

**BOROUGH OF SPRING LAKE HEIGHTS  
BOARD OF ADJUSTMENT  
MINUTES  
MAY 23, 2019 at 7:30 P.M.**

MEETING CALLED TO ORDER AND SALUTE TO THE FLAG

Brian Brendle – present  
Susan Lalji - absent  
Donald Nolan – present  
Bruce Waitzel - present  
Owen Quinn – present  
John Tangeman - present  
Chairman Dennis Pearsall - present

Also Present:  
Mark Kitrick, Board Attorney  
Louis Lobosco, Board Engineer  
Mary Ellen Karamus, Board Secretary

Alternate #1  
Thomas Martin – absent

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.  
EACH APPLICANT SHALL BE LIMITED TO FIFTY (50) MINUTES TO PRESENT THEIR CASE, AS PER RESOLUTION #10-2007.

**Approval of Minutes:** April 25, 2019 - Mr. Brendle made a motion to accept the minutes; Mr. Tangeman seconded; roll call taken as follows:

AYES: Mr. Brendle; Mr. Nolan; Mr. Waitzel, Mr. Quinn; Mr. Tangeman;  
NAYS: None  
ABSTAIN: Chairman Pearsall

**Correspondence:** 5.6.2019 L. Lobosco correspondence to Construction – Mr. Lobosco stated that he inspected the Spring Lake Garden Apartments site in order for the Construction Department to proceed.

**Discussion:**

**Old Business:** **Resolution 2019-10**  
**Emmett and Brittany Smith**  
**Application No. ZB-2019-01**  
605 Passaic Ave.  
Block 53 Lot 9  
Demolish existing structure and build new home

Mr. Tangeman made a motion to approve Resolution 2019-10; seconded by Mr. Quinn; roll call taken as follows:

AYES: Mr. Brendle; Mr. Nolan; Mr. Waitzel; Mr. Quinn; Mr. Tangeman  
NAYS: None  
ABSTAIN: Chairman Pearsall

**Resolution 2019-11**  
**Thomas Walsh**  
**Application No. ZB-2019-02**  
1009 Park Avenue  
Block 25.02 Lot 11  
Great room addition

Mr. Waitzel made a motion to adopt Resolution 2019-11; seconded by Mr. Brendle; roll call taken as follows:

AYES: Mr. Brendle; Mr. Nolan; Mr. Waitzel; Mr. Quinn; Mr. Tangeman;  
NAYS: None  
ABSTAIN: Chairman Pearsall

**New Business:** Chairman Pearsall stated that Mr. Tangeman wanted to discuss outdoor dining. Mr. Tangeman stated that the issue of whether or not outdoor dining is allowed has come up recently. Mr. Tangeman stated that the current planner feels outdoor dining may be allowed. Mr. Tangeman added that the planning board had discussed outdoor dining when the owner of Scottyville made application to the planning board to allow outdoor dining, an indoor sit-down café and a refrigerator outside for a potential renter of the property. Mr. Tangeman stated he had copies of the planning board minutes and wanted to go over them. Mr. Tangeman handed out copies of the planning board meeting minutes to the members of the board.

Mr. Tangeman relayed that the former zoning officer informed the applicant that outdoor dining was not permitted without planning board approval. Mr. Tangeman stated that is not true. Mr. Tangeman stated that the former zoning officer subsequently issued a letter clarifying that design standards for outdoor dining do not exist in the code so outdoor dining is not permitted and that a use variance is required so Board of Adjustment approval is required. Mr. Tangeman stated that planning board minutes indicate that the former zoning official had initially read an ordinance that had not been adopted saying outdoor dining was a permitted use. Mr. Tangeman added that Joseph May at that time had confirmed that outdoor dining is not a permitted use. Mr. Tangeman confirmed that a use variance approval would come to the Board of Adjustment. Mr. Kitrick said yes. Mr. Tangeman stated that the applicant before the planning board withdrew the outdoor dining request.

Mr. Tangeman stated that there was a letter from Mr. Joseph May to council showing possible design standards that council could consider for outdoor dining. Mr. Tangeman added that it did not go anywhere from there; council did not adopt anything.

Mr. Tangeman stated that was the last time outdoor dining was discussed.

Mr. Tangeman stated a recommendation should be made to council to determine if outdoor dining is or is not allowed. Mr. Tangeman asked the board members if they think everyone looking for outdoor dining should be required to come before the Board of Adjustment for a variance. Mr. Waitzel stated if a use variance is required, that makes the most sense. Mr. Nolan

said it is an expense and it is overkill for small businesses, as opposed to restaurants. Mr. Brendle asked where you draw the line. Mr. Kitrick stated that is where standards come in. Mr. Nolan stated it should be sorted out. Mr. Brendle stated it is not only outdoor dining; there was a fruit stand that was not allowed. Mr. Lobosco stated selling goods outside is not allowed. Mr. Tangeman recommended that outdoor dining should not be permitted in any commercial zone and that anyone wanting outdoor dining would have to come before the Board of Adjustment. Mr. Waitzel asked why outdoor dining should not be permitted. Mr. Nolan asked what other towns do. Mr. Lobosco stated many towns do not specifically say it is or is not allowed. Mr. Tangeman stated he feels people who live near outdoor dining should have a right to say how they feel. Mr. Brendle stated it should be taken case by case and that they should come before the board. Mr. Nolan added that there are facts such as hours of operation, number or patrons and alcohol that would need to be addressed. Mr. Waitzel referred to Dunkin Donuts and having a cup of coffee outside. Mr. Kitrick stated that impact on small businesses can be considered when setting standards for coming before the board. Mr. Kitrick added that when the board asks council to establish design standards, it still does not address whether outdoor dining is or is not permitted. Mr. Tangeman stated that there should be design standards but if anyone wants outdoor dining, they should come before the board. Mr. Brendle asked if there are design standards does that mean it is permitted.

Chairman Pearsall asked what the board wanted to do. Mr. Tangeman stated he would like to see outdoor dining be a not permitted use and if people want to have outdoor dining, they have to come before the Board of Adjustment. Mr. Tangeman added that there could be limits concerning smaller business and/or number of tables. Mr. Lobosco added that outdoor dining has been discussed in the current Master Plan review. Mr. Tangeman added that neighbors do not want outdoor dining. Mr. Nolan stated they do not want the noise and traffic associated with outdoor dining. Mr. Tangeman stated that clarification is needed. Mr. Brendle stated if someone wants it, they should come before the board. Chairman Pearsall stated that is how it is now. Mr. Kitrick stated there can be confusion when a bulk or use variance is before the board. Mr. Kitrick added that if it is not prohibited, it could be considered allowed. Mr. Tangeman stated that is why it should be prohibited in nonresidential areas. Mr. Tangeman added that it is only one word that would be added to an ordinance instead of design standards. Chairman Pearsall stated if he was someone who wanted outdoor dining and it is prohibited, he would not pursue coming before the board. Mr. Nolan stated standards are needed; how many tables, parking, noise, time of operation. Mr. Tangeman said standards can be adopted; it is not permitted but here are the standards. Mr. Nolan added that in Avon there is outdoor dining where places have opened up on an open lot with food trucks. Mr. Tangeman stated you would want to prevent that. Mr. Nolan stated that is why there are a lot of things to talk about with outdoor dining.

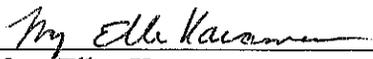
Mr. Tangeman suggested that the board should recommend to Council that outdoor dining should be prohibited in a nonresidential zone and relief should be sought from the Board of Adjustment; anyone who wants outdoor dining would have to come to the board. Mr. Kitrick stated that would trigger a use variance. Chairman Pearsall stated they do not want to hurt people with small businesses. The board discussed jurisdiction and when applicants go before the B of Adjustment or the Planning Board.

Chairman Pearsall stated the question is not settled but there are thoughts. Chairman Pearsall stated they should not ban outdoor dining. Mr. Nolan stated the board should ask the council for clarification. Mr. Brendle agreed that they should see what Council says. Mr. Tangeman stated he would like a time frame; if the board does not hear anything in a couple of months, they

should ask again. Mr. Kitrick stated he will write a letter to the Borough attorney. Chairman Pearsall stated Mr. Kitrick will write a letter to the Borough attorney stating that the board is looking for clarification and hopefully they will hear back from council. Mr. Tangeman asked if the letter can say the board discussed adding outdoor dining to prohibited uses but would like feedback. Mr. Waitzel asked if that was agreed to. Mr. Waitzel added they should ask for clarification. Mr. Kitrick confirmed that the board is asking Council for clarification on whether outdoor dining is or is not a permitted use in the commercial zone. Chairman Pearsall asked if all of 71 is commercial Mr. Lobosco stated most of it is.

**Adjournment:** On a motion by Mr. Brendle; seconded by Mr. Nolan the meeting was adjourned without objection at 8:03 p.m.

**Submitted and Approved:**

  
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Mary Ellen Karamus  
Board Secretary

Date: August 22, 2019