment of the prior approval. The nature and extent of the variances are essentially the same, due to the size of the self-storage facility and the same type of building with residential on the second floor and retail on the first. Mr. Rutherford analyzed the doctrine of res judicata - if the Board had not approved the application the second time, would they have been granted a bite at the

apple. The Board must analyze the application and variances and proofs before it.

Mr. Colling had added there are really three parts to the application and does the application promote the purposes of zoning because of the site's suitability. Mr. Rutherford had gone into great detail. Can the site accommodate the D height 6 variance and if there would be any negative impact. He touched on the Grasso case as well as to whether it would be out of character with the CBD or whether some similarity.

Mr. Raimondi had no comments.

Discussion amongst Board Members followed. Mr. Oakes asked when you reviewed the case, did they say anything about truck rentals, and would that have to be another variance. Mr. Collings said he agreed; he did not see anything about truck rentals. That could be a condition to mitigate any negative impacts. Mr. Martin did not notice it either. That would be noted for further discussion, Mr. Martin noted.

Mr. James commented in his opinion, this is an amended application. He reviewed the testimony and legal discussion by Mr. Rutherford. It offers a better solution for reasons he enumerated. It is a better fit for the property and a good fit for the area. It is better also because of the environmental cleanup, and by listening to the interested party and objector, he did not see the reason for the objection. He feels the Board should approve the application and deny the objection, stating it was better than the original application. Mr. Rutherford advised, per Mr. Martin's request, that environmental cleanup can be a factor for consideration, although financial motivation does not come into consideration.

Ms. Waneck did not think a positive. She could've gone either new or revised. If it came as a new application, she would have denied it. What bothers her is that a D variance is one of the most important decisions they can make and the proofs can have a significant impact on the municipality. We have to be very careful. The height is one of the most important factors. Mr. Kauker said the two buildings used as comparatives---senior housing---is outside the purview of this Board. It was a public project. The bank building was outside the Master Plan and is very old. She is concerned about setting a detrimental precedent that this height is okay. As density, she sees we are adding more and more units

to the Borough. She can see the argument the apartments are a good use. The height is important. We keep making decisions that reduce the number of parking units in the Borough, causing people to make special arrangements. You can't park on the street at night. That, along with the height, a D variance must be taken very seriously.

Mr. Oakes spoke about the height of the self-storage. He felt reducing the basement was a good change. The height is an issue. The result will channel all the noise down to Irvington. Anything that would help cut down the noise, such as receding and the big flat wall running along the tracks will funnel the noise to Irvington. All the way down the corridor is a line of trees, which helps cuts down the sound. Mr. Martin suggested making Mr. Raimondi's recommendations a condition. He did not have a problem with the D1 use variance.

Mr. Hartman commented the use has not changed from the original application, nor did the footprint of the building, and he did not see a great impact on parking. The master building was there to begin with, and it was shown that the site can accommodate the use.

Mr. had an issue with traffic flow in a condensed area near Trader Joe's and the liquor store corner. He was also concerned with setting precedent. Chairman Martin asked Mr. Rutherford to comment. Mr. Rutherford advised that the Board's decisions do not necessarily set precedence, as each application is decided on its own merit, with its own facts and law and record. Ms. Waneck asked wouldn't this now be a precedent for height like they pointed at the senior housing and bank buildings. You are allowing a new building with a new height that applicants can point to.

Mr. Truscio had an issue with parking, and with respect to height, since the architect set it back, it made a big difference.

Mr. Harper, with several pages of notes, commented his findings in hearing the application, is that his opinion remains the same as in 2014. The fact that they are having a remediation is still better than nothing. Streetscape will make it more aesthetically pleasing. Additional trees along the eastern side that can be further improvement. Greater security is an improvement. Having a basement not shared is an improvement. Pedestrian access is an improvement and

helps provide foot traffic in a way that we want. The architecture is a benefit. Doing something, particularly as an entranceway, is a plus. This is a first view of our town in some respects. The one challenge he had in the first application, traffic, he continues to have. An argument was made that the self-storage was not going to add to that. Less flow and activity it was argued, would not add to traffic. He feels; however, that traffic will increase. He does not see any solutions, and traffic flow will be impacted. All said, that negative aspect is not enough to dissuade him from viewing this as a very good application and a positive for the Borough. He would like to see it happen and views it as an amended application.

Chairman Martin, in holding his comments to last, agreed with most of what was stated, and as per Mr. Rutherford's analysis, also agrees that this is an amendment of the previous approval. There are two additional units and 45' in height over what was originally approved. This is a particularly difficult site with a railroad, a short street, a one-way street and a two-way street. The development as a whole is a solution. It is difficult to get permitted uses to fit on or come to this site or accommodate them. This site and location are particularly well-suited. The retail-residential architecture and stepping it back at the top are mitigating factors for the height. There may be a modest increase in traffic, but not more than if a permitted use were put on this site. He did not think it would set precedence. For those reasons, he believes this is an amendment of the previous approval, which he supported last year and will support now as well. Mr. Hartman commented traffic was a concern.

There were no further questions, comments or discussion. The Chairman called for a motion. A motion for approval was made by Eric Oakes for approval of the current list of variances and with conditions to not permit storage of any trucks on site for the self-storage and for the planting of trees by applicant along the eastern side of the property, as recommended by Mr. Raimondi. The motion was seconded by George James. On roll call vote, Eric Oakes, Guy Hartman, Wayne Harper, Marc Truscio, George James, and William Martin voted yes. Cynthia Waneck voted no after stating she feels the D variances are very serious, the proofs have not been met, and they would be a detriment. The project could have gone on without these changes.

The Board took a 5 minute recess at approximately 9:00 pm. Mr. Colling departed. Mr. Lydon took his place at the dais as Board Planner.

2. Care One, 300 Old Hook Road, Block 2001, Lot 64.01

- Mr. Rutherford found the Notice and publication documents to be in order. Donna Erem, Esq. represented the applicant in an application for amended site plan including variances. Modifications of the previous 2012 approval for an addition with bulk variances were proposed. Many aspects have not changed. There is a 997 sf bump out on the eastern side, where 511 sf was previously approved. The variances, including building coverage and FAR, were set forth. It is an open structure--the new pergola doesn't add to the variance. A proposed generator is proposed to be installed on a concrete pad in the northern area of the eastern parking lot near the loading area. The existing wall will be extended to shield the neighbors from potential noise.

The first witness was Michael Fowler, 300 Kimble Drive, Parsippany. Mr. Fowler was previously qualified as a licensed NJ Professional Engineer. He was accepted. The aerial photo was marked Exhibit A1. Mr. Fowler described the site and area. The building has a footprint of 42,585 sf, and the amount of parking is 77 spaces on this plan. The recent construction brought the parking to 127 spaces. The building houses 120 beds for skilled nursing, mostly short-term stays. Exhibit A2 was the site plan exhibit previously distributed. There is a physical therapy addition that falls on an area that was previously approved. 511 sf was previously approved, and 486 sf for a one-story addition is what they are seeking approval for tonight. Parking is 115 spaces where 190 are required. New curbing and lighting were proposed. Maximum building coverage variance is required; maximum floor area ratio and maximum wall height as an existing condition. The variances were also set forth in Mr. Lydon's report dated 11/11/15. Mr. Raimondi had questions about the generator. Mr. Martin asked about the integrity of the wall. It would have to be looked at by a design engineer.

The matter was opened to the public for questions of the engineer. A property owner, Joe Krokus, owner of 100 Carver Avenue came forward. He stated the existing wall was built 40 years ago. Mr. Martin directed him to ask questions of the witness. He asked if the height would mitigate the noise. Ms. Erem said they have an acoustical engineer that could answer.

The next witness was Michael A. Pomerico, NY was sworn in and accepted. The Floor Plan was marked Exhibit A3. Mr. Pomerico described the architectural modifications. The proposed improvement is an expansion of the physical therapy area, he explained, to accommodate the physical therapy devices, such as treadmills and such. They require certain clearances around the devices. A smaller generator inside the building is present, but it is undersized. The new generator will be an increase in size to allow the facility to operate in a facility for patients that conforms to their health, safety and welfare, especially after the Hurricane Sandy storm, when they lost power and had to evacuate patients. The generator will allow them to operate in an environmentally safe facility.

Mr. Raimondi asked Mr. Pomerico for the specifications, such as size and rating, of the generator. Ms. Erem would have the next witness answer and provide those details. Mr. Harper asked if there would be requests for additional expansions. Ms. Erem responded no; this is 486 sf and they pretty much maxed out the site. She does not see that happening. Chairman Martin asked about certain doors shown on the plan. Mr. Pomerico stated that section of the building has not been constructed. Mr. Martin asked what happens to the doors. Mr. Pomerico said that section would have to conform to this expansion. He has not yet had an opportunity to explore that section of the building at all. Right now they are focused on the physical therapy space. Mr. Martin commented normally the plan will show us how things are going to be put together. Mr. Pomerico said those doors would be assimilated into that other building to be constructed and would change orientation as needed. The doors would exit to possibly a corridor and then out. The plans do not incorporate that work yet. Ms. Erem represented if there would be any substantial modification to that, they know they would have to come back. They also have to get State approval.

The witness was open for questioning by the public. Joe Krokus from the public inquired about the generator and if it is required at the State level. Mr. Pomerico explained the necessity of the generator in the aid of the patients and saving their lives. Mr. Krokus was shown the site plan exhibit. There is no DEP requirement. It cannot be placed anywhere else on the property. Mr. Krokus asked how many beds there were in the prior application, comparing the need for a generator. Chairman Martin noted the requirements post-

storms have changed. The original resolution was in 2012 before the storm. There were no further questions of Mr. Pomerico, the architect.

The third witness was Matthew T. Murello, of Lewis Goodfriend & Associates, Consulting Engineers for Acoustics, Whippany, NJ was sworn in as licensed NJ Professional Engineer, specializing in acoustics, and set forth his education and experience. Mr. Murello was accepted and described the proposed generator and the noise. It is approximately 10' from the side of the enclosures. He displayed the site plan A2. At the wall they expect it would be 60 dba. At the residential property line they expect 44 dba. The NJDEP Code for noise regulation says it cannot exceed 65 dba. Any generator that operates in an emergency is exempt from noise regulation.

Chairman Martin asked Mr. Murello if he were standing next to it how high would it be, and Mr. Murello responded about 70 dba. Mr. Raimondi asked and Mr. Murello stated this area would have the least impact. He further asked where the diesel fuel would come from, and Mr. Murello responded the generator sits on a tank. He did not know how much fuel would be in there. Ms. Erem had stated enough fuel for 96 hours. The fuel capacity would be provided by Mr. Murello. Mr. Oakes asked if it made more sense to put it at an area where there is already noise, such as near Old Hook Road, pointing out a perfect spot, where noise exists already on the noisy side of the building. Ms. Erem said it is not that simple, as Care One has certain standards, and it states it complies with DEP requirements if the wall is extended only 4' and is located next to a commercial property that is not going to hear it anyway. Mr. Martin said Care One designed it to benefit Care with no regard for other properties. Mr. Pomerico offered that space is the only space that provides electrical access.

Angelo Caputo, Care One's Corporate Architect, of Fort Lee, NJ came forward and was sworn in. Mr. Raimondi asked if the small generator would stay, and Mr. Caputo stated no. He explained presently if power goes out, they open all the doors to distribute the heat, which takes time, but when you are 80 years old, even 90 degrees outside is not warm enough. All the electrical features and wiring are there and need to be next to the transformer. Mr. Oakes pointed out that section of the building is not built yet. They have the opportunity to place it in a noisier section, away from the

residential. Mr. Martin stated other facilities have placed their generators in the fronts of the buildings. We are looking for a solution to balance the needs of Care One with that of the surrounding property owners. You may not be able to answer that because you have not considered that. There were no further questions of Mr. Caputo.

Questions of Mr. Murello continued. Mr. Harper asked instead of doing 12 x 60, can they do a different dimension or use different materials to reduce the sound. Mr. Murello said there are absorptive sound panels that could be considered. Also the wall could be higher and longer. It doesn't keep going down and will not give a large reduction. In this case 12' works. Mr. Murello noted 60 dba is Code compliant and the best they can do.

Ms. Erem suggested, based on the comments, adjoining and exploring their options. It would be best for them to do this. Mr. Martin agreed it would be helpful. Chairman asked if there would be any odors or exhaust. No information was available, but will be answered. Ms. Waneck asked if the dumpster location was approved by the Zoning Official. Ms. Erem could have Care One testify to that. Mr. Krokus asked who would testify as to the specifications, as he would have questions. Mr. Murello had submitted specs in the binder that was provided with the application. Ms. Erem marked the Generator Specifications as Exhibit A5 and would forward a fresh copy to the Zoning Board Office for distribution to the Board. Mr. Krokus asked Mr. Oakes where he suggested the generator be located. Mr. Oakes responded and also noted that diesel fuel could be delivered to the site rather than stored underneath the generator. All other questions would be addressed at the next meeting.

The matter was carried to the 1/11/16 meeting with no further notice. Ms. Erem indicated she may have a trial on that date.

3. Oberg, 400 (410) Lafayette Ave, Block 301, Lot 7 - Amended Site Plan Variance - John J. Lamb, Esq. represented the applicant. He had noticed for this evening. Per discussion with Mr. Rutherford, and with Mr. Lydon's review letter discussing steep slopes, he agrees further information should be provided, and with respect to notice, Mr. Oberg is selling to a builder. Mr. Lydon suggested architectural plans be provided. Mr. Lamb asked if the builder could just provide elevations with floor plans later. Mr. Lamb was asking for

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a waiver of floor plans. It is a difficult site. Mr. Martin stated that could only help as this is a difficult site, and the floor plans would help. The slopes can have many considerations on the neighboring properties. He feels at the very least at a site like this we should have floor plans. Mr. Lamb agreed and would advise the builder. He withdrew his request for a waiver of floor plans. The Board Members agreed that more information is better, taking the Chairman's advice. Carried to the 1/11/16 meeting, with no further notice;

10. DISCUSSION:

Chairman Martin announced that Guy Hartman would not be returning to the Board next year and thanked him for his service as Board Member. Mr. Hartman will be missed.

Mr. Oakes asked about the annual report. Mr. Rutherford advised it would be provided at the 1/11/16 meeting. Ms. Waneck asked if he can include how many additional parking spaces were approved. Mr. Rutherford can set forth the variances granted as usual, and also point out the parking variances. Mr. Lydon commented.

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