

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF MIDLAND PARK**

RE: Jay Samolowicz LLC d/b/a NJ Swingsets
59 Greenwood Avenue, Unit 9
Block 33, Lot 7.01
I-2 Zone District

RESOLUTION

WHEREAS, Jay Samolowicz LLC d/b/a NJ Swingsets (the “Applicant”) has filed an Application with the Midland Park Zoning Board of Adjustment (the “Board”) seeking a use variance pursuant to N.J.S.A. 40:55D-70(d) to allow for children’s parties and celebrations on weekends at the Applicant’s existing location at 59 Greenwood Avenue, Unit 9, Midland Park, New Jersey (the “Property”); and

WHEREAS, a Public Hearing was held by the Board on October 12, 2022; and

WHEREAS, the Applicant’s Notice of Public Hearing has been served on all required parties and published in accordance with the requirements of the Municipal Land Use Law; and

WHEREAS, the Board has considered the Application and supporting documents submitted by the Applicant as they relate to the applicable provisions of the Midland Park Zoning Ordinance; and

WHEREAS, the Board has considered the following testimony presented at the Public Hearing:

Testimony

1. The Board first heard testimony from the Applicant, Jay Samolowicz. Mr. Samolowicz stated that he operates a business selling swing sets at 59 Greenwood Avenue, Unit 9. The Applicant stated that when he meets with customers to look at swing sets at the site, they often ask if they can rent the premises for birthday parties and events for their children. The Applicant started renting a portion of the space for children’s parties and celebrations on weekends commencing 2017, not knowing that he needed a variance to do so. The Zoning Officer discovered the use and directed the Applicant to cease such activities and apply to the Zoning Board for a use variance.

2. The Applicant testified that he has swing sets assembled on site so that potential customers can view them. He testified that the swing sets are “heavy duty” and well-built. The majority of his customers are in Bergen County, but he has customers as far as 100 miles away.

3. He testified that almost every day when people are looking at the swing sets they inquire about renting the space for birthday parties for their children.

4. The Applicant stated that he is only seeking to use a portion of the premises as a party venue during the weekends from 9:00 a.m. to 6:00 p.m. and that each party would be no more than 1 hour and 45 minutes in duration. This would allow him to have 30 minutes in between parties to clean. All parties would be booked in advance.

5. The average number of children at a party would be 15, but there could be as many as 24. He also stated the average age of a child at a party would be 3 to 8 years old.

6. The Applicant testified that there would be 2 to 3 employees on site supervising the parties along with the adults who accompany the children. A restroom is provided down the hallway.

7. The Applicant testified that he has installed padding on the I beams within the premises and padding on the floor. His insurance company has given him guidance and advice as to how to provide safety measures for the space. The Applicant stated that he was agreeable to having a licensed inspector inspect the premises.

8. Upon being questioned, the Applicant stated that it is not common for an adult to drop off a child for a party and that most adults accompany the child to the party. He stated that on average there would be 10 to 15 adults with the children during a party.

9. With respect to parking, the Applicant testified that he believes that no more than 20 spaces would be required for cars.

10. The Applicant testified that he would look into the maximum occupancy with regard to fire safety limits and comply with the same. He also stated that he would not have showroom hours for selling swing sets during the parties.

11. The Applicant testified that people bring their own food to the parties, and that he does not provide or sell food to the customers.

12. The Applicant testified that he was agreeable to following and meeting any applicable mandatory rules, regulations, laws, and guidelines with respect to the proposed use of the site.

13. The Board next heard testimony from the Applicant's professional architect, Robert Verrengia. Mr. Verrengia was accepted as a licensed architect and expert in the field of architecture.

14. The Board marked architectural plan sheet A-201, updated October 11, 2022, as A1 and the full set of architectural plans as A2.

15. Mr. Verrengia testified as to the background and history of the Marlow Park commercial building with respect to parking. He testified that 37 spaces were on site and that up to an additional 92 spaces could be used from the site across the street at 80 Greenwood Avenue. Sheet SP-201 shows 26 spaces immediately outside the building adjacent to the side entrance

leading to the space. He testified that most, if not all, of the spaces would be available on the weekends when other tenants from the building are not there. However, he also stated that, if overflow parking was needed, there were more than sufficient spaces across the street.

16. The architect testified that only 1 party would be conducted at a time and that the Applicant would have to comply with all applicable codes and regulations with respect to restrooms. The Applicant would also comply with all applicable fire codes. He further testified that the Applicant would comply with all ADA requirements with respect to bathrooms and parking.

17. The Applicant through the architect further testified that he would agree to a maximum of 24 children at any one party.

18. Richard Wostbrock, the Board's engineer, stated that he believes the Applicant needs handicap spaces on the site to comply with applicable laws and codes. He also stated that he believes the Applicant's parking count as provided to the Board, using the requirements of childcare use, is correct. The Applicant's existing conditions and proposed parking analysis was marked as A3.

19. The Applicant agreed that parties would only take place on weekends and that he would agree to a condition that 2 ADA spaces be provided.

20. The Board next heard testimony from the Applicant's professional planner, Irene Benyra. Ms. Benyra was accepted as an expert in the area of professional planning. Ms. Benyra testified that she had reviewed the Borough's master plan, ordinances, and the reports prepared by the Borough professionals.

21. She stated that the building sits on a lot 2.35 acres in size and that the Applicant's space, Unit 9, was 6,339 square feet.

22. She stated that the use was not contemplated by the ordinance because it was so unique and specific. She believed that the proposed use should be considered an accessory use to the primary use as a marketing tool. When people come into the site to look for playgrounds to purchase, they naturally allow the children to play on the swing set and this leads to a discussion as to whether or not the site can be used as a party venue.

23. The planner testified that this helps the viability of the business.

24. She stated that in 2008 there was a master plan reexamination which found the industrial portion of the community to be an asset, and she found that the industrial section along Greenwood Avenue continues to be an asset with many activities.

25. She further testified that the 2019 reexamination encouraged economic development and considered new uses such as recreational uses. However, the ordinance was not amended.

26. She testified that the Applicant is proposing no changes to the outside of the building, and she noted that there is additional parking in the rear for employees.

27. She stated that the proposed use of the facility as a play and event space is not inherently beneficial. However, she stated that she believed the proposed use is particularly suited for the location and, therefore, special reasons are advanced.

28. She further provided that assembled playgrounds already exist within the building that cannot be seen from the outside. The assembled playgrounds and use as a party venue support the viability of the business. No other variances are required as a result of the proposed use.

29. She further testified that indoor recreational uses were contemplated by Midland Park in the 2019 reexamination report, however, no ordinance amendment was adopted.

30. She concluded that the purposes of the Municipal Land Use Law would be advanced by allowing the use since it would provide an appropriate location for the use and ensure that the development of the municipality does not conflict with the development and general welfare of neighboring municipalities. The granting of the variance would ensure a variety of uses to meet the needs of the residents of Midland Park.

31. The planner testified that the negative criteria was met since there would be no negative impact on the neighbors since the use is complementary and supports the existing business. Moreover, there would be no substantial detriment to the Zoning Ordinance or the master plan. The proposed use would simply constitute an upgrade to the business with a complementary use helping the viability of the business which is supported by the 2019 Borough master plan reexamination.

32. The Applicant testified that he would agree to a condition that no music could be heard outside the building.

33. Board Engineer Richard Wostbrock testified that the amount of parking on site would be sufficient with the 26 spaces provided. He also suggested that there would be and should be no drop off of the children and that the parents should escort them to the interior of the site.

34. The Board heard testimony from the Board's professional planner, David Novak, who stated that he did not find that the proposed use would be violative of the master plan since the reexamination did speak of indoor recreational use. He stated that he believed that the site was particularly well suited for the proposed use since the tenant was already in the building and that the building height and parking are suitable for the use. He stated that the 26 spaces, which would comply with ADA requirements, on site, made him comfortable with the proposed use. He believed that a condition should be imposed that staff and employees park across the street leaving the 26 spaces for the customers with children to access the venue.

35. He agreed that there would be no substantial detriment to neighboring properties or the Zoning Ordinance or Zoning Plan of the Borough. Mr. Novak recognized that the building is mostly empty on the weekends and that no additional signage would be required.

Exhibits

- A-1 Sheet A-201, dated October 11, 2022, Nick Tsapatsaris & Associates, Architect Engineers
- A-2 Plans from Nick Tsapatsaris & Associates, Architect Engineers, Sheets T-101, SP-101, SP-201, A-101, and A-201, with last revision date June 23, 2022
- A-3 Marlow Park Existing Conditions and Proposed Parking Analysis
- B-1 Memorandum from David Novak, dated October 10, 2022
- B-2 Review Letter from Richard Wostbrock, dated September 2, 2022
- B-3 Borough of Midland Park Fire Prevention Comments

Board Comments and Findings

36. The Board finds the testimony of the Applicant and the Applicant's experts to be credible and relevant. The Board also finds the testimony of its professional planner and engineer to be credible and relevant.

37. The Board finds that the Applicant has met its burden of proving special reasons with respect to the required use variance. The Board finds that the proposed site is particularly suited for the proposed use as a venue for children's parties on the weekend. The Board further finds that the Applicant has met its burden of meeting the negative criteria as there would be no negative impact upon the neighboring properties or the Zoning Ordinance or master plan of the Borough of Midland Park with the requirement of certain conditions which were found to be reasonable and acceptable to the Applicant and placed on the record.

38. The Board specifically finds that the proposed use as a children's party venue serves as a reasonable accessory use that will help the viability of the existing business. The Board also recognizes that such recreational uses were contemplated by the Borough's 2019 reexamination report. The Board further finds that the size and height of the building along with the existing parking is particularly well suited for the proposed use.

NOW, THEREFORE, BE IT RESOLVED, by the Midland Park Zoning Board of Adjustment that, based upon the above findings of fact and conclusions of law, the Application of Jay Samolowicz LLC d/b/a NJ Swingsets for a use variance pursuant to N.J.S.A. 40:55D-70(d) is hereby GRANTED and that the action taken by the Board of Adjustment on October 12, 2022 be and is hereby memorialized subject to the following conditions:

1. The Applicant is required to obtain a building permit and post all necessary fees and costs with the Borough prior to any construction.

2. All construction shall be completed in accordance with the plans and drawings marked into evidence, along with the testimony of the Applicant and its experts, and in accordance with all applicable, state, county, and municipal codes, ordinances, rules, regulations, and in accordance with the instructions of the construction code of the Borough.
3. The variance relief granted by this Resolution applies only to such variance requests as depicted in the Resolution.
4. The site shall be used as a children's party and celebration venue on weekends (Saturdays and Sundays) only.
5. There shall be no sales of playgrounds and/or products performed on the weekend when parties are taking place.
6. There shall be no more than 4 parties and/or events per day on such weekends.
7. There shall be no food or drink to be supplied by the Applicant in connection with the parties and/or events.
8. The Applicant must comply with all applicable federal, state, and municipal rules, regulations, laws, and codes.
9. If applicable and required, the party/event area shall be inspected by the appropriate licensed individual.
10. The Applicant shall comply with all applicable ADA regulations with regard to parking, playground equipment, and restrooms.
11. Music shall not be heard from outside the building.
12. 20 parking spaces shall be allocated for the proposed use. On the weekends, employees and staff for the party venue shall park across the street at the overflow parking on 80 Greenwood Avenue. There shall be no drop offs of children, and all children attending the venue must be escorted by an adult into the interior of the party venue.
13. There shall be no more than 24 children at any one party and/or event.

BE IT FURTHER RESOLVED that the Chairperson and Secretary of the Board are hereby authorized to affix their signatures to this Resolution confirming approval of the Application.

Approved: November 9, 2022

Mark Braunius, Secretary

Les Andersen, Chairperson

DRAFT