BOROUGH OF SPRING LAKE HEIGHTS
BOARD OF ADJUSTMENT MINUTES MARCH 24, 2016

The meeting was called to order with a salute to the flag and a moment of silence by Chairman Pearsall at 7:30p.m

Roll Call:

Brian Brendle - present
Raymond Miller - absent
Owen Quinn - present
John Tangeman - present
Steven Weiss - absent
Andrew Zelenak - present
Chairman Dennis Pearsall - present

Alternate #1
Thomas Martin - absent
Alternate #2
Susan Lalji - present

Chairman Pearsall announced: This meeting is called pursuant to the provisions of the open public meeting law. Notice of this meeting was included in a list of meetings sent to the Coast Star and Asbury Park Press, posted on the bulletin board in the Municipal building and on the borough web-site.

Approval of Minutes: February 25, 2016 Meeting

Motion was made by Mr. Tangeman to approve the minutes of February 25, 2016; seconded by Mr. Zelenak. Roll call taken:

AYES: Mr. Brendle, Mr. Quinn, Mr. Tangeman, Mr. Zelenak and Chairman Pearsall
NAYS: None
ABSTAIN: Ms. Lalji

Correspondence: None

Old Business: None

New Business: Heuth Application# Z2016-02
Appeal of Zoning Official Decision
Block 60 Lot 4 & 5
2307 Railroad Avenue

Attorney Kitrick explained the hearing was an appeal of the Zoning Official's decision. He added that the borough does not have an ordinance in place requiring that notice be provided in the newspaper or to neighbors within 200 ft. He stated that the board does have jurisdiction to hear this.

Attorney Brennan, Attorney for the applicant, thanked the board members for their service, he apologized that he did not provide full size plans for the members packets in a timelier manner, he delivered them to the office

but the board secretary had sent out your meeting packets. The plans were distributed, Attorney Kitrick confirmed that the members had these copies already; these were enlarged copies.

Attorney Brennan stated that Ms. Lisa Viola, Director of the Montessori School which is presently in Wall is looking to move to the location of the former Junior Junction located on Railroad Ave. He stated that Mr. May, Zoning Official denied the zoning application. He stated that the Montessori is licensed as a child care center which is what Junior Junction was. Mr. Brennan reviewed the history of the approval for Junior Junction: Resolution No. 01-1995. Attorney Kitrick referenced a statement in the resolution stated the center was approved for children from infancy to and including kindergarten. Attorney Brennan that site plan approval was granted as well from the Planning Board in 1995. The approval was for Mark Hueth and his brother, the school was operational from 1996 until 2010. The state license issued to Junior Junction was for the age range of 0-13. The Heuth's had 160 students ranging in age from 2 ½ to 8 or 9, the state license allowed for 174 students. That was the same occupancy detailed by the Sandy Ratz, Constructional Official. He added that Montessori has the same license but age range is 2 ½ to 13. The licensing bureau has changed the formula for calculating students and now the Junior Junction building can house a maximum of 144 students.

Mr. Brennan quoted case law in New York, which he had received from Charles Gilligan that said a private day care center should be comparable to a public school and should not be denied. Mr. Kitrick replied that this was not provided until tonight and can't really be relied upon.

Board member, Thomas Martin arrived at 7:50pm.

Mr. Kitrick addressed Mr. Brennan regarding public comment and the fact that there were several people present for the meeting which in all likelihood were here for the application because of having been made aware but that probably no one was here from the neighborhood since notification was not required. Both Attorneys agreed that public comment should be available.

Mr. LoBosco, Mr. May, Marc & Gretchen Hueth, Mr. Charles Gilligan and Lisa Viola were sworn in by Attorney Kitrick.

Mr. Brennan presented the following as exhibits which were verified to be accurate documents by Mr. Hueth.

- A-1 Design Grading Plan prepared by Gilligan Engineering, last dated on August 23, 1995
- A-2 Letter from Robert Wenzel, Zoning Officer for the Borough of Spring Lake Heights addressed to Thomas Brennan, Esquire dated March 1, 1995, informing him that the application for a day care requires a variance and he referred them to the Spring Lake Heights Board of Adjustment.
- A-3 Development Application by Mark & Chris Hueth for a learning center on 2307 Railroad Avenue
- A-4 Area Map, consisting of 2 pages prepared by Gilligan Engineering, dated on March 9, 1995
- A-5 Letter from State of New Jersey –Dept. of Human Services, Division of Youth & Family Services addressed to Chris Hueth dated March 3, 1995 regarding a courtesy inspection of proposed child care center at Railroad Avenue
- A-6 Preliminary & final Site Plan consisting of 4 pages, prepared by Gilligan Engineering, last dated August 23, 1995
- A-7 Architectural Plans for renovation to building at Railroad Avenue, consisting of 3 pages last dated July 27, 1995

- A-8 Consisting of 3 copies of Certificate of Occupancies for 2307 Railroad Avenue issued by Albert Ratz, construction official for Borough of Spring Lake Heights dated August 23, 1996, August 28, 1995 & August 28, 1995
- A-9 Copy of Child Care Center License issued to Mark & Chris Hueth by State of New Jersey, Dept. of Children & Families, License No. 13JUN0001 certified to Junior Junction PS & Learning Center with a max of 161, ages 0-13

Attorney Brennan asked Mr. Hueth to review each of the documents and testify that they were copies of original documents used to facilitate the opening of Junior Junction, Mr. Hueth replied yes. Mr. Brennan asked what the enrollment was for Junior Junction when operating; Mr. Hueth replied 161 but that number of students was not always at the facility at the same time. Mr. Brennan asked if the building has changed since, Mr. Hueth replied no.

Mr. Tangeman asked when Junior Junction stopped operating, Mr. Hueth replied June 2010. Mr. Tangeman asked if the building was used for any other purpose, Mr. Hueth replied no although he does use it for storage right now.

Mr. Brendle asked what the ages of the children that attended, Mr. Hueth replied 6 months to kindergarten.

Chairman Pearsall asked when the facility was opened was it intended to include teenagers, Mr. Hueth replied no, he added that at the time both he and his brother had small children that would be attending so it was geared more to younger ages. Chairman Pearsall asked how many children were in the school on a given day, Mr. Hueth replied about 140 students but that they would get dropped off and picked throughout the hours of operation which were 6 am to 6 pm. Chairman Pearsall asked about the traffic flow, Mr. Hueth stated that it was changed to a one way street by Mayor Adams. Chairman Pearsall stated that 40 parking spaces were required but the resolution granted a variance for 20, he asked if that was sufficient. Mr. Hueth stated yes, although some teachers did park on the street even though it wasn't necessary, the only time parking was an issue is when there was a special event like graduation day then there would be spill over into the street and the Police would help with that. Chairman Pearsall asked if the neighbors complained about that, Mr. Hueth replied no but maybe on graduation day. Chairman Pearsall also asked about the oldest child that attended, Mr. Hueth replied maybe 7 and that it was for after school care.

Mr. Martin asked about student/teacher ratio, Mr. Hueth replied it varied depending on the age: the infant area required more, he added that the State makes the determination.

The meeting was open to the public of Mr. Hueth; none presented.

Mr. Brennan called Mrs. Gretchen Hueth to explain the teacher/student ratio required by the State. She stated that 6 weeks to 18 months was a 1 to 4 ratio, 18 months - 2 was 1 to 5, 2 - 2 ½ was 1to 6, 2 ½ - 3 was 1 to 8, 3-4 1 to 10, 4 1 to 12 and 5 was 1 to 15. Chairman Pearsall asked if safety regulations have changed with issues today. Mrs. Hueth replied security increased at the playground area, the office was positioned at the front door enabling staff to see when someone came in. Parents did express that a lock should be on the front door but the facility was closed shortly after that request. Chairman Pearsall asked if there were security cameras, Mrs. Hueth replied no, that it was not a requirement at the time.

Mr. Tangeman asked if having the license meant that you met the requirements, Mrs. Hueth replied yes.

The meeting was open to the public of Mrs. Hueth; none presented.

Attorney Brennan introduced Lisa Viola, Director of the Montessori School. She stated that the school is presently in Wall Township for ages 3 through 10, the Montessori principles are followed. They are in business for 4 years and that she is looking to expand to a larger facility. Mr. Brennan asked if a state license is required, Mrs. Viola replied yes.

Mr. Brennan presented the following exhibit:

- A-10 Copy of Child Care Center License issued to Monmouth Montessori Academy, LLC by State of New Jersey, Dept. of Children & Families, License No. 12WIL0001 certified to Monmouth Montessori Academy, LLC

Mrs. Viola added that the license is for the ages of 2 ½ to 13, the school presently has a maximum capacity of 43 students. The families that are presently in attendance would like to stay beyond kindergarten; she and her husband would like the same for her children. Attorney Brennan asked Mrs. Viola with the expansion grade levels, there was a need a larger facility, Mrs. Viola replied yes. Mr. Brennan asked if she has found a new location, Mrs. Viola replied yes, it's Junior Junction. Mr. Brennan asked if there was a contract, Mrs. Viola replied yes. Mr. Brennan asked Mrs. Viola if a zoning permit was applied for, she replied yes. Mr. Brennan asked if it was granted, Mrs. Viola replied no.

Mr. Brennan presented the following exhibits:

- A-11 Borough of Spring Lake Heights zoning application dated February 17, 2016 consisting of 3 pages, includes narrative of the application, prepared by Lisa Viola
- A-12 Denial of Zoning Permit dated February 29, 2016
- A-13 Notice of Appeal dated March 10, 2016 prepared by John P. Brennan, Jr.

Mrs. Viola confirmed the documents.

Mr. Brennan asked Mrs. Viola about the teacher ratio over 5 years old; Mts. Viola replied that to the best of her knowledge it was 6 years old 1 to 15, and over that age the requirement was more like a public school. Attorney Brennan asked Mrs. Viola if there was a new courtesy inspection, Mrs. Viola replied yes and based on new standards it allowed for 144 students. The reduction to the number of students has changed due to new regulations. Mr. Brennan asked if the Gilligan site plan was reviewed and if the site remains the same as shown in the plan, Mrs. Viola replied yes. Mr. Brennan asked how many teachers are at the present location, Mrs. Viola replied 5. She added if allowed to move to this location they would add 2 more classrooms for a total of 9 teachers. Mr. Brennan asked if there will ever be more than 20 teachers, Mrs. Viola replied no. Mr. Brennan asked Mrs. Viola if she was aware of the new standards, the new occupancy limit and required site plan requirements, she replied yes. Mr. Brennan asked Mrs. Viola about transportation, she stated with fewer teachers and students there would be less traffic. Mr. Brennan asked if families carpool and families have multiple children attending, Mrs. Viola replied yes.

Mr. Brendle offered that the license Montessori has, is for the ages of 2 ½ to 13, he stated the Junior Junction license was a different age group, 0 -13 years. Mrs. Viola replied yes but that they are similar in that they both cover 2 ½ to 13 years old. Mrs. Viola added that the younger ages have more stringent regulations which is what Junior Junction had. Attorney Kitrick asked if she could obtain the license for that age group she replied yes.

Chairman Pearsall asked if the inspector walked through and made suggestions for safety and updating the facility, Mrs. Viola replied yes. There was a list prepared by them. He asked for examples. Mrs. Viola replied the playground equipment is no longer legal; it would have to be removed. There is 1 structure on the

playground that could be kept but needed additional safety measure with padding. There are changes every year as to what is allowed.

Mr. LoBosco asked about the playground that stays, would it be expanded, Mrs. Viola replied no.
Mrs. Viola stated that she would like to put in a garden.

Ms. Lalji asked if they expect children to be walking to school, there are driven. If there are nearby residents attending, it is possible that walking or riding a bike to the location is possible.

Mr. Martin asked if the license is strictly Montessori specific, Mrs. Viola a license is required by the state and the age level is based on several requirements such as fire safety.

Mr. Quinn asked about for the children and if structures would be installed such as basketball courts, Mrs. Viola replied no, that the children are more geared for gardening type of outside activity, more nature inspired activities.

Mike Viola asked Mrs. Viola if there was a license for Montessori, Mrs. Viola replied yes. When you realized that you were outgrowing your facility and when looking for a new location what attracted you to Junior Junction was it because you had similar licenses, Mrs. Viola replied yes. .

Attorney Brennan asked Mr. Gilligan to step up. Mr. Gilligan gave his qualifications; he added that he was the engineer for the original application.

Attorney Kitrick expressed that the prior case law Mr. Brennan referred to earlier was referencing a use variance application which this not.

Mr. Gilligan recently inspected property which still remains the same, although the parking area needs some improvement and some property maintenance is needed. Mr. Gilligan added that original plan for Junior Junction was for 2 way traffic which would remain the same.

Mr. Brennan presented the following exhibit:

- A-14 a single page from State of New Jersey, Dept. of Human Services-Division of Family Development consisting of 1 page, Starting a Child Care Business- steps to start the license process

Mr. Brennan asked Mr. Gilligan as a licensed planner would this be a greater or lesser use of the property, Mr. Gilligan replied similar, but added that there would be a reduction in staff numbers as attendance would be less in his opinion.

Chairman Pearsall stated that the original application was from 20 years ago. He asked about drainage on the site, Mr. Gilligan replied that some improvements might be necessary.

Mr. LoBosco asked about the plans being upgraded to meet present ADA requirements, Mr. Gilligan thought that they might still be compliant. Chairman Pearsall asked how the parking spaces are delineated, Mr. Gillian stated that there are wheel stops but that they may need updating.

Ms. Lalji asked about a large tree on the south side of the property, it appears that the roots are exposed, she added that it appeared on the original plan has being removed. Mr. Gilligan stated that all trees will remain.

Mr. Brendle and Mr. Zelenak both wanted to clarify that this hearing was to appeal the zoning officials decision, Attorney Kitrick replied yes.

The meeting was open for questions of Mr. Gilligan.

Mrs. Andrea Patterson 110 Ninth Ave. asked if the building is multilevel, is it ADA compliant, wouldn't an elevator be required. Mr. LoBosco stated that is done through the construction permit process. Mr. Hueth added that there is handicap access and bathroom. He added that a handicap individual wouldn't be able to access second floor.

Sharon Batteau 719 Beverly Ave asked if there is a public comment period before the vote, Mr. Kitrick replied yes.

Mr. Brennan presented the following exhibit:

- A-15 Letter from State of New Jersey Dept. of Children & Families-Office of Licensing dated July 2, 2015 to Lisa Viola – Monmouth Montessori consisting of 7 pages, regarding courtesy inspection of 2307 Railroad Avenue
- A-16 Aerial photo of subject property

Mr. Brennan asked Mr. Gilligan to confirm the documents, he did.

The meeting was open to the public.

Mike Viola 704 18th Ave Lake Como asked Mr. Gilligan if there was a use variance granted to Junior Junction, Mr. Gilligan replied yes. Mr. Viola offered that the license that was issued to Junior Junction was for 0 to 13, Mr. Gilligan replied yes. Mr. Viola asked when the property transfers ownership is it lost; Mr. Gilligan replied that the variance continues, Mr. Gilligan replied stays with land. Mr. Viola asked in his opinion are we essentially asking to use the facility in the same manner, Mr. Gilligan replied yes.

Attorney Kitrick asked Mr. Gilligan if the license is granted by the state Mr. Gilligan replied yes. He asked if he reviewed the resolution granted, Mr. Gilligan replied yes. Attorney Kitrick read a section of the resolution which read, "for a special reasons use variance to convert the present vacant premises to a preschool learning center for children from infancy to and including kindergarten." Mr. Kitrick asked if that is what was granted, Mr. Gilligan replied yes. Mr. Gilligan pointed out the article from COX presented before states there isn't a difference. Mr. Kitrick stated that someone asked what the Spring Lake Heights board approved; Mr. Kitrick wanted to make it clear what the board approved.

Mr. Brennan asked Mr. Gilligan asked if the application came through as a learning center, Mr. Gilligan replied yes. Mr. Brennan asked if the license granted calls the facility a child care center, Mr. Gilligan replied yes. Both documents were presented as exhibits in the previous application, Mr. Gilligan replied yes. Mr. Gilligan added that the state does not differentiate between the two.

Mr. Tangeman referred to the COX article that stated that a child care center shall be a permitted use in a in all non-residential districts and the property is located in a residential, Mr. Gilligan replied yes and that was why a variance was needed which included specified ages of infancy to kindergarten, Mr. Gilligan replied yes.

The meeting was open to the public, none presented.

Chairman asked Mr. Brennan if he there were additional persons, Mr. Brennan replied none.

Mr. Hueth added that when the application was made the zone was light industrial; Mr. Brennan stated that the application at the time stated it was R-5 which it still is today.

Attorney Kitrick asked Attorney Brennan if he wanted to ask Mr. May questions, he replied no.

Chairman Pearsall asked Mr. May his point of view and how his decision was made.

Mr. May testified that the zoning permit presented to him did not provide for parking for staff, students and those that would be entering the building. His review included the approval resolution in 1995 which included language that stated the ages of the children that would be attending was infancy to kindergarten. The resolution didn't detail too many items but it did specify the age of the children that would be attending. The state issued license does not factor in the decision. His denial included a suggestion that the applicant make application to the board for a variance. Chairman Pearsall asked Mr. May if his opinion remains the same after hearing testimony tonight, Mr. May replied yes. He added that the resolution is very specific about the age of the attendees, not the number of students. The resolution does not talk of the state license. His zoning decision was based on information in the resolution. Mr. Zelenak added that his decision was difficult due to a lack of information not knowing the discussion from the previous meeting. Mr. May added that the change from a 2 way street to a 1 way street may have be done due to complaints from surrounding neighbors. Attorney Kitrick asked Mr. May if the license from the State impacted his decision, Mr. May replied no. Mr. May offered again that the resolution from 1995 spelled out specific ages for the children. Mr. Kitrick asked Mr. May what the certificate of occupancy is based on, Mr. May replied that it's based on square footage of the building. He added that the board did not have the Certificate of Occupancy information as the application was April; the Certificate of Occupancy was August. Mr. May added that there are several questions unanswered with regard to the operation of the Montessori school.

Mr. Brennan stated that the presentation of the CO's was to show that the use was not going to increase; it would actually be less than intense. Mr. Brennan stated that an exhibit was shown of the state license indicated that 161 children would be allowed. Mr. Kitrick asked Mr. May if the licensing from the state had impact on his decision, Mr. May replied no.

Mr. Tangeman added that there is a formula that the state uses to determine the number of children at a facility, may not coincide with the CO.

Mr. Martin asked Mr. May his opinion the application was missing some details, he added that this was an elementary school were previously a day care center.

Dana Lerdieri 3809 River Rd Pt Pleasant asked Mr. May if heard the number of students that the school presently has, Mr. May stated that the resolution was specific as to the age of the attendees. She also asked if there are items still not answered, why not ask them now. Mr. May answered that the question tonight is his decision as the zoning official. He added that it was suggested that they come before the board with an application.

Mr. Viola asked a use variance is granted and the building is given a CO, Mr. May stated the CO is not a part of the zoning process, he added that the resolution spelled out ages. The CO is a building issue and not a part of his decision. Mr. Viola asked if Mr. May has ever given a use variance, Attorney Kitrick answered that Mr. May does not grant use variances.

Mr. Brennan asked Mr. May if reviewed the case law involving horse/cow farm, Mr. May replied no. Mr. Brennan asked if he heard the previous testimony from Mr. Gilligan report on case law from COX, he stated yes. Mr. Kitrick replied that the animal case was more about abandonment.

Ms. Lalji asked Mr. Hueth about previous approval if the license was presented to the board at that time and if the board was made aware of the age designation on the license, Mr. Hueth wasn't sure.

Attorney Brennan asked Mrs. Viola what the hours of operation are now and what the prosed hours of operation are now and for the new location. Mrs. Viola stated the hours are and will remain 9 to 3:30.

Attorney Brennan asked Mr. Gilligan if the use will be less intense with the reduction in hours from when Junior Junction operated, he replied yes. He added with some of children being older, drop off and pick up would be less intense.

The meeting was open to the public.

Sharon Batteau 719 Beverly Avenue stated it was unfortunate that the surrounding neighbors are not here. The presentation tonight indicates that this is an elementary school; Spring Lake Heights has a school. She added that the site is in a residential area. Mr. Brennan stated that existing approval allows for more students and offered that this would be a lesser use, she answered yes, Mr. Brennan that this use would be less, and she replied that is not relevant to her, in her opinion.

Kathy Heuth 415 Washington Avenue Spring Lake stated that she owned the property with her brother-in-law; it's a beautiful building and thinks it would be asset to the community.

Mr. Tangeman asked if the comments are relevant to the appeal of the zoning official's decision. Attorney Kitrick repeated that this hearing is an appeal of the Zoning Officials decision and that this is not a use variance application but that Attorney Brennan is allowed to present history of the property.

Mr. Martin believes that if Mr. May had some of the information presented tonight in the original zoning application to Mr. May, we may not be here tonight. .

Audrey McGowan 604 Essex Ave stated that her children went to Montessori and it was a good experience and felt it would be a positive.

Mr. Michael Viola stated that they were looking to establish relationship in town and bring the families and children to the great building here in town.

Matt Doherty 112 Inlet Terrace Belmar testified that he knows both families very well. He added that at one time Belmar had a Montessori School with Hurricane Sandy they had to close, there were never any issues with the school. He added that if denied tonight it would put a financial burden on the families to come back to the board with a full application and based on some testimony tonight the board would be compelled to approve, Attorney Kitrick stated the board would not be compelled to grant the use variance.

Daniel Corrigan 27 Rimwood Drive Lincroft stated that his daughter attends the school and felt the board should override the zoning official's decision. He felt it would be a less intense use with regard to parking and attendance. He added that the school would be a taxpayer not exempt from taxes. Attorney Kitrick added that the board could not take tax benefits into consideration

Ms. Lalji asked Attorney Kitrick for clarification as to the process tonight.

Michele Farfel Allaire Rd Wall felt that the residents in the area should have been made aware. She also stated that the school year for Montessori is shorter, the school is open shorter hours and the number of students is minimal, it's not like an elementary school, it's a much quieter environment.

Mr. Martin pointed out that information that was presented here or to Mr. May it would be different.

Mr. May stated that he didn't want to be perceived as against the school but he pointed out that a zoning denial was issued in December, by now if there was an application presented that it would be done by now.

Chairman Pearsall offered that he thought he was on the board when the application was presented previously. He stated that applications are reviewed by the board and we do the job to the best of our ability. He offered that he was an elementary school teacher and grade levels are always changing within a building and offered no matter what grades are in the building it is looked at as an elementary school.

The voice of the public was closed by Mr. Martin and seconded by Mr. Quinn; roll taken all ayes.

Attorney Brennan stated that he had nothing further and thanked the board.

Attorney Kitrick reminded a member that tonight is to review the zoning decision and that alone and certainly the applicant could come back to the board for a use variance.

Mr. Tangeman made a motion to uphold Mr. May's decision of zoning denial, seconded by Ms. Lalji. Roll call taken:

AYES: Mr. Brendle, he added that based on the language in the resolution, which had specific language about age, he voted to uphold the decision. He added that a Montessori school could be a good fit but that was not the case at hand.
Mr. Tangeman stated that based on the previous resolution which had specific ages he was upholding the decision but certainly the applicant could come back for a variance which is what Mr. May suggested.
Mr. Zelenak, was upholding the decision, he also voiced that the neighbors should have been notified.
Mr. Martin stated that it's a difficult decision but was also upholding the decision. H offered that it might be a great fit for the property, but that the applicant must go thru proper channels.
Ms. Lalji was upholding the decision she offered that it would probably be a great fit but her decision is based on appeal application before them. She added that it was apparent to her that Mr. May was upholding the previous board requirement.

NAYS: Mr. Quinn stated that he has gone back and forth but he added that he thought it would be a good fit.
Chairman Pearsall stated that he felt the ages of the children didn't matter that the spirit of the previous board allowed for a school. He suggested to the applicant that they come back with a use variance application.

ABSTAIN: None

Attorney Kitrick reviewed that Mr. May's decision is upheld

Adjournment: On a motion by Mr. Brendle and seconded by Mr. Zelenak the meeting was adjourned without objection at 10:20 p.m.

Submitted And Approved:

Janine Sues Date: April 28, 2016