

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES**

April 2, 2012

APPROVED 5/7/12

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 Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Robert Bicocchi
Eric Oakes
Christopher Owens
Matthew Ceplo (Alt #1)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Kathryn Gregory appeared on behalf of
Steve Lydon, Burgis Associates,
Board Planner for KMACK North & South

ABSENT: Michael Bieri (excused absence)
Vernon McCoy (excused absence)
Guy Hartman (Alt #2) (excused absence)

4. MINUTES - The Minutes of the 2/27/12, 3/5/12, 3/29/12 and 4/2/12 were carried to the 5/2/12 meeting.

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5. CORRESPONDENCE:

1. Memo from Burgis Assoc. dated 3/12/12 RE: Kowal;
2. Memo from Burgis Assoc. dated 3/15/12 RE: Metro PCS;
3. Memo from Burgis Assoc. dated 3/23/12 RE: Metro PCS;

6. VOUCHERS: A motion to approve vouchers totaling \$2,072.50 was made by Mr. Arroyo, seconded by Mr. Oakes, and carried unanimously on roll call vote.

7. RESOLUTIONS: None

8. PENDING NEW BUSINESS:

1. **Van Grouw, 27 Ruckner Road - Appeal-** incomplete;

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

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

1. Metro PCS New York, 182 Third Avenue - Variance and Site Plan Approval - Carried to 5/7/12;

2. Care One at Valley, 300 Old Hook Road - Variance & Site Plan Approval, Block 2001, Lots 51 and 64 - Carried to 5/7/12;

3. Snyder, 73 Lyons Place - Variance Application - Mr. Rutherford advised matter still incomplete; he would follow up with Ms. Koch as to applicant's intentions.

4. Morrison, 24 Clinton Avenue - Variance; Mr. Rutherford advised that the publication documents were in order. Andrea Morrison, 94 Clinton Avenue, application, was sworn in for an application to put on a front porch on their house, which they are renovating. They want to reconfigure it completely. The photographs were marked Exhibit A1. The prior Survey showed an old enclosed porch, and they are proposing an open porch.

Mr. Lydon reviewed the variances. It is an existing non-conformity with regard to property width. Even after the construction proposed is completed, the coverages will be under

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that established by ordinances, and there will be a variance for a front yard setback. The survey submitted does not show a rear deck, but the architectural plans do. It is closer to the garage than permitted by ordinance. It is 8' vs. 10'. The deck is included in the percentage coverages.

Mr. Raimondi issued a report dated 12/28/11. He also noted a wood deck was not on the site plan. Applicant indicated it was removed. The architect plans were revised to 2/22/12. Mr. Martin commented front porches add an aesthetic element to houses. Mr. Arroyo commented it is a benefit that the porch is now open, which is an aesthetic value. Further, it is only 6', and applicant tried to minimize the extension into the front yard setback. There were no further questions or comments, and none from the public.

Mr. Arroyo moved for approval with second by Mr. Bicocchi. There were no further questions, comments or discussions. On roll call vote, all members voted yes.

5. Kowal, 98 Cypress Street - Appeal - Mr. Rutherford advised the publication documents were in order. Architectural plans were prepared by Element Architectural Group, revised to 2/12/12. Applicant explained they are outgrowing the home and seek to put on a rear, one-story addition for a first floor bathroom, dining room and family room. They were granted a similar variance a few years ago, but did not go forward with the plans because they had another child. Mr. Lydon commented the property is undersized. Chairman Martin commented it seems very large in comparison to what is there now, and he asked Mr. Raimondi to check the property size in relationship with a conforming lot size, to see if the percentage they are asking for is consistent. They are asking for a floor area ratio (FAR) variance, which maximizes same for their home. Mr. Raimondi said it was about 6,100 sq. ft. or approx. 72%. Chairman Martin suggested a ground-level patio may be better than a deck, as it does not contribute to the coverage variance. They are also asking for a maximum impervious coverage variance and maximum building coverage variance. Mr. Oakes asked if they were going to put in a full basement. Applicant was not sure. The plan did note there was a full basement.

A brief discussion ensued. Mr. Martin commented one mitigating factor is that it is an undersized lot. Mr. Lydon

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commented there should be a ratio between the size of the lot and the house. It is a significant deviation in that it requires five affirmative votes and special reasons. Mr. Martin asked for his opinion on it being an undersized lot seeking those variances. Mr. Lydon commented it is a narrow lot. Mr. Martin recommended he return with a reduction in size of his proposal.

Anthony Klymenko, Element Architectural Group, prepared the plan, revised to 2/12/12. He is in the process of being licensed. Mr. Rutherford advised the Board could hear testimony. Mr. Martin recommended the design can be reviewed and reduced in size being brought into conformance with the FAR or brought very close thereto.

Mr. Klymenko commented because of the configuration of the driveway, they wanted to stay closer. They did not want to build a second level and exacerbate that FAR. It did increase the FAR on the first floor dramatically. By pulling the family room back, it being only 18 x 13, finished 12' x 6', you would not be able to utilize the space by shrinking it 2'. Mr. Martin made suggestions to reconfigure the addition to reduce the FAR. Mr. Klymenko said it was considered, but they were taking the path of least disturbance. This was not a reason for the granting of the variances, Mr. Martin commented. They could also take another look at it and come back showing how they reduced the addition. Mr. Klymenko said it is 40% maximum, and they are looking for 49.5% on a 7,500 sq. ft. lot. They are not trying to go any bigger than on an adjacent conforming lot.

Mr. Martin noted it was not a conforming lot. He believed a reduction could be implemented without sacrificing anything. Also, there were only six members present, and the vote requires five members. They would need to get five affirmative votes on the six members present. The chances are better when seven are present. They could request to carry the application to May, and confer with the architect to reduce the addition in size but still have the same number of rooms. Applicant commented they changed it around over the last four years and asked if reducing the deck would make a difference. Mr. Martin responded it would not. The only way to reduce FAR is to reduce floor area in the house. The applicant agreed with the Board's advice and requested that the matter be carried to the May meeting.

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The matter was carried to the 5/7/12 meeting with no further notice.

The Board took a recess from 8:55 pm to 9:05 pm.

**6. KMACK North, 39 Kinderkamack Road, Block 1805, Lot 39-
Variance & Site Plan Approval**

7. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval - Kathryn Gregory acted as Board Planner for this application. David Lafferty, Esq. represented the applicant and reviewed from the prior hearing. Architectural plans were revised. Mr. Lurie described the changes, to the plans revised to 2/14/12. Basically on the West side they put the sign for the most visibility, and the drawings now have the correct heights. The pylon sign is reduced in height. It is 14'8' to the top, and it is now a single column. The entire mass has been reduced. This modification was included on the engineering drawings. There were no questions of the architect.

The next witness was Mr. Adelsohn, applicant's engineer, who described changes to the Site Plan, revised to 3/22/12, marked Exhibit A14. Sheet SD-1 had revisions to the Zoning Table. The sign area and setback were adjusted and reduced. Sheet SD-2 showed shifting the building to the North and adjusting the setback. SD-3 had minor changes to the southern driveway curve on Kinderkamack Road. No changes were made to Sheet SD-4. Sheet SD-5 showed changes to the pylon sign being 61.5' sq. ft. in area, 14'8' in height, and height to bottom being 7'10'. Ms. Gregory asked for the setback of the sign, and the response was 9'. There were no further questions. There were no interested parties.

Mr. Lafferty reviewed they do not know who the other tenants would be. Mr. Martin commented Ms. Petrou testified as to the Master Plan, but it does not mention general retail. Ms. Petrou continued under oath. According to the ordinance, there are many retail uses in the CBD Zone. The Chairman asked what type of retail uses would there be at the premises. She reviewed the lease with 7-Eleven, and there are many restrictions, such as no businesses can sell a slice of pizza, and there could be no liquor store. Mr. Martin stated we need

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to restrict the uses beyond the 7-Eleven lease. We must look at this order to reconcile it with the Master Plan.

Ms. Gregory commented perhaps we can go back a little further. The case was made for convenience use but not for general retail use. Mr. Lafferty was looking for feedback from the Board as to uses they did not want to see there. Mr. Arroyo was not comfortable giving a blanket approval for what the developer and the tenant are requesting. Mr. Lafferty commented the site is not appropriate for what it is zoned for, and that is why they are here.

Mr. Arroyo asked Ms. Petrou to speak to the pylon sign. The 60 sq. ft. sign is below the 5% permitted and is appropriate. The materials support the building, and it is adequate in size. The sign identifies each of the tenants in the building.

The matter was open to the public for questions of Ms. Petrou. Councilwoman Cynthia Waneck came forward. Ms. Petrou responded to her question about the Lease. The Lease for 7-Eleven identifies which uses are specifically excluded. They are proposing retail. Gary Conklin 406 Kinderkamack Road, asked to see the list of the exclusions, but Mr. Lafferty advised they cannot disclose the Lease, but did give an overview. Convenience stores not permitted. One bank and one post office are permitted. Soda and sandwich shops are not permitted. Basically, Mr. Martin noted, any competing uses are not permitted. The Board's questions were answered.

The Chairman called for general comments from the public. Cynthia Waneck came forward and was sworn in. She stated she was a former Planning Board Member and is presently a Councilwoman. Mr. Rutherford asked her if she was appearing tonight as a resident and not as a member of the governing body. The testimony does present some legal issues. The Board is a quasi-judicial entity. She chooses to come in as an individual and is not situated within 200'. She is coming here out of general community concern and as a private citizen and commented he needs to be privy of what the Governing Body and Planning Board's intentions were during the Master Plan. Mr. Lafferty stated it was impossible to separate the sitting member of the governing body when it testifies--it is fraught with danger. Mr. Rutherford advised it is difficult to distinguish between the two, but case law says council members are not precluded

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from giving testimony. Mr. Martin commented he was given similar instructions, as he is a Planning Board Member, and that she should be permitted to proceed based on those limitations. Ms. Waneck stated she would eliminate some comments she was going to make based upon same. Ms. Waneck proceeded, stating that the LB3 Zone was to complement the CBD Zone, not compete with it. It cannot be argued that the Master Plan is out of date, but it does not address general retail in the LB3 Zone. Developer is asking the Board to override the wisdom of the Planning Board and Council, who are members of the community. They were very specific, and applicant knew this when making the application. The Board has to decide whether to waive this, and make sure the reconciliation rule has been met. Mr. Rutherford commented what the developer knew or did not know is irrelevant. The case law is very clear that purchasing a property needing a variance is not different. Mr. Lafferty cross-examined Ms. Waneck, asking if she attended any other sessions of this application or heard any testimony, other than tonight, such as planning, traffic or architectural and engineering, but she had not. Mr. Lafferty continued, asking whether she was ever been a member of the Zoning Board and that its purpose is to review and grant variances. Ms. Waneck agreed and stated was a member in 2007. When asked whether she was familiar with any of the parties or knew if any of the permitted uses, such as an appliance store or car dealership, were interested in this site, she responded no. There were no further questions of or comments from Ms. Waneck.

Gary Conklin, a member of the public, was sworn in. Mr. Rutherford asked if he had any affiliation with the Governing Body. He was a Councilman four years ago. He commented there is no one permitted use, i.e., car dealership, PC Richards, that would be interested in this site. He has a vested interest here, and that site presently looks terrible. No one is renting this or other sites. It is not working out in these areas in town by picking and choosing what uses you want. The Master Plan is flawed. What could move in there that is so detrimental that could adversely affect the downtown. Mr. Martin explained they are asking for general retail that is not permitted. As a rule, the Zoning Board does not write or create the Master Plan, other than have our annual report analyzed. We can only try to review and evaluate, and much of what you said is used to review and evaluate. Mr. Conklin stated he does not mind what they are proposing and why go another five years like this. This is the

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entrance into Westwood, and there is no reason not to grant this variance. There were no further interested parties.

Mr. Martin noted we do not have a full Board this evening. Five affirmative votes were needed for a use variance. He suggested carrying to the 5/7/12 meeting, at which time they could have closing arguments, and by then they would have the absent members listen to the proceedings. Mr. Oakes, Mr. Hartman and Mr. Bicocchi would listen to tapes. They are leaving the public portion open in the event there are further questions or comments by Board Members or any other interested party. The applicant stated he has no further testimony and wants to close the hearing now. Mr. Rutherford advised they closed the public portion tonight, and carried to 5/7/12 solely for closing summation by Mr. Lafferty and Board deliberations and comments. Further, they decided they would conclude KMACK North before starting KMACK South. There was no need to republish and the time was extended by Mr. Lafferty on both matters.

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:15 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary