BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES
November 9, 2022

PLEASE TAKE NOTE:
ON WEDNESDAY, NOVEMBER 9, 2022, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULAR MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

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	present
Mr. Richard Formicola	excused	Mr. William Placier, Alt #1	present
		Mr. David Barlow, Alt #2	present

Attendance by Board Professionals: R. Landel, Esq., Attorney, R. Wostbrock, Engineer, and E. Snieckus, Borough Planner

Minutes of the 10/12/22 meeting - approved

PUBLIC HEARINGS:

612 Godwin Avenue LLC – 612 Godwin Avenue – BL 42 LT 8.01 – Atty. Bruce Whitaker of McDonnell & Whitaker on behalf of the applicant 612 Godwin LLC. Notices are in order. This application is for variance relief for parking in relation to a tenant the property owner is seeking to place in the building. The applicant, Robert Spiotti, has his law practice on one floor of the building and is proposing to have a tenant, Konigsberg Pediatric Orthopedics, move into the vacant floor. This medical practice is currently in Midland Park and seeks to move, no other changes proposed to the practice. In addition, no modifications to the building, footprint, or site are proposed. Currently, there are 25 parking spaces. Per Atty. Whitaker, this site was previously approved to have multiple tenants and from a planning perspective, an appropriate two-tenant use is better than having multiple tenants. Atty. Whitaker supports a stipulation limiting any potential approval of this application be specific to this law practice and this specific medical use, as they are both unique in how they operate. Atty Whitaker is also asking for the Board to vacate a condition in a prior resolution from 2008 as now the condition is negated as a result of an ordinance change where now the medical use is permitted.

Robert Spiotti, Owner – sworn in. Mr. Spiotti has owned the building since December 2020 and occupies the second floor of the building which is 3195 SF. Out of that location, Mr. Spiotti runs a law firm specializing in tax appeals. His practice is primarily done over the phone and through e-mail, and he has 4 employees; there are less than one member of the public a month coming into this location to conduct business. Mr. Spiotti believes the existing parking is appropriate for his use and the proposed tenant's use. Mr. Spiotti' s parking need is 5 spaces.

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

Dr. Konigsberg, proposed tenant – sworn in. Dr. Konigsberg has been in practice for 22 years, with his existing practice in Midland Park in business for 12 of those 22 and is a sole practitioner pediatric orthopedic surgeon. The practice has 5 employees, with only 4 at any one given time and is open Monday through Friday, from 9:00 AM to 5:00 PM. On days when Dr. Konigsberg is in surgery, no patients are scheduled to come to the office. Other days, 5 patients maximum per hour visit the practice. Dr. Konigsberg's parking needs amount to 10- spaces at any given time, or 15 if it is assumed some patients may come early. Dr. Konigsberg is confident the parking is more than sufficient for his needs and has no intention of expanding his practice in any way.

Mr. Papapietro expressed concern over the issue of potential parking in the nearby residential neighborhood; Atty. Whitaker submits that it has been testified to that the practice will not be expanding, and that he would be agreeable to a condition that limits it to one doctor at a time. Atty. Whitaker also reiterated his proposed stipulation of the approval being limited to this specific law practice and medical office only due to the unique nature of the businesses. In addition, the second-floor tenant accepts that he would need further approval to bring in another tenant to that space in the future. Per Atty. Whitaker, the maximum total need for both tenants is 20 spaces, where 25 are existing which is more than sufficient for both their uses. Mr. Andersen feels there should be a limit on the number of staff for the law practice since there is concern over such a small practice using such a large space, Mr. Spiotti would be agreeable to a limit that includes two more employees bringing the total maximum parking need to 22. Mr. Spiotti also offered that he has no interest in adding another tenant to the space on the second floor. Dr. Konigsberg also added that in 22 years, he has never had 15 parking spaces occupied. Mr. Wostbrock questioned how medical waste is handled; an outside company picks up the sharps container once a month. There is no designated dumpster area, but Mr. Spiotti has a small rolling dumpster in the turnaround area of the property that is emptied by private hauler.

Meeting opened to the public for questions of Dr. Konigsberg, with none, meeting closed to the public. Meeting opened to the public for comments, with none, meeting closed to the public.

Atty. Landel reviewed the conditions discussed: approval would be limited to this law practice and this medical practice only, with one tenant only on the first floor and one tenant only on the second floor, the law practice is limited to the 4 employees, the attorney, and two additional employees if needed in the future, sole practitioner for the medical practice, with 4 employees, operating Monday through Friday,

Motion to approve this application with the conditions discussed made by Mr. Braunius. Seconded by Mr. Papapietro; all voted in favor.

Nouvelle LLC – 714 Godwin Avenue – BL 55 LT 8 - Atty. Matthew Capizzi of Capizzi Law Offices on behalf of the applicant; continued from the October 24, 2022, meeting. Mr. Placier listened to the recording of the last meeting and is eligible to vote. The previously required height variance has been resolved on the modified plans that were submitted to the Board, the variance for the maximum number of stories is still required as a result of the grade and can't be addressed. The other remaining variances include the parking drive aisle width and the curb cut. Setbacks, building coverage and impervious coverage are all conforming and the parking lot is otherwise conforming. The building height was lowered by modifying the roof pitch, and the picnic area has been relocated for ADA accessibility. In addition, a turning template has also been provided for justification of the curb cut variance and landscaping has been supplemented. **Exhibit A7** – Revised Site Plan sheets 1-9, revision date 10/26/22.

Power went out at 8:04 PM and came back on at 8:12 PM

Michael Fisher, Engineer – Still under oath. **Exhibit A8** – Colorized site layout exhibit, dated 11/9/22. Reviewed the revisions Atty. Capizzi mentioned: the picnic tables were relocated closer to the building and an ADA compliant curb ramp was created to access the area, additional landscape screening was added along the Godwin Avenue frontage and the area around the A/C condensers. An analysis was done at the entrance of the site for turning movements of garbage trucks to support the need for the larger driveway opening and associated variance. Mr. Fisher described the turning template provided, which was configured for a standard garbage truck and indicated that the swing of the cab will not cross over the curb lines. Based on the analysis done there is not an opportunity to reduce the curb cut opening and maintain the safety of the ingress and egress from the site. The change in the building height was also reviewed; the modification of the roof pitch reduced the building height from over 32' to 31.3' which is conforming and eliminated the height variance that was previously needed.

Mr. Andersen asked for further clarification regarding the turning template, and the depicted direction of travel for the garbage truck. Mr. Papapietro brought up the comments regarding the utilities; electric is to remain overhead and the aesthetics of the utility meters has been improved by shifting them on that elevation and adding additional landscaping for screening. Mr. Papapietro questioned the height of the

plantings used for screening when they are installed; per Mr. Fisher they will be 6' at planting. Atty. Landel asked if any paved surface would be added to the picnic area in conjunction with the ADA accessible ramp, Mr. Fisher is agreeable to adding one.

Borough fire siren went off repeatedly at 8:32 PM, meeting resumed at 8:35 PM

Mr. Wostbrock further discussed the turning templates and the possibility of modifying the turnaround area, and discussion continued regarding the curb cut width and the possibility of reducing it, as well as if the Borough would pick up refuse at this site or not. Wendy Martin, Borough Administrator was sworn in to advise that the Borough Council has previously agreed with Nouvelle LLC that the Borough will not pick up refuse at this site, they would have to provide their own commercial pick-up. Mr. Papapietro asked for an explanation of **Exhibit A9** – NJ DEP Freshwater Wetlands Letter of Interpretation: Line Verification, dated 11/9/22. Mr. Fisher explained that the DEP found that the delineation of the wetlands they provided was indeed representative of the wetland limits, with the correct 50' transition buffer. The Board discussed delivery trucks and moving vans in addition to the garbage trucks with respect to the curb cut width. Mr. Wostbrock questioned the drainage along the front of the building. Mr. Fisher advised that the design includes a swale condition that allows the water to pitch out. Discussion continues about lowering the elevation to create a flush entry, per Atty. Capizzi and their experience is that the ramp is sufficient for their proposed tenants and they are comfortable with the ramp design which meets ADA requirements. Mr. Wostbrock adds that he has no concerns about the drainage calculations, but suggests that there may be a better way to accomplish the drainage in the areas in question. Mr. Fisher is confident that the proposed 1% slope at the front of the building is sufficient to get the small amount of surface water out as designed. Atty. Landel suggests a standard developer's agreement which would alleviate some concern regarding potential drainage issues, which Mr. Capizzi is amenable to. Mr. Capizzi also discussed the operation and maintenance manual for the permeable paver system which would be a part of any developer's agreement.

Meeting opened to the public for questions of Mr. Fisher.

Jessica Strader – 720 Godwin Avenue – Sworn in; questioned what she should do if all the maintenance agreements are in place and she still has an issue, if other locations for the dumpster were considered, how recycling is being handled, where snow will be removed to, how fires would be fought from the neighboring parking lot if there is cars parked there. Mr. Andersen reviewed the department comments. Ms. Strader also asked what the foot candles are for lighting on the parking lot, why a pole mounted fixture is being used as opposed to a bollard, and drainage. Mr. Fisher asserts that under the proposed build, there is less water going to the wetlands and therefore onto adjacent properties. Ms. Strader also questioned why there is no berm on the western property line, if any traffic study was available for public review, if a impact to the wetland study was done, if there was a report available for the soil tests done and if soil testing could be repeated in a rainier season. Mr. Wostbrock feels that would not be needed based on the information previously reviewed. **Frank Pastor – 720 Godwin Avenue** – Sworn in; questioned if the applicant is going to be responsible to fix it if they flooded the wetlands and if any study was done regarding neighboring home values dropping due to the affordable housing. **Corrie Bouma – 715 Godwin Avenue** – Sworn in; asked if the plans with the turning templates were made public. Mr. Andersen advised that they are in the Zoning Board office and posted on the Borough website. Ms. Bouma expressed concern about delivery or garbage trucks backing into her driveway. **Michael Olson – 97 Midland Avenue** – Sworn in; asked if the applicant is putting in a 6,000-gallon tank to contain runoff and where the water will be going. Mr. Fisher stated that when the drainage system reached its capacity of 7,000 gallons and begins to overflow, that overflow will be drained to the wetlands, however it will still be less water overflowing there post-build than it is today. Mr. Olson further questioned where the gutter and leaders will drain to and what the roof is made from. **Philip Florey – 110 Godwin Avenue, Wyckoff** - Sworn in – Questioned where the snow will be plowed to and if they considered the addition of melting snow to the wetlands, and if the record rainfall in the past couple of years was considered. Per Mr. Andersen, the applicant is not saying they are going to cure the flooding problem, they are saying they are not going to make it worse.

Meeting closed to the public.

Recess taken at 9:33 PM, meeting resumed at 9:42 PM.

Yogesh Mistry, Architect – remains under oath. **Exhibit A10** – Proposed floor plans/Proposed exterior elevations – Sheet A-2.01, dated 10/27/22. Reviewed the revisions to the plan: the pitch of the roof was lowered making the building height 31'4" which is conforming. **Exhibit A11** – Colorized front elevation. Overall aesthetics are the same. **Exhibit A12** – Godwin Avenue elevation, height comparison. depicts the proposed structure in relation to the commercial building adjacent to it, per Mr. Mistry, the impact of the Godwin Avenue side elevation is much less than the office building next door. **Exhibit A13** – Colorized right side elevation – façade and landscaping. Mr. Mistry also reviewed the enhancements to the Godwin Avenue side elevation including more landscaping and the shifting of the gas meters, an enhancement of the roof line and adjustments to the gable end of the roof. Mr. Mistry is of the opinion that there would be substantial visual buffer of the meters from Godwin Avenue.

Mr. Braunius questioned the need for 5 A/C condensers and gas meters; Mr. Mistry advised the additional unit is for the common areas, as they can't be run off a tenant's meter. Mr. Mistry further addressed the Fire Department's comments: Knox box, combination smoke/CO detectors, adjustable alarm system and sprinklers to be installed. Mr. Mistry discussed the concern about access to the building from the rear and the Fire Chief felt comfortable with what was proposed.

Meeting opened to the public for questions of Mr. Mistry

Philip Florey – still under oath – asked about the setback requirements on the right side of the building and if there were egress windows in the basement. **Jessica Strader** – still under oath; asked if there was a depiction of the east elevation, if there will be landscaping on that side and if there were any provisions for more outdoor living space. **Corrie Bouma** – still under oath; asked for a review of the height comparison exhibit and the height of the planted landscaping. **Andrei Stuliy – 7 Brook Road** – Sworn in; further questioned the landscaping. **Michael Olson** – still under oath; questioned what the roofing material is made of. **Steven Paz – 720 Godwin Avenue** – Sworn in; asked about the need for a ramp and its height. The Board further discussed the ramp and possible alternatives, and a condition that the basement may not be developed.

Meeting closed to the public.

Mr. Wostbrock asked why the gas meters were moved and not the electric meters as well. Mr. Mistry advised that there are certain clearances needed. Mr. Andersen advised the applicant that they will not typically call a new witness after 10:00 PM and Atty. Capizzi advised that they are subject to some time constraints and would prefer to get through the Planner testimony tonight if possible. Mr. Papapietro suggested coming back for another meeting so the process would not be rushed. Atty. Capizzi requested the scheduling of another special meeting to complete the hearings within the applicant's time constraints. The Board and the applicant agree on carrying the matter to November 30, 2022. Mr. Andersen advised the public present of the time and date of the meeting and that they will not receive further notice.

RESOLUTIONS:

NJ Swingsets – 59 Greenwood Avenue, Unit 9 – BL 33 LT 7.01 – Motion to approve the resolution made by Mr. Braunius. Seconded by Mr. Meeks; all eligible members voted in favor.

COMMUNICATIONS:

Feuilly, Brian & Kathleen – 75 Highwood Avenue – BL 10.02 LT 7 - Motion to approve the return of $35.85 of unused escrow made by Mr. Braunius. Seconded by Mr. Meeks; all voted in favor.

Meeting Adjourned – 10:18 PM
Jessica Harmon