RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF SOUTH ORANGE VILLAGE

Decided: June 7, 2016
Memorialized: July 5, 2016

APPROVAL OF APPLICATION
LITTLE STAGES LLC
FOR "D" VARIANCE RELIEF AND MINOR SITE PLAN APPROVAL
179 IRVINGTON AVENUE
BLOCK 2021, LOT 14
ZBA APPLICATION #1024

WHEREAS, Little Stages LLC ("Applicant") having made application for "d(1)" variance relief and minor site plan approval to the Township of South Orange Village Zoning Board (Application #1024) regarding property located at 179 Irvington Avenue, South Orange, NJ (the Premises"), and known as Lot 14, Block 2021 on the tax map of the Township of South Orange Village (the "Village"); and

WHEREAS the Board having accepted jurisdiction based upon proof of publication and notices provided in accordance with the Municipal Land Use Law; and

WHEREAS, a public hearing having been conducted at a meeting held on June 6, 2016 and the Applicant having appeared by its attorney Carmine Campanile, Esq., and the Board having heard testimony of the Applicant and its witnesses Guerlyne Millington, principal of Applicant, Richard Keller, PE, PP, and Douglas Miller, AIA, and considered the exhibits and expert reports submitted by Applicant and considered the comments and review memos from Board Planner Topology dated April 29, 2016 and May 31, 2016, and considered the comments of all members of the public desiring to be heard, and deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was submitted in connection with the application and considered by the Board:

1. The Board received the application form and the documents submitted therewith, including the following:

(i) Certificate of Ownership,
(ii) Certificate of Paid Taxes,
(iii) Checklist,
(iv) Architectural Drawings prepared by AHM Architects, LLC dated March 3, 2016 (Sheet A-1), and
(v) Site Plan Drawings prepared by Casey & Keller, Inc., dated March 1, 2016 (Dwg 1 through 4).

The Board also received the following:

(i) Site Plan Drawings prepared by Casey & Keller, Inc., last revised May 24, 2016 (Dwg 1 through 5),
(ii) Copy of Letter from New Jersey Department of Children and Families Office of Licensing to Little Stages LLC dated May 20, 2016,
(iii) Memorandum Regarding Requirements for Premises at 179 Irvington Avenue from Applicant (2 pages),
(iv) Color Photographs of the subject premises (3 sheets), and
(v) Copy of Deed

2. The Board accepted into evidence the following exhibits:

A-1 Aerial Photograph
A-2 Color Version Site Plan Drawing (Sheet No. 4)
A-3 Color Version of Sheet 4 with Revised Lighting
A-4 Document Titled "Drop-off Observations" prepared by Casey & Keller, Inc. (1 Sheet)

3. Applicant was represented by Carmine Campanile, Esq.

4. Guerlyne Millington was sworn and testified that she is the owner of Little Stages, LLC which is a daycare center currently operating at 60 Taylor Place in South Orange. Ms. Millington testified that she has a month-to-month lease and is looking for a more permanent location for her childcare facility. She stated that the center services 26 children ranging in ages from infant through 5 years old and is licensed by the State of New Jersey. The majority of her clients come from the West Orange, South Orange, Maplewood area. She noted that her children arrive on a staggered basis between 7 a.m. and 9:30 a.m. and that they depart daily between 4:30 and 6:30 p.m. The new proposed location at 179 Irvington would have 4 parking spaces for her use which is the same number that she has at their current site. There are 2 more parking spaces at the new location but they are reserved for the residential apartment upstairs. Ms. Millington testified that she has 8 teachers working for the Applicant, 5 of whom are full-time and 3 part-time.

There is also a manager. Currently her employees who drive obtain parking permits for spaces in municipal parking lots for their vehicles.

Responding to inquiry Board Engineer Sal Renda testified that parking regulations on Cottage Street allow parking on the east side for 2 hours, but no parking on the west side of the street adjacent to the subject premises.

Responding to question by Board Planner Phil Abrahamson Ms. Millington testified that drop-off and pick-up by parents was a fairly speedy process.

5. Richard Keller, PE, PP was sworn and qualified as an expert in both planning and engineering. A question arose regarding the interpretation of Municipal Land Use Law §66.6 and its applicability to the application. §66.6 provides in relevant part:

> ". . . The floor area occupied in any building or structure as a childcare center shall be excluded in calculating: 1) any parking requirement otherwise applicable to that number of units or amount of floor space as appropriate, under State or local laws or regulations adopted thereunder; and 2) the permitted density allowable for that building or structure under any applicable municipal zoning ordinance. . . ."

Mr. Keller noted that the current authors of Cox & Koenig, *NJ Zoning and Land Use Administration* (2016) believe that §66.6 is intended to apply only to those structures in which employers maintain a childcare facility onsite for their employees. Mr. Keller opined that notwithstanding the Cox treatise, MLUL §66.6 exempts Little Stages, LLC from having to meet parking requirements.

6. Applicant called Douglas Miller, AIA who was sworn and qualified as an expert in architecture. Mr. Miller stated that Applicant intended to make minimal architectural changes to the structure which was a former pediatric medical office. Applicant intends to remove operatories, add bathrooms and add doors per State requirement. Mr. Miller described the floor plan set forth on his drawing A-1 and identified which areas would be used for infant, toddler, pre-K and Kindergarten age children along with staff meeting room, bathrooms and exit doorways. Mr. Miller testified there were no exterior changes planned to the structure.

Responding to Board questions Mr. Miller testified that the rear entrance would be handicapped access and that there is a separate entrance to the apartment upstairs.

7. Applicant recalled Richard Keller, PE, PP who reviewed his site plan drawings which were revised through May 24, 2016. He described the lot as having 15,855 sq ft and located in the RC-1 Zone which permits a mixture of uses including both residential and non-residential. Referring to the aerial photograph marked as Exhibit A-1, Mr. Keller noted that in the vicinity there are condominiums, multi-family dwellings, doctors' offices and Congregational Beth El synagogue. He noted that the site would be accessed from Cottage Street and have one-way circulation exiting onto Irvington Avenue. He noted there are currently 8 parking spaces on the site, but described them as being "unsafe" because they did not allow sufficient room for a vehicle to back out of each space. Referring to Sheet 2 of the site plans and Exhibit A-1 he noted that existing parking would be "flipped" to create new angled parking spaces with a 4 ft wide sidewalk next to the building to allow for easy drop-off and pick-up of children. The new plans provide a total of 6 spaces on site, 3 of which will be along the northern property line and 3 adjacent to the structure. He opined that the proposed plan had fewer spaces, but was safer than the existing parking arrangement. Applicant would add landscaping and overall lot coverage would be reduced. He reviewed the lighting and noted that new LED lights would be installed in order to maintain tighter control over lighting on the premises and prevent it from spilling over onto adjacent neighbors. There would be a minimum of .4 footcandles on site and a minimum of .5 footcandles on the driveway with an average of 1.9 footcandles overall. He stated the lighting would be evenly distributed and that LED lighting was being used to protect neighbors because the area was semi-residential.

8. Testifying as a planner Mr. Keller stated that Applicant is seeking a d(1) use variance to locate a childcare facility on the premises which is not a permitted use in the zone. Mr. Keller stated that childcare facilities are identified as inherently beneficial uses under §4 of the Municipal Land Use Law, which defines inherently beneficial as uses which are "universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare." Mr. Keller noted that as an inherently beneficial use the standard for review is the four-step balancing test set forth in Sica which he applied to this application as follows:

1) a childcare facility promotes the general welfare and adds many benefits to the community,

2) the detriments would be minimal because lighting is being controlled and there is sufficient parking for dropping off and picking up children;

3) as for conditions to be imposed to mitigate the detriments he noted that Applicant would agree to prohibit employees from parking on site during the hours between 7:00 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. in order to preserve parking spots for use by parents dropping off and picking up children; and

4) on balance Mr. Keller opined that the benefits of the proposed use far outweigh the detriments.

Responding to questions by the Board Planner, Mr. Keller stated that if five parents who currently walk their children to the existing facility decide to convert to vehicle use that the proposed site will still work because they will likely arrive at staggered times. Mr. Keller further responded that the train station is .4 mile from the subject premises so that parents could still walk their children to day care and then commute by train. He further stated that the lighting would be turned off by a certain hour each day. When asked whether maintaining 8 parking spaces would work, he stated that it would require moving the driveway even closer to the intersection between Cottage Street and Irvington Avenue which would not be a better traffic solution. Mr. Keller introduced Exhibit A-4 which was observations he made regarding drop-off and pick-up at the Applicant's existing facility located at 60 Taylor Place. He identified Exhibit A-4 a diagram depicting the times at which parents dropped off their children on Friday, June 3rd and Tuesday, June 7th of 2016. Mr. Keller noted that the drop-off times took place in a staggered fashion with generally only 1 occurring during each 10 minute interval. He observed an occasional 2 occurring and in one instance 3 occurring. He noted that there were a number of parents who walked their children to the facility and that none of the parents used parking other than the 4 spaces which Little Stages had at its disposal. There were no parents parking in the adjacent municipal lot in order to drop-off their child. Mr. Keller opined that even if the new facility had 30 children, rather than the 26 at the current place, that the diagram was indication that 4 parking spaces were sufficient to handle drop-off at the facility.

9. Guerlyne Millington was recalled and testified that Little Stages daycare does have an occasional recital at which a number of children will attend and that they currently use an off-site location at St. Andrew's Church for those events.

Responding to Board questions, Ms. Millington noted that the garage on-site would be used for storage of buggies and other equipment.

10. There was no public comment for or against the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The premises are located in the RC-1 zone district which permits a mixed of uses including both residential and non-residential.

12. Although Municipal Land Use Law §66.6 provides that childcare centers "shall be a permitted use in all non-residential districts of the municipality," the

Board agrees with the Zoning Officer that a "d(1)" use variance is required in order for the Applicant to use the premises for childcare because the RC-1 district is not exclusively non-residential.

13. The site is approximately 15,855 sq ft and is located on the corner of Irvington Avenue and Cottage Street. The lot was formerly used as an office for pediatricans and has recently been vacant. The site is improved with a two-story structure which has offices on the first floor and a residential apartment on the upper floor. Currently there are 8 parking spaces on-site in addition to a garage.

14. Applicant proposes to use the premises to relocate its childcare facility from its current location at 60 Taylor Place to the subject premises. The evidence shows that the Applicant presently has a license for 26 children and has obtained approval for up to a maximum of 34 children at the new location but would limit the number to 30. Applicant proposes no changes to the footprint of the building and minor architectural changes on the first floor in order to convert the former medical office to childcare use. Circulation on site will be via a one-way entrance from Cottage Street and exiting onto Irvington Avenue. Applicant proposes to reduce the number of parking spaces from 8 to 6, 4 of which will be for use by Applicant and 2 for use by the upstairs residence.

15. The Board notes that Municipal Land Use Law §66.6 exempts that portion of a structure dedicated to childcare use from parking requirements for the site. The Board notes that notwithstanding the exclusion, circulation for drop-off and pick-up at a childcare center poses significant safety issues which require close examination. In this instance the Board finds that the proposed circulation and parking arrangement will suffice. The Board notes that Exhibit A-4 indicates the clients who patronize the facility arrive at staggered times in the morning so that 4 parking spaces are more than enough for its operations. The Board further finds that the addition of a few more children at the subject site (30 as compared with 26 at the current site) should not cause problems since the data provided shows that no more than 3 spaces have been used at the busiest 10 minute interval on the days studied. The Board notes that Applicant has offered, and the Board agrees, that employees of the facility should not be permitted to occupy any of the parking spaces during the hours of drop-off from 7:00 a.m. to 9:30 a.m. in the morning, nor during the hours of pick-up from 4:30 p.m. and 6:30 p.m.

17. Applicant contends the proposed use is inherently beneficial. The Board notes that Municipal Land Use Law §4 defines inherently beneficial as "a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, childcare center, group home or a wind, solar or photovoltaic energy facility or structure." (underlying added).

18. Having been identified as an inherently beneficial use the Applicant's use is judged by the Sica balancing test. In Sica v. Bd. of Adj. Twp. of Wall, 127 N.J. 152 (1992), the Supreme Court recommended a four-step balancing test in determining whether a negative or positive criteria are met for an inherently beneficial use:

i. identify the public interest at stake;
ii. identify the detriments caused by the proposed use;
iii. identify any conditions which could be imposed to mitigate the detriments;
iv. weigh the benefits versus the detriments.

In this case Applicant proposes a childcare center which by its nature promotes the public good in providing working parents with suitable childcare during the business day. The detriments to the neighborhood would be insubstantial. The evidence shows that:

i. the Municipal Land Use Law §66.6 exempts childcare centers from the parking requirements under the ordinance; and
ii. even if the parking requirements apply in this case the 4 spaces proposed are sufficient to meet Applicant's needs.

Applicant has proposed lighting which is designed to prevent spillover from the site, and a one-way circulation plan which will allow for ease of ingress and egress during drop-off and pick-up times. The Board therefore finds that the detriments of the proposed use are not substantial. As for conditions which might be imposed the Applicant has stipulated and the Board agrees that employees shall not be permitted to use the 4 on-site parking spaces during the morning drop-off and evening pick-up hours: Therefore on balance the Board finds that the benefits of the proposed use outweigh the detriments.

19. In reviewing the application and the evidence submitted the Board finds that the site has sufficient size which when coupled with the cap on the number of children and proposed circulation plan will allow the proposed use to occupy the site in a manner which would not overwhelm the site or the neighborhood. The Board notes further that the surrounding area contains a number of different types of uses, including houses of worship, offices and multi-family. Accordingly, the use will not be out of character nor substantially impair the intent or purpose of the zone plan and ordinance, or cause substantial detriment to the public good.

20. For all of these reasons the Board finds that the Applicant has carried the burden of proof necessary to obtain a d(1) use variance to relocate its child care facility to the site. The Board notes that the proposed use is inherently beneficial

and under the Sica balancing test there is sufficient proofs to grant the variance relief sought. The application for minor site plan approval is similarly approved.

THE DECISION AND CONDITIONS

WHEREAS, the Board, having reviewed the application for "d(1)" variance relief and minor site plan approval, and having considered the impact of the proposed application on the Village and its residents and the surrounding property owners, and having considered whether the proposal complies with and furthers the goals of the Master Plan and zoning ordinances of the Township of South Orange Village and the Municipal Land Use Law; hereby concludes that good cause has been shown to grant the application;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of the Township of South Orange Village that the application for a "d(1)" variance relief and minor site plan approval as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is hereby granted with the following conditions:

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.

2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

3. The Applicant shall pay all outstanding taxes, application fees, technical review fees and inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within ten (10) days of notification.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

5. All conditions and approvals will be noted on the plans.

6. Applicant's employees shall not be permitted to use on-site parking during the hours between 7:00 a.m. and 9:30 a.m. and 4:30 p.m. to 6:30 p.m.

7. On-site lighting shall be placed on a timer so that it shall not start earlier than 6:30 a.m. and shut off not later than 8:00 p.m.

8. Applicant shall have no more than 30 children enrolled at or attending the facility.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 5th day of July, 2016.

Ojetti Davis, Secretary

Vote on the Action Taken by the Board:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene	X		X			
Dahn (V.Chair)		X	X			
DiScala			X			
Reeves (Chair)			X			
Semper			X			
Parlapiano						X
Shapiro						X
Levine 1st alt.			X			
Cranko 2nd alt.						

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene			X			
Dahn (V.Chair)	X		X			
DiScala		X	X			
Reeves (Chair)			X			
Parlapiano						X
Semper						X
Shapiro						X
Levine 1st alt.			X			
Cranko 2nd alt.						