

MEETING OF THE ZONING BOARD OF ADJUSTMENT
OF THE TOWN OF HARRISON, COUNTY OF HUDSON,
STATE OF NEW JERSEY HELD ON MAY 15, 2024

Eugene Gilmore, Chairman of the Zoning Board of Adjustment of the Town of Harrison called the meeting to order at 6:30 P.M. with the following statement:

This is a regular meeting and proper public notice, in compliance with the Sunshine Law, has been forwarded to two newspapers published in this area and a copy of the said notice has been filed with the Town Clerk.

SALUTE TO THE FLAG

ROLL CALL: Commissioners Jack Jian Chen, Alberto Garrido, Susan Karas, Larry Kelly, and Eugene Gilmore --PRESENT

Commissioners Gallagher & Maza - - Absent

The following were also present:

Michael Pichowicz, Board Attorney
Isabel Simoes, Recording Secretary

There being no requests for corrections or amendments, on Motion by Commissioner Karas, seconded by Commissioner Kelly and on Roll Call, ALL Commissioners voting AYE, the minutes of the meeting held on March 20, 2024, were approved.

OLD BUSINESS:

Memorialize Resolution of Approval for Calendar#Z0-2023-02- Application by All Seasons Childcare and Learning Center, for a Childcare Center at property located at 10-12 North 3rd Street, Block 14, Lot 26. A "D1" Variance and Minor Site Plan Approvals are being sought from the Zoning requirements of the Land Development Ordinance proposing a child care center in the ground floor commercial space.

**Memorialized
RESOLUTION
Harrison Zoning Board of Adjustment
Application No. Z-2023-2
Decided: March 20, 2024
Memorialized: May 15, 2024**

APPLICATION

Application No. Z-2023-2 was filed by All Seasons Childcare and Learning Center, LLC, 1100 Frank E. Rodgers Blvd. So, Harrison, New Jersey 07029 (hereinafter referred to as the “Applicant”) with the consent of the owner, Jose Soares and Jenny Ron-Chavez, his wife, 41 Stewart Avenue, Kearny, New Jersey 07032 (“Owner”) for premises located in the 2F-1 Residential Zone and being designated on the Town Tax Map as Block 14, Lot 26 and commonly known as 10-12 North Third Street, Harrison, New Jersey 07029 (“Property”).

The Applicant seeks approval to convert the existing commercial ground floor space which had been used as a restaurant/bar with liquor license (now vacant) into a day care center licensed by the State of New Jersey, Department of Children and Families, for 84 children maximum. The existing residential apartments on the upper floors will remain unchanged.

Applicant has applied to the Town of Harrison Zoning Board of Adjustment for “d(1)” variance relief for a use (day care center) that is not permitted in the 2F-1 Residential Zone, and minor site plan approval including exceptions from parking requirements (no on-site parking exists).

PROCEDURE

Public hearings on this matter were held on various dates, November 20, 2023, December 20, 2023, January 17, 2024 and February 21, 2024.

A public hearing was last held on this matter on March 20, 2024 at which time the following Board members were present:

Commissioner Eugene Gilmore, Chairman
Commissioner Grisel Maza, Vice-Chairwoman
Commissioner Jack (Jian) Chen
Commissioner Michael Gallagher
Commissioner Susan Karas
Commissioner Alberto Garrido
Commissioner Larry Kelly

Also present were:

Board Planner: M. McKinley Mertz, PP, AICP, LEED Green Associate, Heyer, Gruel & Associates

Board Engineer: Peter Bondar, P.E., C.M.E., T&M Associates

Board Secretary: Isabel Simoes

Board Attorney: Michael R. Pichowicz, Esq.

Applicant has filed an affidavit showing compliance with all statutory and jurisdictional requirements. Applicant was represented by Kenneth J. Lindenfelser, Esq. at each meeting. Proper and adequate notice was provided to the public at each adjourned/continued meeting date. Each adjourned/continued meeting was with the consent of the Applicant and the time for the Board to render a decision was extended by the Applicant.

Board member(s) who were not present for any one or more of the previous meeting(s) certified to the Board Secretary that the member reviewed the transcript(s) for any missed meeting(s) and therefore, were eligible to vote.

EVIDENCE

The Applicant submitted the following materials:

- Town of Harrison Standard Development Application with associated checklists, dated August 8, 2023 (with subsequent amendments for “d” variance and minor site plan approval);
- 1-sheet set of plans entitled, “Electrical Plans,” prepared by Crearc, LLC, dated March 10, 2023 and revised through July 13, 2023;
- 1-sheet set of plans entitled, “Conversion of Vacant Commercial Space to Day Care,” prepared by Crearc LLC, dated March 10, 2023;
- 1-page letter with attachments, written by Jenny P. Ron-Chavez, Owner, dated October 10, 2023;
- Three (3) page review letter dated March 19, 2024 prepared by Peter Bondar, P.E., C.M.E., T&M Associates, Board Engineer (“Board Engineer Review Letter”); and
- Five (5) page memorandum dated November 13, 2023 from M. McKinley Mertz, PP, AICP, LEED Green Associate, Board Planner (“Board Planner Review Memo”);

MARCH 17, 2024 HEARING

The Applicant was represented by Kenneth J. Lindenfelser, Esq. Mr. Lindenfelser stated that, without objection he was submitting joint exhibits, J-1 (letter dated March 18, 2024 from Paul J. Zarbetski, Esq., Town Clerk to Commissioners) and J-2 (letter dated March 20, 2024 from Kenneth J. Lindenfelser, Esq. to Paul J. Zarbetski, Esq., Town Clerk). Mr. Lindenfelser explained that J-1 set forth the requirements by the Town Council for three (3) metered parking spaces in front of the Property. J-2 set forth the Applicant's acceptance of the terms of the March 20, 2024 letter. Previously, the Applicant's attorney forwarded a request for on-street parking spaces to the Mayor & Council dated January 18, 2024 that was superseded by Exhibits J-1 and J-2.

Craig Perrogoy, Dynamic Traffic, 245 Main Street, Suite #110, Chester, New Jersey 07930, was sworn-in and testified on behalf of the Applicant. After placing his credentials on the record, Mr. Perrogoy was qualified as an expert in the field of traffic engineering.

Mr. Perrogoy introduced Exhibit A-1, Traffic and Parking Study for Proposed Day Care Facility, Property Located at 10-12 North 3rd Street, Block 14 – Lot 26, Town of Harrison, Hudson County, NJ, dated March 7, 2024 ("Study"). Mr. Perrogoy reviewed his Study with the Board. He reviewed traffic counts in detail. Engineer Perrogoy projected future traffic volume should the Application be approved. He made various assumptions. The Property has no on-site parking and has no parking lot. Mr. Perrogoy discussed pick-up and drop-off spaces on the street in front of the Property. He opined that three on-street parking spaces in front of the Property would allow for a smoother operation and would be a big benefit. He projected that parking for staff could be accomplished with the municipal parking lot located one block away under Interstate 280. The Study was accepted into evidence as Exhibit A-1 (3/17/24).

At the conclusion of Mr. Perrogoy's testimony, Attorney Lindenfelser asked whether or not the Construction Official was available to describe how the project began and how it ended up before the Board. A discussion between the Board members ensued that having the on-street parking spaces would be essential for the successful operation of a day care center at the Property. The Board members discussed 15 minute only parking and appropriate signage which would be determined by the Mayor & Council. The parking spaces would have to be for the entire school day, weekdays from 7 am to 6 pm.

Chairman Gilmore set forth on the record that safety has been and is a main consideration in determining whether or not the Application would be approved. Further, he stated that the proposed parking spaces on the street would make it a lot safer. Without the parking spaces, he was concerned that it would be extremely unsafe (double-parking, etc.) and could result in injuries. He agreed with the traffic engineer that the parking spaces were needed and would make for a safer situation.

Mr. Pichowicz summarized the feelings and position of the Board members over the duration of all the hearings. The Board was not satisfied that double-parking was a police issue. Even with the dedicated on-street parking spaces, the Applicant would have to conduct some

self-policing in order to ensure its customers used the dedicated on-street parking spaces and did not double-park.

Mr. Pichowicz discussed the chronology of the Application. Exhibit B-1 was entered into the record. It was the initial application by the Applicant on or about August 8, 2023. It set forth the use as "Preschool." Exhibit B-2, a copy of municipal ordinance #1479, was entered into the record. Ordinance #1479, passed on February 17, 2023, permitted the zoning officer or construction official to waive certain requirements. However, despite their initial determination, if the use involved a "d" variance, no waiver was permitted. Upon realization, and since the Property was located in the 2F-1 Zone, the Applicant was required to file a new application with the Board for a "d(1)" use variance and minor site plan approval. Until the Board made a determination, the Applicant proceeded to develop and improve the Property at its own risk.

Mr. Pichowicz placed Exhibit B-3, a copy of amended application, setting forth a request by the Applicant for a "d(1)" use variance and minor site plan approval. It was clarified that since the actual use was not for a preschool (because the Applicant could not produce a license from the Department of Education), it did not qualify as an institutional use exception in the 2F-1 zone under the Town of Harrison's land use ordinances, as initially determined by the zoning officer and/or construction official. Instead, the use was for a day care center because the Applicant would be providing a license from the Department of Child and Families for 84 children. A letter from the Applicant dated October 10, 2023 was marked J-3 setting forth the limit of 84 children, etc.

Mr. Soares, on behalf of the Applicant, provided various photographs of the improvements made to the first floor, which were marked as Exhibit A-3. Mr. Soares described the photographs and answered questions from the Board members. He stated there would be no signage. In the future, if any proposed awnings were over the public right-of-way, they would require Mayor & Council approval.

PUBLIC

The meeting was opened to the public.

John Pinho, 301 North Frank E. Rodgers Blvd, Harrison, New Jersey, was sworn-in. He asked about the hours of the dedicated parking spaces, 7 am to 6 pm – weekdays, and who could use them.

No one spoke either in favor or in opposition to the Application.

The Board closed the public portion of the meeting.

FINDINGS AND CONCLUSIONS

The Board considered prior testimony provided by witnesses and relevant law. Mr. Pichowicz pointed out that the Applicant's planner, William Stimmel, correctly set forth the

proposed use, a child care center, was an inherently beneficial one. Accordingly, under existing case law, the first prong under the law, proving the positive criteria, was met. The Board needed to conduct a balancing test between the negative and positive criteria under the law. Notwithstanding the testimony of Mr. Stimmel, the Board had agreed with the Board's planner, McKinley Mertz, that the negative criteria - not providing parking spaces for the drop-off and pick-up of children, could be a substantial detriment, which could be sufficient to substantially outweigh any benefit, thereby not meeting the threshold proofs necessary for the relief requested. Although Mr. Stimmel opined that drop-off parking spaces would be helpful, the Board disagreed with his opinion that it was "a police issue." Mr. Stimmel opined that double-parking, etc. was not a consideration for a land use board. The Board, through its questioning and statements, along with the Board's planner's testimony, disagreed.

The Board was charged with identifying the public interest at stake, identifying the detrimental effect that would ensue from the granting of the variance, determining whether or not the detriment could be reduced by imposing reasonable conditions and finally, conducting a balancing test considering the positive and negative criteria.

The public interest at stake was providing another day care center in the community. The Applicant set forth the need and that it would receive a license for 84 children from the State of New Jersey, Department of Children and Families, if the Application was approved.

The Board considered the detrimental effect that would ensue from the granting of the variance. Specifically, it heard over the course of the hearings that double-parking and lack of parking for a non-permitted use in a 2F-1 Zone, was a substantial detriment that upon balance, could not overcome by the positive criteria, and necessitated a denial of the application. The members of the Board had expressed a significant safety concern for its citizenry over a lack of parking spaces for the drop-off and pick-up of children.

The Board considered whether or not the detriment could be reduced by imposing reasonable conditions. After consideration of Exhibits J-1 and J-2, the Board discussed the proposal for three (3) on-street parking spaces, dedicated to the exclusive use by the Applicant for drop-off and pick-up of the children attending the day care center. The board members were adamant that without the three (3) on-street dedicated parking spaces, the Applicant did not meet the requirements for relief. However, if approval of the application was conditioned on obtaining and using the three (3) on-street dedicated parking spaces, the concern for its citizenry would be ameliorated. The Board found this condition to be reasonable and necessary. The three (3) on-street dedicated parking spaces are required for as long as the Property is used for a day care center and the Board's approval will be null and void if the parking arrangement is not approved by the Applicant and the Town of Harrison. The Applicant would have to compensate the Town of Harrison for the lost meter revenues as the Mayor & Council deemed appropriate. The Agreement would have to remain current and in good standing.

After the discussion, and after hearing the presentation of the Applicant's application and submissions and after considering the testimony of the witnesses, the board members found that the proposed improvements, with conditions, would be in compliance with the character of the neighborhood and would have minimal impact on the surrounding properties and the

neighborhood in general. The Board found that the use was inherently beneficial and subject to conditions, the use variance could be granted. The Board further found the Applicant proved the positive and negative criteria balance test required by N.J.S.A. 40:55D-70(d)(1). With conditions, the benefits of the deviation substantially outweighed any detriment and the requested relief could be granted without substantial detriment to the public good and the relief would not substantially impair the intent and purpose of the Zoning Ordinance of Harrison.

With conditions, the Board voted unanimously, 7-0, to grant the “d” use variance and minor site plan approval. including exceptions from parking requirements (no on-site parking exists).

RESOLUTION

Now Therefore Be It Resolved by the Zoning Board of Adjustment of the Town of Harrison on this 15th day May, 2024, that application number Z-2023-02 is approved subject to the following conditions

- 1) Applicant shall satisfy all requirements and shall obtain all necessary permits, zoning permits and Certificate of Occupancy from the Construction Code Enforcement Department;
- 2) Applicant shall obtain all other agency approvals having jurisdiction as required, including, but not limited to Hudson County Planning Board, Hudson Essex Soil Conservation District, and Passaic Valley Sewerage Commission;
- 3) Applicant shall pay all fees, inspection fees, charges, escrows, liens, performance guarantees, etc. as required under statute and/or ordinance(s);
- 4) Applicant shall provide an estimate for the cost of improvements to the Town in order that performance guarantees and inspection fees can be calculated;
- 5) Applicant shall enter into agreement with the Town of Harrison for the use of at least three on-street parking spaces, for the day care center use, Monday through Friday, from 7 am to 6 pm (operating hours), and shall maintain such agreement in perpetuity as long as the Property is utilized as a day care center; in the event the Applicant fails to maintain this agreement current and in good standing, the approval to use the Property as a day care center shall become null and void;
- 6) It is noted that the Property is in a 2F-1 residential zone and as such N.J.S.A. 40:55D-66.6 is not applicable (the child care use is not exempt from parking requirements);
- 7) The hours of operation for the day care center shall be Monday through Friday, 7 am to 6 pm;

- 8) Applicant shall cooperate with the Town of Harrison and inform its customers about the need to park within the designated parking spaces and not double-park, etc.;
- 9) As per Applicant's testimony, there shall be no food preparation on-site and no deliveries are needed;
- 10) Applicant shall obtain approval and licensing from the State of New Jersey Department of Children and Families to operate a child care center on the Property;
- 11) The maximum number of children permitted per session on the Property shall be 84;
- 12) Applicant shall dispose of recycling/trash on the curb during hours designated by the Town of Harrison; at Applicant's option, it may provide for a private carting company depending on Applicant's needs;
- 13) Applicant shall comply with and submit revised plans consistent with the conditions of this resolution and testimony provided at the hearing and Board Engineer Review Letter and Board Planner Review Memo, which shall be subject to the satisfaction of the Construction Official's office;
- 14) All construction, development, and use of the lots approved herein shall be in conformance with the Plans approved herein, all findings, conclusions, terms and conditions of this resolution and, to the extent not inconsistent therewith, all representations of Applicant and its witnesses during the public hearing. Any deviation from the requirements of this condition shall be deemed a violation of the Land Development Ordinance of the Town of Harrison;
- 15) Applicant shall not begin any land disturbance or construction pursuant to the approved Plans, and the Construction Official shall not issue a permit for construction on any approved lot, until:
 - (a) the approved Plans have been signed by the Board Chairman and Secretary and released to Applicant;
 - (b) Applicant has submitted an engineer's estimate for proposed site work and, upon acceptance of the estimate by the Town Engineer or his designee, has posted inspection fees as required by ordinance;
 - (c) Applicant has arranged for and attended a preconstruction meeting with the Town Engineer and such other Town officials as the Town Engineer shall designate; and
 - (d) Applicant has obtained a road opening permit for any work to be performed within a public street. Thereafter, Applicant shall comply with all applicable road opening permit requirements in the course of the work.
- 16) Before the Board Chairman and Secretary sign the approved Plans:

- (a) Applicant shall submit to the Board Engineer (i) proof that it has obtained approvals from all other governmental authorities with jurisdiction, or (ii) a certification from its engineer or attorney that no such approvals are required. Such authorities shall include, to the extent applicable, and without limitation, the Hudson County Planning Board, Hudson-Bergen-Essex Counties Soil Conservation District, and the New Jersey Department of Environmental Protection.
- (b) Applicant shall have paid all required application fees and technical review fees.
- (c) Applicant shall submit six (6) sets of the Plans approved herein for signature by the Board Chairman and Secretary.

15) Applicant's construction activities shall be limited to those hours permitted by ordinance.

16) **THE LOT(S) APPROVED HEREIN ARE PERMITTED FOR USE AS A DAY CARE CENTER (FIRST FLOOR) AND RESIDENTIAL APARTMENTS (UPPER LEVELS). IT SHALL BE UNLAWFUL FOR ANY PERSON TO ADD AN ADDITIONAL LIVING UNIT TO ANY APPROVED DWELLING, OR TO ENLARGE THE NUMBER OF BEDROOMS IN ANY APPROVED DWELLING, OR ENLARGE THE APPROVED AREA OF THE DAY CARE CENTER WITHOUT PRIOR WRITTEN APPROVAL FROM THE TOWN OF HARRISON PLANNING BOARD OR BOARD OF ADJUSTMENT.**

17) **ALL NOTES INCLUDED IN THE APPROVED PLANS, INCLUDING NOTES REQUIRED BY THIS RESOLUTION, SHALL BE DEEMED TO BE CONDITIONS OF APPROVAL HAVING THE SAME FORCE AND EFFECT AS CONDITIONS EXPRESSLY SET FORTH HEREIN.**

18) All references herein to the Town Engineer shall include his designee, which may include but shall not be limited to the Board Engineer.

The Board of Adjustment approval to erect or alter any structure and its approval to use the premises for any specific purpose shall expire unless the construction or alteration is commenced on each and every structure subject to the variance, and unless any specifically permitted use is started, within the allowable time period as applicable.

Votes To Approve Relief: (Chen, Gallagher, Garrido, Gilmore, Karas, Kelly, Maza)

Votes To Deny Relief: (NONE)

Isabel Simoes, Secretary

Eugene Gilmore, Chairman

Voting to Approve this Resolution Approving the Application with Conditions:

	Yes	No	Absent	Other
Chairman Eugene Gilmore	X			
Vice-Chairman Grisel Maza			X	
Commissioner Jack Chen	X			
Commissioner Michael Gallagher			X	
Commissioner Alberto Garrido	X			
Commissioner Susan Karas	X			
Commissioner Larry Kelly	X			

Isabel Simoes, Secretary

Eugene Gilmore, Chairman

Dated: May 15, 2024

There being no further business,

ON MOTION by Commissioner Karas, seconded by Commissioner Kelly, the meeting adjourned at 6:41 p.m.

Town of Harrison
ZONING BOARD OF ADJUSTMENT

Isabel Simoes, Recording Secretary

Dated: May 15, 2024