

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

**October 12, 2022**

PLEASE TAKE NOTE:

ON WEDNESDAY, OCTOBER 12, 2022, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULARLY SCHEDULED MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

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FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Nick Papapietro	present
Mr. David Zuidema	present	Mr. Mark Braunius	present
Mr. John Meeks	present	Mr. Mark Divak	excused
Mr. Richard Formicola	absent	Mr. William Placier, Alt #1	present
		Mr. David Barlow, Alt #2	present

Attendance by Board Professionals: R. Landel, Esq., Attorney; R. Wostbrock, Engineer; D. Novak, Planner

Minutes of the 9/14/22 meeting - approved

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**PUBLIC HEARINGS:**

**Jay Samolowicz LLC dba NJ Swingsets – 59 Greenwood Avenue, Unit 9 – BL 33 LT 7.01** – Atty Bruce Rosenberg of Winne Banta Basralian & Kahn on behalf of applicant. Notices are in order. Mr. Zuidema recused. Applicant is before the Board for a use variance to hold weekend birthday parties in the existing swing set showroom. Mr. Samolowicz has occupied Unit 9 at 59 Greenwood Avenue, known as Marlow Park, since 2014. Customers shopping for swing sets would ask to hold children’s birthday parties in the space and Mr. Samolowicz offered these parties in 2017. In 2019, Mr. Berninger advised that this was not permitted in the zone and a variance was needed; Mr. Samolowicz immediately ceased the birthday party operation and filed an application with the Board.

**Jay Samolowicz, applicant/business owner** – sworn in. Operates a swing set company, the space in question is a warehouse and showroom space where prospective customers can see the swing sets, try them, customize them, and arrange for delivery and installation in their yard. **Exhibit A1** – Picture Board, page A-201 from original plan set, colorized, 1 sheet. Nick Tsapatsaris & Associates, Architect, revised 10/11/22. Applicant reviewed contents of the exhibit; the blue area is proposed to be a seating area with tables and chairs, the purple area is where the swing sets are, and the beige area is the warehousing space. The proposed weekend only children’s parties would occur from 9:00 AM – 6:00 PM on Saturdays and Sundays, there will be no more than 3-4 parties per day, lasting 1 hour and 45 minutes each with a half hour in between for cleaning and set up. Parties will be private parties, booked in advance, with a maximum of 24 children ages 3-8 years old. 2-3 employees will be on site during parties, and it will be mandatory that all children attending be accompanied by an adult. Restrooms are located down the hallway within the common area of the building and any child going to the restroom must go with parental/adult supervision. Mr. Samolowicz spoke to his insurance company and the manufacturer regarding any safety requirements for these events, requirements are proper surfacing for fall heights, padding, for example around I-beams, signs – children must be attended, play at your own risk - and proper spacing of the sets to swing and play. Applicant is willing to have a licensed inspector come in per Mr. Wostbrock’s review letter. All party activities would be occurring inside the building, contained to Mr. Samolowicz’s unit.

Board discussed the potential parking requirement for this use, the applicant’s calculation is 19.5, or 20 spaces needed. Board also questioned potential safety codes required for a use like this, and whether this would be considered a public or private playground. The definition of a public playground from the US Consumer Product Safety Commission was reviewed, as well as the ability for the applicant to comply with

those regulations. Applicant's stance is that they are before the Board for this use variance and not relief from any other regulations which, as a condition if approved, it would be their burden to abide by. The Board does not believe they can enforce the handbook's guidelines, just that they can require the applicant to comply with all applicable regulations.

The space would not be open for potential customers, sales, or warehouse activity during a party, and all employees will be parking in the lot across the street. Party guests will provide their own food and beverages. The only equipment available for the parties are products the applicant carries, no trampolines or bouncy houses will be brought in. Applicant also references other swing set stores in New Jersey and Pennsylvania that follow the same business model.

**Robert Verrengia, Architect** – sworn in, accepted as expert. **Exhibit A2** – Full set of plans, 5 sheets. Robert Verrengia, Architect/Nick Tsapatsaris & Associates; dated 6/23/22. **Exhibit A3** – Supplemental Parking Table of Marlow Park. Mr. Verrengis works for Nick Tsapatsaris & Associates which is the architect and engineer for Marlow Park. In 2013, Marlow Park was approved for a shared parking agreement between 59 Greenwood Ave, 80 Greenwood Ave, and 445 Godwin Ave. Mr. Verrengia's office prepares an updated parking table every time a new occupant comes in to any one of the 3 properties involved, which certifies that there are enough parking spaces on the properties. This property, 59 Greenwood Avenue, has 37 spaces (26 are right outside the front door) and is permitted to also use 92 spaces at 80 Greenwood Avenue across the street. The proposed use is estimated to need approximately 20 spaces, and since most of the other tenants in the building operate their businesses Monday through Friday, the front 26 spaces are expected to be more than adequate. If overflow use of the 80 Greenwood parking lot is needed, there is a crosswalk on Greenwood Avenue that is ADA complaint and has all the necessary signage.

Mr. Verrengia reviewed sheet A-101, the floor plan of 59 Greenwood Avenue, including all means of egress. Unit 9 is approximately 6,040 SF. The building contains 11 total units, the majority of which operate Monday through Friday, with warehouse, wholesale, and storage uses. The layout of unit 9 and where the proposed parties will take place is reviewed again. The bulk requirements for the property are either compliant or existing non-conforming, and no exterior or site changes are proposed with this application. Mr. Verrengia explained how the 20 parking spaces needed for this use was calculated. If this application is approved, 59 Greenwood Avenue requires 75 parking spaces, it has 37 on its site proper and it has access to an additional 92 bringing it to a total of 129 available spaces where 75 are required.

The Board raised some safety concerns: the door to unit 9 will not be locked during a party but will be monitored by staff for the duration of the event. The applicant will use accordion panels and seating to separate the party space from the warehouse space. Board also discussed the restrooms available in the building; there are sufficient men's facilities, but they are short one woman's fixture and acknowledges they will have to comply. The space is ADA accessible, but the ADA accessible play area guidelines may or may not apply; if they do, the applicant will provide equivalent facilities.

Meeting opened to the public for questions of Mr. Verrengia, with none, meeting closed to the public.  
Meeting opened to the public for questions of Mr. Samolowicz, with none, meeting closed to the public.

**Eileen Benyra, Land Use Planner** – sworn in, accepted as expert. The property is 2.35 acres is part of the Marlow Park industrial park. Specifically, unit 9 is a 6,339 SF space within this building complex and there are an existing 26 parking spaces right outside the door and an excess of parking around this building and across the street. The use has not been contemplated by the zoning ordinance. This use would be an accessory use to augment and provide marketing for the existing business, which is a warehouse selling playsets, swing sets and equipment. Retail uses are permitted in this I-2 zone. The entire building is 64,500 SF and as was previously testified there are 11 tenants.

Ms. Benyra reviewed the 2019 Reexamination Report, which specifically talks about industrial districts and encouraging and promoting economic development, revitalization of the industrial areas, and the consideration of permitting additional uses, including indoor recreation, which this could be considered as. The applicant proposes no outdoor or physical changes so there will be no negative impact relative to the goals of the Master Plan. This use would allow the applicant to remain viable by enhancing his business and

marketing, furthering the goals of the Master Plan. In terms of negative impacts or any impacts on the Borough, the use would be imperceptible and offers a service to residents. Particular suitability regarding this property - the building exists, playground, and company exists, the playground warehouse assembly are permitted uses in the zone, the use and activity are imperceptible from the outside, so no negative impacts to any surrounding uses or neighbors.

Regarding the positive criteria, this an appropriate location and no activities are going to be outside of the building and this use will not conflict with the development or general welfare of the city, state, or any neighboring municipality. This is a private, invite-only use. Regarding the negative criteria, there are no structural changes visible from the exterior, no impacts to the neighbors, the use provides a service for the community and surrounding areas, it is complimentary to and supportive of the existing business, and parking is adequate. There is no substantial detriment to the zoning ordinance or Master Plan as the applicant is looking for a modest, complementary upgrade of what they do already. Children play on the equipment when families come in to look at the sets for purchase, so it's not foreign to what's happening already, the applicant has been an existing business operation there since 2014 and this use fits the indoor recreation category suggested in the 2019 master plan. The testimony supports the statutory requirements for the D1 use variance and the site specificity, as well as the positive and negative criteria. There is no impairment to the Master Plan or zoning ordinance, and this will be a good business for the community.

The Board questioned if any loud music might be played during parties that could affect the neighborhood; music will be subdued and will not affect the neighborhood or neighboring businesses. Per Ms. Banyra, this is an augmentative, accessory use to what is already happening in the building, this helps keep an existing business viable, and has no negative impacts as it will be imperceptible. In addition, the weekend use and extensive parking, as well as the high ceilings and that the equipment can fit into this warehouse location add to the suitability.

Meeting opened to the public for questions of Ms. Banyra, with none, meeting closed to the public.

**Exhibit B1** – Burgis and Associates report, dated 10/10/22. Borough Planner Mr. Novak reviewed his report and the testimony heard. Per Mr. Novak, with the proper parking management and staff parking in the ancillary parking lot, alleviates one of the potential negative aspects of the application. There is no substantial detriment to the zone plan, or the public good. Mr. Novak questions if any additional signage would be added; there would not be. **Exhibit B2** – Richard Wostbrock & Associated report, dated 9/2/22. **Exhibit B3** – Borough department comments. The Fire Prevention department had a comment regarding striping the floor to indicate a path of egress, maintaining a clear path, and reviewing emergency lighting once the path of egress is established.

Meeting opened to the public for comments, with none, meeting closed to the public.

Board reviewed the various conditions discussed: parties will be weekend only, there will be no playground sales on weekends, no more than 4 parties per day on weekends, no food or drink to be supplied by the applicant, the applicant has to comply with all federal state and municipal safety, building, and fire codes, applicant must comply with all ADA regulations for parking and playground equipment, music will not be heard outside, 20 parking spaces are allocated to this use, staff will park across the street on weekends, there will be no drop-offs - children must be escorted into and out of the facility, and a maximum of 24 children per party.

Motion to approve the application based on the applicant's testimony and the aforementioned conditions. Per Atty. Landel, the Board found the testimony of the applicant's planner credible, especially considering the suitability of the site, the special reasons, and the finding that there will be no substantial detriment to the neighboring properties or the zone plan; amended by Mr. Braunius. Seconded by Mr. Papapietro; all voted in favor, except for Mr. Zuidema who recused.