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ZONING BOARD OF ADJUSTMENT
Thursday, September 5, 2019
APPROVED MINUTES

OPENING: The meeting was called to order by Chairman Jonathan Rardin at 7:33 PM.

PLEDGE OF ALLEGIANCE: Led by Chairman Jonathan Rardin.

OPMA STATEMENT: Read by Chairman Jonathan Rardin in compliance with the Sunshine Law.

ROLL CALL

- **Members in attendance:** Jonathan Rardin; Daniel DiRenzo, Jr.; Wyatt Sklar; Nacovin Norman; Ann Madden Tufano; and Greg Bruno.
- **Professionals in attendance:** Natalie Shafiroff, PP, AICP, Supervisor; Jacob Richman, PP, AICP, Planner; and Cosmas Diamantis, Esq., Zoning Board Solicitor.

ADMINISTRATIVE ITEMS

Adoption Meeting Minutes from August 15, 2019. Mr. Norman made a motion, which was seconded by Mr. Bruno, to adopt the Meeting Minutes from August 15, 2019. Affirmative votes by Rardin, Norman, and Bruno. Minutes are approved.

RESOLUTIONS:

19-Z-0021

Block(s) 471.01 Lot(s) 7

Zone: Highway Business (B2) Zone and Residential (R1) Zone (Split Zone Lot)

Relief Requested: A use (d1) variance with preliminary major site plan only with bulk (C) variances to construct 64, one-bedroom multi-family units, which are 100% affordable senior and supportive needs housing units, accompanied by various site improvements including stormwater, landscaping, lighting and other site improvements.

Fortitude Realty, LLC

1991 Route 70 East

Cherry Hill, NJ 08003

Motion to Ratify: Following the review of the resolution, Mr. Bruno made a motion which was seconded by Mr. Norman, to memorialize the resolution for Fortitude Realty, LLC. Affirmative votes by Rardin, Norman, and Bruno. The resolution is memorialized.

Prior to the first agenda item, Mr. Norman announced that he would have to recuse himself from the remainder of the meeting due to a professional conflict with I.K. Properties, LLC.

AGENDA ITEMS:

19-Z-0023

Block(s) 284.02 Lot(s) 7 & 8

Zone: Highway Business (B2)

Relief Requested: An Interpretation per N.J.S.A. 40:55D-70(b) from the Zoning Board of Adjustment to determine if the subject property is being used as a "Medical/Dental Office or Clinic (outpatient facility)," which requires a minimum number of parking spaces based upon (two (2) for each doctor, plus one (1) for each two hundred (200) square feet of gross floor area," OR if the property is being used as an "Office, General/Professional," which requires a minimum number of parking spaces based on "one (1) for every two hundred fifty (250) square feet of GLA." The applicant is seeking a favorable interpretation to classify the use as "Office, General/Professional," which is contrary to the finding of the Cherry Hill Township

I.K. Properties, LLC

2433 Church Road

Cherry Hill, NJ 08002

Department of Community Development, where a change in occupancy Zoning Permit had been denied, as it was determined by the Zoning Officer that the use should be classified as a "Medical/Dental Office or Clinic (outpatient facility)." Should the Zoning Board grant an unfavorable interpretation, a bulk (C) variance shall be required and is requested to permit 16 parking spaces, where 40 are required.

Applicant's Representatives: Richard Goldstein, Esq. – Applicant's Attorney; Andrew Feranda, PE, PTOE – Applicant's Traffic Engineer; Melissa Torpey – Chief Operating Officer of Interactive Kids (and property owner); and Colleen Tessing – Supervisor of Educational Services for Interactive Kids.

Exhibits Submitted: A-1: Excerpts from the Zoning Ordinance.

Mr. Goldstein introduced the application for Interactive Kids and noted that the applicant seeks a favorable interpretation on the amount of required parking spaces for their propose use, or in the event of a denial of interpretation, the applicant seeks a bulk (C) variance for parking. The crux of the issue pertains to the Township's determination that the use is a medical office which would require 40 parking spaces while the applicant contends the use is more aligned with a general/professional office which would only require 15 parking spaces (where 16 are provided). Mr. Goldstein gave an overview of the use, which is a behavioral health service provider, and noted that the employees, while qualified, are not licensed medical professionals (there is presently no State licensing requirements).

Mr. Goldstein noted that the Township's prior Zoning Officer determined Interactive kids is a medical office/clinic thus requiring two (2) parking spaces per doctor plus one (1) parking spaces per 200 SF GFA. The applicant believes they are not a medical office/clinic and thus require only one (1) parking space per 250 SF GLA as required for general/professional offices. After reiterating what each parking calculation requires and how much parking is available, Mr. Goldstein submitted Exhibit A-1 to highlight the definitions for the different use groups and their associated parking requirements plus the parking requirement for a daycare use, which the applicant argued their parking needs function more like a daycare use. Mr. Goldstein asserted that the definition for a general/professional office use more aligns with Interactive Kids.

Ms. Torpey stated that she is a managing member of the applicant's LLC as well as the property owner. Ms. Torpey stated that she is a Board Certified Behavioral Analyst (with a Master's in Education). Ms. Torpey estimated that 80-90% of the business' services are provided outside of the building typically in schools, at a client's home, or out in the community and that these services are to help children (ages 2 to 6) who have mental/behavioral disabilities. Ms. Torpey stated that she acquired the property in December of 2017 and didn't realize they needed a Certificate of Occupancy, zoning permit, or sign permit to operate. Ms. Torpey noted that she went to explore the possibility of expanding the parking lot prior to moving into the building but did not proceed any further. Ms. Torpey noted subsequent interactions with the Township up until August 18 when they eventually applied for a change owner and occupancy as they needed a Certificate of Occupancy on record in order to receive certain State funding to provide behavioral health assessments. Since they could not get a CO, the applicant moved their vocational program (which the State needed a CO for to provide funding) out of this office. The applicant stated they do not plan on bringing the program back.

Ms. Torpey stated that being Board Certified does not mean they are nationally certified and licensing level depends upon your education as some licenses only require a Bachelor' Degree while other require a Master's Degree plus a combination of continuing education credits and passing an exam. Ms. Torpey stated that licensees are trained to look at observable behavior but not the underlying medical causes. Ms. Torpey stated that they have contracts with schools districts requiring staff to be Board Certified; however, no State oversight is required. Ms. Torpey stated that she is not aware of any recognition of behavioral analysis being considered medical professionals. Ms. Torpey explained that Interactive Kids is paid by the contractor (like a school district) but with regard to health insurance, they will only pay out of they are working with a child with autism. Ms. Torpey stated that treatment planning consists of developing goals and a program for the individual which can involve teaching social skills and life skills. Ms. Torpey affirmed that they are not a Medicare or Medicaid provider. Ms. Torpey stated that in order for the business to bill to a health insurance company, they need to register with the State to a get a healthcare provide number.; however, they do not collect co-pays on-site. Ms. Torpey stated that staff at Interactive Kids feel more like a child student team members and not a medical professionals. Ms. Torpey noted that their trained staff do not provide medical diagnoses but they can help treat clients with autism. Ms. Torpey agreed to not bring back the vocational program as licensed by New Jersey's Department of Developmental Disabilities to this location.

Ms. Tessing stated that she has a Bachelor's and Master's Degree in Elementary Education and that she is presently a behavioral analyst at Interactive Kids as well as a supervisor of behavioral consultants. Ms. Tessing also does consulting at various school districts. Ms. Tessing discussed the behavioral/social skills that they address through their programming. Ms. Tessing stated the maximum number of employees is 11 but that some staff comes to the site periodically then go to other sites to administer program, therefore, staffing numbers can vary. Ms. Tessing explained that schedules fluctuate depending upon client needs and that they can be in the field, at a client's home, or on-site to administer their programming. Ms. Tessing clarified that only their "Early Learners" program operates at the subject site and that it is specifically for kids ages 2 through 6. Ms. Tessing stated that no specific medical professionals are on-site nor will you find medical equipment, waste or prescriptions (except for an EpiPen).

Ms. Tessing noted their hours of operation are from 8am to 5pm and that children arrive in a staggered fashion and are also picked up in a staggered fashion. Ms. Tessing stated that 3 drop-offs at a time is the maximum and that parents do not linger that long. Ms. Tessing explained that there is some carpooling of children that occurs. Ms. Tessing stated that therapy sessions are typically 2 to 5 hours in length depending on client needs but they don't expect more than 9 children on-site at any given time. Ms. Tessing discussed the adequacy of available parking spaces and also noted that some drop-offs take place in the loop in front of the building as opposed actually parking in a designated space. Ms. Tessing noted that employees are not necessarily there all day so there will be turnover in parking space usage. Ms. Tessing stated that if there ends up being an overflow situation, they have a good relationship with the neighboring Dunkin Donuts and could potentially park there; however, there is no legal agreement between the two entities.

Mr. Feranda noted that the building is 2-stories and approximately 3,600 SF in size. Mr. Feranda stated that on average there will be 8 to 11 employees in the facility except during extended school year times where there can be 2 to 3 more employees. Mr. Feranda stated that on a typical day there are 5 to 6 available parking spaces including when staff is in the facility and parents are doing drop-offs. Mr. Feranda posited that the site profile is more similar to a daycare than a medical office use based upon trips and drop-off/pick-up patterns noting that there is a lot of turnover in the parking lot. Mr. Feranda stated that based upon his observation, 40 parking spaces is not needed. Ms. Tessing clarified that the maximum number of employees on site would be 14. Ms. Tessing stated that she the applicant would agree that during extended school year time that any additional staff needed would have to carpool to the site. A discussion ensued regarding potentially capping the number of kids on site.

Mr. Goldstein stated that the applicant would agree to come back to the Board for site planning if there ends up being a parking issue. Mr. Goldstein also noted his concern about planning for the potential worst parking day as opposed to the typical daily need. Ms. Torpey stated that if their business capped out in terms of number of clients that they would refer them to their offices in other locations. Mr. Bruno stated that he observed multiple instances in the past week of there being six (6) or more empty parking spaces on-site during normal business hours. Ms. Torpey concluded by indicating that she believes the parking availability on-site is sufficient for their business.

Public Comment: None.

Board discussion ensued regarding whether the business is more of a clinic or a professional office. The Zoning Board primarily expressed their view that the proposed use and the employees staffed by Interactive Kids are more consistent with medical personnel and that they agree with the Zoning Officer's original determination regarding the use being aligned with a medical office use as opposed to a general/professional office use.

Motion to Deny the Applicant's Request for a Favorable Interpretation: A motion was made by Ms. Tufano and seconded by Mr. Sklar, with affirmative votes by Rardin, DiRenzo, Sklar, Tufano, and Bruno for the denial of a favorable Interpretation request for the applicant. Motion carries 5-0.

Following the motion denying the interpretation, Solicitor Diamantis noted the conditions attached to the application including that Interactive Kids will not bring back a vocational program to their site, that carpooling will be utilized by staff during the extended school year time periods, and that the applicant will comply with the Department of Community Development review letter pertaining to acquiring all necessary zoning and sign permits for their business. Mr. Goldstein clarified that the applicant requests permission to be able to expand their business but not in a manner that will exceed the

sites parking space allotment (16 spaces) when utilizing the parking calculation used for daycares which is equal to one (1) parking space for every six (6) students plus one (1) parking space per employee.

Motion to Approve the Bulk (C) Variance to Permit 16 Parking Spaces where 40 Parking Spaces are Required:
Following a review of the application and conditions of approval by Solicitor Diamantis, a motion was made by Mr. DiRenzo and seconded by Mr. Sklar, with affirmative votes for approval by Rardin, DiRenzo, Sklar, Tufano, and Bruno for the approval of the Bulk (C) Parking Variance with the noted conditions. Motion carries 5-0.

Meeting Adjourned: at 9:36 PM.

ADOPTED: 9/19/19

ATTEST:



LORISSA LUCIANI, PP, AICP
ZONING BOARD SECRETARY



JONATHAN RARDIN, CHAIRMAN