CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, JANUARY 12, 2015

REORGANIZATION MINUTES

A public meeting of the Clark Board of Adjustment was called to order at 8:12 p.m. by Janet Gentry who was acting as Coordinator until a Chairman was elected. She asked all present to participate in a flag salute and moment of silence. She stated that this meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Ed Ruth, Douglas Krok, John Tierney, John Caliguire, Steve Kaminsky, William Helm and Chris Tierney

Members Absent: John Moricz and Thomas Meade

Also Present: Howard D. Spialter; Board Attorney and Janet Gentry Board Secretary

OLD BUSINESS

Minutes from the December 8, 2014 public meeting were reviewed. John Tierney brought a motion to accept the minutes. Motion was seconded by John Caliguire and carried unanimously by voice vote.

NEW BUSINESS
APPOINTMENTS

Edward Ruth brought a motion to nominate Steve Kaminsky for Chairman which was seconded by John Caliguire.

Douglas Krok brought a motion to nominate John Tierney for Chairman. No second on the motion.

Vote on motion for Steve Kaminsky as Chairman: *All Ayes*

Steve Kaminsky brought a motion to nominate Ed Ruth for Vice Chairman. Motion was seconded by John Tierney and carried unanimously by voice vote.

Steve Kaminsky brought motion to nominate Howard D. Spialter as Attorney to the Board which was seconded by John Tierney and carried unanimously.

John Caliguire brought a motion to nominate Janet Gentry as Secretary to the Board which was seconded by John Tierney and carried unanimously by voice vote.

Newly re-appointed Chairman Steve Kaminsky took over the meeting at this time.

ANNUAL REPORT

Board Members reviewed term expirations, hearing dates for 2015 and the Annual Report.

John Tierney brought a motion to accept the Annual Report for submission to Council. Motion was seconded by Ed Ruth and carried unanimously by voice vote.

The following Board Members were sworn in by Attorney Spialter since their terms have expired: Douglas Krok, Edward Ruth and William Helm.

CORRESPONDENCE

Received by the Board Secretary was a memo from Edie Merkel. Township Clerk that the Business Administrator and Chief Financial Officer recommend professional services contract to Howard Spialter for the year 2015. Also received was Resolution 15-19 stating that the Union County Local Source and the Star Ledger are designated as the official newspapers of the Township of Clark for the Year 2015.

DISCUSSION

Board member received an update regarding litigation.

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by William Helm and carried unanimously by voice vote. Meeting adjourned at 8:37 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

Feb 26, 2015

Dated

MEMORANDUM

TO: MAYOR, TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF CLARK

FROM: ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF CLARK

RE: ANNUAL REPORT PURSUANT TO N.J.S.A. 40:55d-70.1

DATE: JANUARY 12, 2015

INTRODUCTION:

The Municipal Land Use Law, N.J.S.A. 40:55D-70.1, et seq., Provides, in pertinent part, as follows:

> The board of adjustment shall at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The board of adjustment shall send copies of the report and resolution to the governing body and planning board.
>
> N.J.S.A. 40:55d-70.1.

This report is made pursuant to the aforesaid statute.

REPORT FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2014:

The following applications were made to the Zoning Of Adjustment of the Township of Clark, New Jersey ("Board") in 2014 for variances seeking relief from the Revised General Ordinances of the Township of Clark, New Jersey:

APPLICANTS	VARIANCES
Wireless EDGE Towers & New Cingular Wireless PCS,LLC 360 Central Ave DISTRICT CI	Site Plan approval with Bulk Variances Purpose: Construction of a wireless telecommunications facility consisting of a 130' high monopole and new equipment shelter, generator & fencing *Granted*
Antonio & Maria Ribeiro 32 Stemmer Drive DISTRICT: R-150	Lot Coverage, front yard depth (Stemmer Drive) front yard depth (Rand Road) lot area, side minimum width. Purpose: Expansion of an one-story single family dwelling *Granted*
Iselin Realty, LLC 1208 Central Avenue DISTRICT CI	Issue of Abandonment *Granted*: Pre-existing non-conforming use of the subject property has not been abandoned Site plan approval and bulk variances Purpose: for the proposed construction of a gasoline fueling station which a pre-existing non-conforming use exist *Denied*
Nicholas & Fatima Calhoun 68 Hall Drive DISTRICT R-150	Lot coverage, side yard setback and lot area Purpose: Second story addition with wrap around covered porch *Granted*

Kyle & Michele Harrington
31 Meadow Road
DISTRICT R-150

Lot Coverage, side yard setback
Purpose: Family room addition to rear of home
Withdrawn

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

THURSDAY, FEBRUARY 26, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:09 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Moricz and Steve Kaminsky

Members Absent: John Caliguire, William Helm and Chris Tierney

Also Present: Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the January 12, 2015 Reorganization meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by John Tierney and carried unanimously by voice vote

CORRESPONDENCE

Newspaper publication showing that the meeting scheduled for February 23rd. was re-scheduled for tonight, February 26th. 2015

NEW BUSINESS

Calendar #3-15, Antonio & Maria Ribeiro, 32 Stemmer Drive. George Sincox, Architect & Planner from Westfield was present and was sworn in by Mr. Spialter. Mr. Spialter stated that proof of mailings were all in order.

Mr. Spialter asked Mr. Sincox what a half story is. Mr. Sincox discussed some history to a half story but stated that in terms of building codes, there is no

half story, its either a story or it's not. There are really two issues, one is zoning and one is building. From a zoning perspective it's something enclosed by a roof and shoots down over it to make it appear to be less than a full story which it actually is. Spialter: Is it fair to say that in the Clark Ordinances the concept of a half story does not exist? Mr. Sincox: Honesty, I do not know. *Discussion took place regarding height requirements for a half story and attic height.* Mr. Spialter read onto the record section 195-111 of the Township Code which talks about a half story and Mr. Spialter also read resolution 4-R-14 of the Board dated April 10, 2014. *Discussion continued between Mr. Spialter and Mr. Sincox.* Spialter: Are you saying that in realty while the application says one-half story, it's really a full story? Sincox: it's actually a full story. Spialter: Would it be fair to say that the notice that went out to the public then is erroneous? Sincox: That's a legal issue. Spialter: but I believe it is and if that's the case I don't believe your clients can proceed at this time because they are not seeking a half story, their looking to make a two story home. Sincox: understood. Spialter: I will not allow the board to proceed with this matter tonight based upon the application as presented does not conform with our ordinance and does not conform in reality of what it is they want and the publication to the people did not provide proper notice. Sincox: So they have to re-notice if they want to re-appear? Spialter: Start over, the application talks about a half story and in realty it's not. Sincox: yes, it's a full story. Spialter: Are you withdrawing the application? Sincox: yes. Spialter: The applicant has withdrawn their application.

RESOLUTIONS

Calendar #1-15, Reorganization Meeting. Attorney Spialter read onto the record Resolution 1-R-15. Edward Ruth brought a motion to accept the resolution as read. Motion was seconded by John Tierney. *Vote in Favor: Ruth, Krok, Tierney and Kaminsky*

Calendar #2-15, Annual Report, Attorney Spialter read onto the record Resolution 2-R-15. John Tierney brought a motion to accept the resolution as read. Motion was seconded by Edward Ruth. *Vote in Favor: Ruth, Krok, Tierney and Kaminsky*

ADJOURNMENT

Edward Ruth brought a motion to adjourn. Motion was seconded by Thomas Meade and carried unanimously by voice vote. Meeting adjourned at 8:35 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

March 23, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, MARCH 23, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:12 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, John Tierney, John Caliguire, John Moricz, William Helm and Steve Kaminsky

Members Absent: Thomas Meade

Also Present: Alternate Member Chris Tierney, Board Attorney Howard D. Spialter and Janet Gentry, Board Secretary

OLD BUSINESS

Minutes from the February 26, 2015 public meeting were reviewed. Edward Ruth brought a motion to accept the minutes. Motion was seconded by John Moricz and carried unanimously by voice vote

PRIVATE SESSION

John Tierney brought a motion to go into private session to discuss litigation. Motion was seconded by Douglas Krok and carried unanimously by voice vote.

Edward Ruth brought a motion to come out of private session. Motion was seconded by John Tierney and carried unanimously by voice vote.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, John Tierney, John Caliguire, John Moricz, William Helm and Steve Kaminsky

Members Absent: Thomas Meade

Also Present: Alternate Member Chris Tierney, Board Attorney Howard D. Spialter and Janet Gentry, Board Secretary

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by John Moricz and carried unanimously. Meeting adjourned at 8:50 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

April 27, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, APRIL 27, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:13 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Moricz, William Helm and Steve Kaminsky

Members Absent: John Caliguire

Also Present: Alternate Member Chris Tierney, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the March 23, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by John Tierney and carried unanimously by voice vote

NEW BUSINESS

Calendar #4-15, Antonio & Maria Ribeiro, 32 Stemmer Drive. Mr. John C. Phillips is the Attorney representing the Applicant. Mr. Spialter reviewed proof of mailings and stated that all were in order.

Spialter: In reading the publication itself on what was served, I have a question. It reads "the owners/applicants proposed use of the second floor will not result in any change or modification to the exterior of the previously approved building envelope nor any change in variance relief previously granted by the board." I'm sure that you are aware that this is your client's third application before this board. The first one was a resolution approving what variances they sought basically one year ago Resolution 4-14 and we have sort of a temporary start with the second application; about a month or two ago, and there was some preliminary review and my recollection is that the rear of the house had a different configuration with windows, roof line and a modification of a chimney which was somewhat different than what was approved a year ago. We need to know if that's accurate, if there's a change in the exterior because if there is I have to question whether the Board has jurisdiction to presently hear this matter based upon the wording in the application. Mr. Phillips: I had the architect take a look at that, it's my understanding, and I submitted to the board a copy of the original footprint and a copy of the new footprint and they are identical. Kaminsky: we are not questioning the footprint; we are questioning the windows on the second floor and chimney. Spialter: It depends on how someone reads the publication. It talks about; the words are: "will not result in any change or modification to the exterior of the previously approved building envelope or any change in variance relief previously granted by the Board." We have two aspects that are at play here, one is the exterior building envelope and the other is the variance relief previously granted. The question that I perceive is that even if the building envelope is not different, the variance resolution granted a year ago made specific reference to the plans presented to and relied upon by the board and relief was granted based upon the utilization of those plans. Do we have an envelope issue, if we don't have an envelope issue; even if there are exterior changes from that which was presented last year and relied upon by the Board, that in essence would give rise to some difference that the board would have to consider and the question is; has proper notice been given in regard to that and if not, or if it's in question, does the board has jurisdiction to hear the matter tonight. Phillips: the footprint has not changed. There is an addition of two dormers and a chimney on the rear of the building which has not changed the roofline, not changed the volume or anything else other than putting two windows into an existing area with dormers. Given the nature of the application, it does not change variance relief, it does not change the volume of the house, it really doesn't change roof line other than the two dormers on the rear of the building and I would ask the board to consider the application tonight to hear it, rather than put it off. Spialter: doesn't the presence of two dormers increase square footage, volume, they take up space and doesn't that increase volume and doesn't that increase something somewhere and we have at play here the board having jurisdiction and even if the board were to be liberal and say they would hear it, are your clients not at risk somewhere down the road if someone else looks at this and says the board never had jurisdiction because there are significant changes from that which was given a year ago. Phillips: That is a theoretical concern; however, I would take the position that the change is not so significant. In this case, it's on the rear of the building, it is not square footage, it is not anything that would cause anyone to object to this application to come in on that basis. We are here because the board in the resolution made reference to a single story but absence of one-story representation in the resolution, the applicants could have gone to the building inspector and got their plans approved, because there's no change to variance relief and no change to the exterior of the structure. I understand it was kicked back to this board because it was listed as a one-story structure in the testimony. Spialter: The resolution from a year ago makes specific reference in more than one place, single one-story. I have questions and I will leave it up to the board to decide, is the board sufficiently

satisfied that it has jurisdiction to hear the matter tonight or does the board desire to have everyone re-noticed. I placed my concerns on the record but I don't feel that I should make that decision as one person and sweep that away from the board.

Spialter: If there's going to be a motion, the motion has to be in favor of proceeding tonight or not proceeding tonight.

John Tierney brought a motion not to proceed tonight. Motion was seconded by Steve Kaminsky. ***Discussion took place regarding an appeal and commentary was given by members: Vote:*** **Ruth: yes, Krok: yes, Meade: no, Tierney: yes, Moricz: no, Helm: no, Kaminsky: yes.**

Spialter: It appears that to be able to proceed; matter will have to be re-noticed and republished and we will carry this to the next meeting. Next meeting is May 11th. It's going to be tight giving the 10-day notice. The Chairman just asked about transcripts. Spialter to Mr. Phillips: I'm going to ask to have a transcript prepared of last year's proceeding so that the board will have a full record of what was testified to, that gave rise to the Resolution last year.

PRIVATE SESSION

Thomas Meade brought a motion to go into private session to discuss litigation. Motion was seconded by John Tierney and carried unanimously by voice vote.

Edward Ruth brought a motion to come out of private session. Motion was seconded by Thomas Meade and carried unanimously by voice vote.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Tierney, John Moricz, William Helm and Steve Kaminsky

Members Absent: John Caliguire

Also Present: Alternate Member Chris Tierney, Board Attorney Howard D. Spialter and Board Secretary Janet Gentry

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by Thomas Meade and carried unanimously by voice vote. Meeting adjourned at 9:53 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

May 11, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, MAY 11, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:12 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Chris Tierney, John Tierney, John Moricz, William Helm and Steve Kaminsky

Members Absent: Thomas Meade and John Caliguire

Also Present: Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the April 27, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes as amended. Motion was seconded by Douglas Krok and carried unanimously by voice vote

NEW BUSINESS

Calendar #4-15, Antonio & Maria Ribeiro, 32 Stemmer Drive. Mr. John Phillips is the attorney representing the applicant. Mr. Phillips: Proof of Publication due the short time between this meeting and the last, affidavit of service is fine, certified mailings is fine, the affidavit indicates that an affidavit of publication was filed with the Court and was published in a timely manner. Proof of Publication will be provided to the Board. *The actual newspaper publication was submitted and Marked as Exhibit A1.* Mr. Phillips: We are here tonight to ask this Board to remove the one-story limitation that's in the Resolution. The applicant was planning on using the first floor of 2,000 sq. ft. When the contractor came in to begin to lay out the rooms, he realized that the rooms on the first story were too small. They have three daughters. The original plans call for a master bedroom, a sitting room and one other bedroom. Obviously when the girls come back from

college they will need a room. They decided they needed more space, spoke with the architect and he suggested going to the second floor and building in the existing envelope.

Mr. George Sincox, Architect & Planner was sworn in by Mr. Spialter. Mr. Sincox: The house as originally designed and presented initially to the Board has two bedrooms. There was a lot of space in the attic which at that time was intended not to be used and used only for attic space. Gabe came to me, and we are partners and discuss things all the time, so when the bedrooms were laid out, one bedroom was much larger and the small one was too small. The owners wanted to reconfigure to gain more space which was totally inadequate and that's when the discussion came about the attic. Mr. Spialter: When it was brought to your attention by your partner that there was a distinction in the size of the bedrooms, was what he was relating to you a size differential that was different from the plans that were approved by this board or is he relating to you his visual understanding of what was being built in accordance with the plan. Sincox: built in accordance with the plan which was entirely too small. Spialter: It was built according to terms of the plans that was presented to this board upon which the board relied, correct? Sincox: yes, but I would like to point out that a few changes were made that are made all the time, interior alterations are made from the building department. Spialter: The prior application to this board was a two bedroom home and designed by you and the dimensional aspects of the various rooms were presented to you by the applicant or presented by you to the applicant? Sincox: we had discussions back and forth so it was agreed on. Spialter: is it you understanding that the concerns raised was that of the applicant? Sincox: yes. Mr. Phillips: The original proposal was to have the master bedroom on the first floor and I believe that the testimony was that as they begin to age, they didn't want to go up and down stairs and presently before the board the master bedroom is still on the first floor so that aspect of it has not changed. It's only when two new bedrooms on the second floor and bath on the second floor became an issue. There is no change in the footprint of the building as approved by this board. There is no change in the exterior of the building as approved by this board with the exception of the chimney and the two dormers in the back and that change was approved by the zoning dept. Kaminsky: did the original plans include the two dormer windows in the back of the house? Sincox: the original plans did not. Kaminsky: and they were the ones approved by the board, correct? Sincox: approved by the building department, yes. Kaminsky: the one approved by the board? Sincox: it was without dormers. Kaminsky: There was an oversite by the building inspector that he approved plans with dormers on it, correct? Sincox: that's not correct, changes like that are made all the time, minor changes can be made to the facade of the building without coming back to any board. Kaminsky: I don't consider going into a second floor when we were told that it wouldn't be used for anything but storage a minor change, that's why we're here tonight. Spialter: The board granted an approval to the applicant last year certain drawings which did not include the two dormers or the extension of the chimney, is that correct? Sincox: correct. Spialter: this Board approved certain plans, the plans that were presented initially to the Building Department after this Board approved

them, were they the same plans that this board approved? Sincox: essentially the same. Spialter: what differences were there? Sincox: we added the chimney and the dormers. Spialter: that was done between this board's approval and the initial presentation to the building department as the initial filing with the building department for purposes of construction, is that correct? Yes. Spialter: when the plans were presented to the building department that contained both the dormers and the chimney, was it pointed out to the building department that these plans differed from the plans presented to the board? Sincox: not to my knowledge. *Mrs. Ribeiro submitted a copy of her building plans to the board, Mr. Spialter and Mr. Sincox discussed the revision dates.* Spialter: Is there any relationship to the plans prepared by your office dated April 11, 2014 and the resolution entered by this board dated one day prior, April 10, 2014. *Revision dates continued to be discussed*

Questions from the public: none

Gabriel Landerverde, assistant to Mr. Sincox. *Mr. Landerverde who worked on this project with the Architect's office, applicant and builder described in detail on how the decision was made to build on the second floor and discussed the revision dates. Board members reviewed what pages of building plans were submitted to the construction office. Mr. Spialter continued to discuss revision dates with Mr. Sincox. .*

Spialter: If A-1A is what this board approved and its dated April 11, 2014 the day after the Board's resolution dated April 10, 2014 then how is A-1A not part of the April 11, 2014 application for plans presented to the Building Department if you're relying on what the Board approved the day before. Sincox: plans were revised for the change of dormers, masonry fireplace. Spialter: I don't want to confuse the issues, I don't care about the dormers, or the chimney, I don't care about any of the aesthetic changes, I care about what this board approved that you just testified to that was part of what you presented to the building department as part of the April 11, 2014 drawings to get the construction permits for that house, do I understand your testimony correctly? Sincox Yes. Spialter: Show me, show me where A-1A exist in the plans you just testified to, I don't see it. *Discussion on plans and their revision dates continued between Mr. Spialter, Mr. Landerverde. Mr. Sincox and Mr. Phillips. Mr. Sincox and Mr. Spialter continued to discuss building department plans.* Marked as Exhibit A2 was the Site Plan submitted to the Board.

Mr. Spialter to Mr. Sincox: Have you read the Resolution of this Board? Sincox: not until tonight. Spialter: do you have a copy of it? Mr. Sincox: the attorney does. Spialter: Just so the record is accurate as to the licensed architect and planner on behalf of the Ribeiro's prior to May 11, 2015 never read the Resolution of this Board dated April 10, 2014. It says "variances are approved subject to but not limited to: Adherence to the plans and specifications as presented to and relied upon the Board in rendering its decision as embodied herein." Is it fair to say that the plans as presented to the building department dated April 11, 2014 did not adhere to the plans and specifications as presented to and relied upon the board in rendering its decision dated April 10, 2014, it's a yes or no question Mr. Sincox.

Kaminsky: What was submitted to the Building Department, were they the exact plans that the board approved? **Sincox**: They were not exactly, there were some differences in size and some configuration and dimension change, interior alterations, when we filed; dormer and chimney were added and second floor improvements. *Mr. Kaminsky read from the original transcript dated February 24, 2014. It stated: We looked at other possibilities, it is possible to increase the size of a house by adding a second floor as opposed to going up, however, as we all age, we tend to have a more difficult time with stairs. The neighborhood I think; tends to be primarily single story homes. In keeping with the neighborhood, was another one of the factors that led us to maintain one-story and to expand on one floor.* **Kaminsky**: do you think that the original application with an additional 3' side yard setback that was granted was dedicated on the fact that you're not going after a second floor in this house? *Mr. Tierney also questioned the transcript where Mr. Ruth questioned: no additional space that you'll be using above the second level? Mr. Sincox stated No; that's all added space.*

Spialter: Mr. Sincox, as a qualified expert witness in Architecture and Planning. Is a one-story home with a large attic the same as a two-story home; the second story of which is finished for occupancy purposes? Sincox: no. Spialter: based upon that answer would it be fair to say that that would not be a minimal deviation or minor change that would not be just brushed off by building department as part of change orders during a construction process. *Mr. Spialter continued to question Mr. Sincox regarding building permits.*

Questions from the Public: none

Mr. Phillips gave a very detailed summary. He apologized for the errors that were made and asked the board to vote in favor of the application.

Mr. John Tierney brought a motion to *deny*. Motion was seconded by Edward Ruth. *Board members gave commentary. Vote:* **Ruth; yes, Krok; yes, Chris Tierney; yes, John Tierney; yes. Moricz; no, Helm; no, Kaminsky; yes (application denied)**

Kaminsky: the application to the board did not include dormers in the back of the house. Is it my understanding that it has to be changed? Spialter: Mike Khoda, the Building Department should be aware of what this board approved and Janet may want to double check with the building department to make sure that they have an accurate set of plans that this board approved in connection with whatever build out is continued by the Ribeiro's. Obviously Mr. Sincox can provide them with another copy so everyone is on the same page with what the plans are. It's not this Board's function to police that aspect. That's the Building Departments function.

ADJOURNMENT

Ed Ruth brought a motion to adjourn. Motion was seconded by John Moricz and carried unanimous
sly by voice vote. Meeting adjourned at 10:04 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

June 22, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, JUNE 22, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:12 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, John Tierney, John Moricz, Chris Tierney and Steve Kaminsky

Members Absent: John Caliguire, Thomas Meade, William Helm

Also Present: Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the May 11, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by Douglas Krok and carried unanimously by voice vote

RESOLUTION

Calendar #4-15, Antonio & Maria Ribeiro, 32 Stemmer Drive. Attorney Spialter read onto the record Resolution 3-R-15. John Tierney brought a motion to accept the resolution as read. Motion was seconded by Edward Ruth. Vote in favor of Resolution: Ruth, Krok, John Tierney, Chris Tierney and Steve Kaminsky

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by Doug Krok and carried unanimously by voice vote. Meeting adjourned at 9:21 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

8/24/15

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, AUGUST 24, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:02 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Moricz, William Helm and Steve Kaminsky

Members Absent: John Caliguire, Chris Tierney

Also Present: Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the July 27, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by Douglas Krok and carried unanimously by voice vote.

Mr. Spialter stated that there is litigation he would like to discuss and suggest we go into private session.

PRIVATE SESSION

Douglas Krok brought a motion to go into private session. Motion was seconded by Thomas Meade and carried unanimously by voice vote.

John Tierney brought a motion to come out of private session. Motion was seconded by Edward Ruth.

ROLL CALL

Member Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Moricz, William Helm and Steve Kaminsky

Members Absent: John Caliguire, Chris Tierney

Also Present: Board Attorney Howard Spialter and Board Secretary; Janet Gentry

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by John Moricz and carried unanimously by voice vote.

Meeting adjourned at 9:37 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

Sept 25, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, SEPTEMBER 28, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:02 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney, John Caliguire, John Moricz and Steve Kaminsky

Members Absent: none

Also Present: Alternate Members William Helm and Chris Tierney, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the August 24, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by John Tierney and carried unanimously by voice vote

PRIVATE SESSION

John Tierney brought a motion to go into private session. Motion was seconded by Edward Ruth and carried unanimously by voice vote.

John Tierney brought a motion to come out of private session. Motion was seconded by Thomas Meade and carried unanimously.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Caliguire, John Tierney, John Moricz, and Steve Kaminsky

Members Absent: none

Also Present: Alternate Members William Helm and Chris Tierney, Board Attorney Howard D. Spialter and Board Secretary Janet Gentry

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by John Caliguire and carried unanimously by voice vote. Meeting adjourned at 9:17 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

Oct 22, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

THURSDAY, OCTOBER 22, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:01 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Chris Tierney, John Tierney, John Moricz, John Caliguire and Steve Kaminsky

Members Absent: William Helm

Also Present: Richard O'Connor, Township Engineer, Kevin O'Brien, Township Planner, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the September 25, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by John Moricz and carried unanimously by voice vote.

NEW BUSINESS

Board member Thomas Meade arrived during this proceeding and did not participate in this application for Calendar #5-15

Calendar #5-15, Michael Simone, 5 Westfield Avenue. Mr. Jason Pressman is the Attorney for the Applicant. Mr. Spialter stated that proof of mailings and notices were in order. Mr. Spialter: This is a use variance with bulk variances? Mr. Pressman: yes. Mr. Simone stated that he is the applicant to this property located at 5 Westfield Avenue and signed a lease in July and the lease is contingent on tonight's application. Mr. Pressman: one of the issues with this application is how you are going to dispose of the pet waist, can you describe to the board how you will deal with that situation. Mr. Simone: There are services that come once a day and outside there will be an area where every employee will be able to dispose of the waste. I plan on two employees, hours of operation on weekdays will be 10am to 7pm, Saturdays 10am to 6pm.

Questions from board members: Chris Tierney: are you planning on selling any merchandise? Just a few things like sweaters, dog's brushes and beds. J. Tierney: there's a pet store next door and that store is actually connected and you actually work at this pet store; correct? Yes, Animal Crackers. Many of the items you sell will be sold at this pet store and vice versa, correct? Yes. Kaminsky: is there an interior door between this store and the pet supply store? Yes, it's an existing door but that door will be locked. Krok: There's a question here from the Health Officer on animals being vaccinated and licensed, how would you address that? For every pet that enters the store, we need to see their records. John Tierney: you going to do the washing? No, it's self-washing and by appointment only and there will be cages inside when the pet is done. Ruth: what happens if you're locking up and the owner doesn't show up? The dog would have to come home with one of us. The dog would not stay on the premises? No. Spialter: are you going to maintain your relationship with Animal Crackers? Yes. *Mr. Spialter discussed restrictive covenant in a lease. Mr. Spialter and members continued discussion regarding outdoor clean up after dogs. Handicap Parking was also discussed.*

Mr. O'Connor: The parking space probably needs modification. Your one space would have to be a van accessible space, it is not currently and it's a shared space. It does not now appear to be compliant.

Spialter to Mr. O'Connor: Do you have a concern with regards to plans/testimony that you would like the board to consider with Mr. Simone being involved both with the existing dog pet store business and the proposed grooming business, do you see it as a potential one bulger enterprise that needs to be considered by the Board based on our ordinances? O'Connor: I don't think that's a concern for me as Engineer, maybe a concern for the Building Department at the time of application. My concern at this point is that the space is compliant and that the appropriate signage is in place and that the accessible pathway to the building is well documented which is currently not shown. But the applicant has asked that this be a use variance consideration and did not receive site plan approval. So once the applicant has the use variance approval he's still going to have to come in with a minor site plan approval that provides documentation that we've been looking for. *Questioning continued to the applicant regarding self-washing and grooming areas.*

Questions from the Public: Walter Maxemow, 1272 Madison Hill Road, Clark. I live adjacent to this. You said they were going to clean up. There's a grassy knoll there and they clean up there? Yes. Do they clean up over here? Mr. Simone stated that they provide extra baggies. Mr. Spialter: so this gentlemen's question to you was that he see things and that you would not be surprised that it would be an occurrence sometimes.

Next Witness was Michael J. Pessolano, Licensed Professional Planner in the State of N. J. since 1984. This application is a site suitable for the proposed use in many ways. I think the application considers positive consideration because in my opinion it's a sound application. The proposal is to occupy 1,277 sq. ft. of an existing commercial building which is vacant since January. The DTV District seeks to encourage retail businesses, personal service businesses and variety of other uses and I believe that this is not one of those uses which I would expect to find in a downtown setting. Pet care is now part of everyday life. There are veterinarians, hospitals for pets, pet supply stores etc. The self-washing is a new concept and it makes sense. Owners are provided with the special equipment for bathing dogs. It's a good place to do this because it's a business area. As we heard earlier from Mr. Simone, the whole property would be in better care with a dog waste pick up service. As you know this use is not permitted in the district. Literally nothing has to change to accommodate this use. Setting for short parking, I think this happens when one customer who maybe a customer of the grooming establishment also a customer to pet supplies from the adjoining establishment, one parking space used for two different places. Parking also can be self-managed by the applicant in terms in scheduling the appointments so there is no overload. Overall I believe the parking resources are very suitable for the three tenants that operate on that property. I was told that there was a van-accessible space, up against the back of the building. O'Connor: should the applicant prevail tonight he will be required to submit a site plan to the Board to the Township which will be dealt with administratively as a minor site plan. At the time he submits that; he's going to have to document compliance with that, at that time. His current plan does not show that.

Marked as Exhibit A-1. This exhibit contains nine pictures. Page one is an aerial photo of the site. Page two contains four pictures, two pictures of the parking lot, without striping, front view of Animal Crackers and the side entrance to Animal Crackers. Page three contains four pictures, Land Use North: commercial on Westfield Avenue. Land Use: Commercial on Madison Hill Road. Land Use North: screened residential on Washington Street and shows signage. Land Use West: screened commercial on Westfield Avenue and shows signage.

Spialter: you have some area near the building that has grass and trees on it but is not owned by the owner. What aspect of those areas will be cleaned up? Mr. Simone: I think it would benefit the whole area to service it. Spialter: even the grassy area that's technically not owned by the landlord; you would pay to have it cleaned? Yes.

Closing Statements: Mr. Pressman, I want to thank the board for their consideration tonight. I think we demonstrated positive and negative criteria on this application and hope for a positive result. *Further discussion continued on cleanup.*

Edward Ruth brought a motion to approve Calendar #5-15. Motion was seconded by Douglas Krok. Vote: *All Ayes.*

Calendar #6-15, V & R Developers, 1132 Westfield Avenue. Stanley Fink is the Attorney representing the Applicant. Board Member John Caliguire stepped down for this application; he is within the 200 radius. Alternate member Chris Tierney sat in for Mr. Caliguire.

RECESS

Douglas Krok brought a motion to take a 5-minute recess. Motion was seconded by John Tierney and carried unanimously by voice vote.

ROLL CALL

Members Present: Ed Ruth, Douglas Krok, Chris Tierney, John Tierney, John Moricz, Thomas Meade and Steve Kaminsky

Also Present: Board Member John Caliguire, Richard O'Connor; Township Engineer, Kevin O'Brien; Township Planner, Gordon Meth; Traffic Consultant, Howard D. Spialter; Board Attorney and Janet Gentry Board Secretary

Members Absent: William Helm

NEW BUSINESS

Mr. Fink: The subject property is at 1132 Westfield Avenue. The property is owned by Wilson Bonney and has owned it for a number of years and is in a contract to sell that property to the applicant, the developer, who will then construct a day care facility on the property for the Learning Experience, a National Company that has many of these all over the Country plus several in New Jersey. It's a day care center. Day care facilities are not a permitted use in this particular zone. This is a RTH, residential townhouse zone district, however, day care centers and day care facilities are considered by State Statue; inherently beneficial uses under the Municipal Land Use Law in the State of New Jersey. Therefore, we ask to bifurcate this application, first to seek a Use Variance and then return at a later date with a Site Plan for approval. This also must be approved by the Union County Planning Board because Westfield Avenue is a County Road. The operator of this facility must comply with all New Jersey licenses, state licensing requirements. So tonight we are asking for a use variance to permit the use of this facility on this site in the RTH Zone. Keep in mind throughout the testimony that upon approval of the use variance; thinking positively, we will be back with a site plan so if there are site plan questions they may not be answered directly because the site plan is not in front of you. Right now is just a general plan of the layout of the property.

Elton Bonney, 1132 Westfield Avenue. Mr. Bonney stated that he is under contract to sell this property to the applicant. He has owned this property since 1981. He has lived there and had his business there as well. The business was an outdoor power and equipment with sales in parts, lawn mowers, chain saws, snow blowers. *Mr. Bonney described the uses surrounding this property.* He also stated that there was another day care center interested in purchasing his property; he also was previously contacted about a car wash and a Krauser's.

Questions from the Public: Tom Kowalczyk, 27 Garside Place. You don't own the property next to yours? No. Do you know if that property is going to be impacted by this building? To the best of my knowledge it's not. Mr. Kowalczyk was told by Mr. O'Brien that this would not impact that lot

Next Witness: Mr. Gerard Gesario is a Licensed Professional Engineer in New Jersey. Marked as Exhibit as A-1 is an Aerial Exhibit. Mr. Gesario described the uses surrounding the property. Marked as A-2 is the existing conditions. He stated that the access to the site is on Westfield Avenue. All structures on the property will be demolished. From a land use prospective it is not a flood plain so for this application no land use permits will be needed by the DEP. Marked as Exhibit A-3 is the proposed conditions. This will be a 2-story 5,500 sq. ft. building. Behind the building will be a play area enclosed by a fence. Parking for the proposed use is in front of the building and will use the same driveway location. *Mr. Gesario discussed the bulk variances associated with this application.* He stated that they will comply with the ordinance for landscaping. Fink: In terms of this particular use; your firm has worked with them in the past so that what you designed here, for the purpose of the use variance, complies with what the Learning Experience requires and what they have on other sites in terms of the layout and what was designed. You mentioned that the fencing will be sufficient to pass the State licensing authorities that want jurisdiction over such facilities, whatever they require the applicant is prepared to comply with. *Mr. Gesario agreed with Mr. Fink's comments.*

Mr. Fink: You mentioned a couple of other sites that are in this area that you worked on. Mr. Gesario: Roseland and Union. Fink: is Union typical of what we have here? Gesario: Roseland is a two story and Union is a single story. Spialter: the lot that the single story is on; how does it compare to this one? Gesario: Similar sized lot. *Drainage/water pump was discussed.* O'Connor: different emergency management people view these facilities differently, some prefer not to have a fence to facilitate their ability to affect a recue promptly and others want the fence to prohibit someone from being able to get in to; sort of define it as an attractive nuisance and to prevent the access. Typically Clark's Emergency Management people have for shallow basins and have preferred the ability to access the area quickly and promptly, as a result most of the shallower basins throughout town are not fenced because of that, to facilitate a rescue in the event one was necessary. That would be a question you may want to raise with our police and fire when they are here next time.

Questions from the Public: Tom Kowalczyk, 27 Garside Place. Where do kids go in case of an emergency evacuation? Gesario: I think that a question for operations people.

This application will be continued on November 19th.

PRIVATE SESSION

Mr. Ed Ruth brought a motion to go into private session; motion was seconded by Tom Meade and carried unanimously by voice vote.

Mr. Doug Krok brought a motion to come out of private session; motion was seconded by Thomas Meade.

ADJOURNMENT

John Caliguire brought a motion to adjourn. Motion was seconded by John Moricz and carried unanimously by voice vote.

Meeting adjourned at 11:15 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

November 19, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

THURSDAY, NOVEMBER 19, 2015

A public meeting of the Clark Board of Adjustment was called to order at 7:15 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Chris Tierney, John Tierney, John Moricz, John Caliguire and Steve Kaminsky

Members Absent: William Helm and Thomas Meade

Also Present: Richard O'Connor, Township Engineer, Kevin O'Brien, Township Planner, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

PRIVATE SESSION

John Tierney brought a motion to go into private session to discuss litigation. Motion was seconded by Edward Ruth and carried unanimously by voice vote. Time was 7:15 p.m.

John Tierney brought a motion to come out of private session. Motion was seconded by John Caliguire and carried unanimously by voice vote. Time was 8:19 p.m.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Chris Tierney, John Tierney, John Moricz and Steve Kaminsky

Members Absent: William Helm and Thomas Meade

Also Present: Richard O'Connor, Township Engineer, Kevin O'Brien, Township Planner, Gordon Meth, Township Traffic Consultant, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the October 22, 2015 public meeting were reviewed. Ed Ruth brought a motion to accept the minutes. Motion was seconded by John Tierney and carried unanimously by voice vote.

NEW BUSINESS

Calendar #6-15, V & R Developers, 1132 Westfield Avenue. Stanley Fink is the Attorney representing the Applicant.

Board Member John Caligiure stepped down for this application; he is within the 200 radius.

Fink: The subject property is at 1132 Westfield Avenue. The application is for a pre-care center. We are seeking a use variance and if approved will be back with a site plan application for your consideration at that time.

Russ Luttino, Real Estate Development. We have two facilities called The Learning Experience, one is in Rivervale which is in Bergen County and recently completed one in Woodbridge in Middlesex County. The one in Rivervale is exactly 10,000 sq. ft.; very similar to this, built as a one-story. The one in Woodbridge is in excess of 13,000 sq. ft. with a daycare on ground and residential apartments above it. Fink: You are going to build this and own the property and they will lease it from you, is that correct? Mr. Luttino: Yes, build it and lease it back to them. Fink: you approved the plan for this particular facility? Mr. Luttino: Yes I have.

Questions from Board Members: Spialter: If you own the land and lease it back to Learning Experience, what happens if it's not a successful venture? Luttino: we would then look for a different type of use. Moricz: How long have the other locations been in business? Rivervale has been there since 09 and in Woodbridge since 2013 and both facilities operate very well. Spialter: is that similar where you own the property and lease it to them? Yes, in Riverdale they are part of a 30,000 sq. ft. shopping center and in Woodbridge it has residential above it, but both arrangements are identical, 15 year leases. Spialter: so this would be the first Learning Experience facility in which they would be the sole tenant of the property? Correct, they stand alone. Kaminsky: beside building it and leasing it, what do you do with the property, oversee them and visit them? We own and manage them. Kaminsky: but you're not involved in the daily operations of them? No, not with the Learning Experience, I'm only the landlord. Fink: with regard to construction of a project like this, there is obviously strict regulations when you run this kind of facility, so when you build it and I'm assuming that your familiar with the State requirements for this kind of facility and Learning Experience gives you direction on what to build and how? Luttino: very much so, yes.

Questions from the Public: Gregory Oross, 30 Cutler Place. Did you investigate other areas of town that's zoned where it's a permitted use for a day care center? No.

Next Witness: Sharon Steinhardt, Regional Manager. Ms. Steinhardt stated that she oversees the daily operations of 15 centers throughout New Jersey, one in Westchester and one in Connecticut. There are 153 centers throughout the Country and 50 in New Jersey. *Ms. Steinhardt described the daily routine at the Learning Centers.* We have no set time for drop off or pick up, so parents can come throughout the day, 6:30 it starts. We offer three days and 5-days; we also have part day programs, 8:30-12:30, 8:30-3p.m., full days 8:30 – 5:30 with drop off options of drop off earlier or pick up late. Ages are six weeks to six years. Playground is in the back of the building, one side for younger and the other side for the older children.

Questions from Board Members: Kaminsky to Steinhardt: how many children at Rivervale? 172. Do you provide busing for students? No. Every child is picked up and dropped off by the parents? Yes. 176 trips in at that location and 176 trips out, correct? No, there are some families with multiple children. What percentage of multiple families? About 5%. Kaminsky: you're still looking at 150 trips in. Steinhardt: not every day; some are part time and there's an absentee rate of 20% so it varies. Kaminsky: who do we talk to about where the children go in case of emergency? Steinhardt: once the site is approved, they look for a safe location that would be able to accommodate us within walking distance. Kaminsky: you talking about off site location? Yes, if we had to evacuate the building. One of my locations has a storage facility that's open or whether it's a restaurant that has hours opened, it depends on the site. If it's a fire drill, there's an area in the parking lot, if they have to get off the premises they find an emergency evacuation site that would be able to accommodate all the children and the hours they need. Ruth: on an average day how many children would be in the building? On a certain day out of 150 children, they may be 130 children. Spialter: if Learning Experience is sole center and Mr. Luttino's company is expecting rents to be paid from the sole tenant, arguably there's income and expenses and you need something in the positive range to be able to pay that rent and someone decides that the Learning Experience with 150 facilities is the numbers cruncher to look at things and have an understanding as what we need to make it function. Steinhardt: Whether the tenant or whether it will be the franchisee at the center, there's training, working capital that's put aside, but I work with them to achieve the goal they need. Spialter: so this is a Franchise? Yes. *Discussion took place between Mr. Spialter, Mr. Fink and Board Members regarding the Franchise.* Spialter: as the Regional Manager do you scope out what your competition is? Yes. Spialter: have you conducted any scoping out of competition in connection with this facility? I have not personally but corporate has. Spialter: is it fair to say that you do not know the results of that other than the fact that you're here so they must be satisfied. Ms. Steinhardt: exactly, there is a need for child care in this area, all levels of child care and that's why we're here.

Kevin O'Brien: Are all employees who are in contact with the children licensed? No, they are finger printed and background check. <u>O'Brien</u>: Who runs the finger printing and background check? State of New Jersey, they have to have child abuse records and finger printing. *Licensing of employees was discussed.* <u>J. Tierney:</u> you have handicap and special needs children, you don't turn them away and you have people who can handle that? Exactly, and the bathrooms are set up for them.

Questions from the Public: Bob O'Flynn, 21 Garside Place. At some point there will be approximately 120 children at the school, in the event of a fire drill or emergency these kids will go into the parking lot? <u>Steinhardt</u>: We have a set area in the parking lot. <u>O'Flynn:</u> the same parking lot that the emergency vehicles will be entering. <u>Tom Kowalchek</u>, 27 Garside Place questioned locating 120 children in the parking lot. *A discussion took place between Mr. Spialter and Mr. Fink.* <u>Mr. Fink</u>: If you want details; that will have to come from the other professionals.

Next Witness: Matthew Jarmel, Licensed Architect in New Jersey. Mr. Jarmel stated that he is the Principal of the Architectural Engineer firm of Jarmel Kizel and when it comes to child care I designed upwards of 150 child care centers throughout the Country. When it comes to Learning Experience I had the pleasure of being the exclusive architect for about 90% of their facilities. I've actually developed five Learning Experiences in the State of New Jersey and currently own four. Spialter: you own them? I'm the Landlord. *Mr. Jarmel gave his credentials and Mr. Spialter stated that Mr. Jarmel can be recognized by the Board as an expert in architecture and architecture specializing in child care facilities. Mr. Jarmel gave a detailed explanation on licensing procedures, operating procedures and safety requirement for the building.* There is a tremendous amount of stringent requirements. With evacuation, the building is mandated by the law to have multi fire codes; they do fire drills on a regular basis. They work with the local fire dept. to discuss how to evacuate the building and where the children should go. If the emergency prevents the children from going back in, we have to have a contingency plan where their obligated to have a facility to take the children to. For an example in some locations they made arrangements for hotels and with busing companies. If they didn't have their own buses then they would make arrangements with a charter bus company and have the buses take them to a safe facility. The State doesn't let them operate unless they submitted those procedures and plans. Once the building is built the State comes back and inspects the building. *Mr. Spialter mentioned the written comments from the Clark Police and Fire Dept. Mr. Fink responded by stating they would reach out to the Fire and Police Dept.*

Richard O'Connor: The Police Dept. has not changed its opinion. They still have concerns and brought their memo in place. Our Fire Chief was supposed to be here tonight but is sick today. Our Fire Chief is a full time fire chief who is available through town hall, who's present for CCO Inspections and other things for the building department so I don't know what circumstances is making him unreachable. But in this particular instance this week was the League of Municipalities Convention and he was out sick today. <u>Jarmel</u>: we will reach out and

try to schedule a meeting and report back to you. O'Connor: perhaps the Chair should request through Janet a formal written request go out to the Police and Fire Departments for their attendance at meetings as part of this application and that they provide written responses as may be appropriate. Spialter: I'm looking at Lieutenant Pollock's letter dated September 8th and I'm going to read the third paragraph into the record. It says "I would like to know when the traffic study was conducted. I see the letter was dated July 22, 2015, if so; the conditions of the road way during the summer are much different than a work week with regular school traffic in full force. Spialter: has it been addressed to the police and have they responded. Jarmel: the answer is no but we will reach out to them. O'Connor: the Board also has its own traffic consultant in this matter that's pretty good at speaking for himself; he also has been present here and has been working with the applicant's engineer and at the appropriate time he will inject his concerns. While they may not be a perfect match for the police, there were similar concerns mentioned and discussed with the applicant and the applicant's traffic engineer and I don't know yet what the results of that were and we are looking forward to hearing from the traffic consultant and the applicant's traffic consultant.

Spialter: I would like to carry the 120-days to February 29, 2016. Fink: the applicant has agreed.

Jarmel: New Jersey is by far the State that they have the largest amount of child care centers in. *Mr. Jarmel discussed the provisions of franchising.* Part of Ms. Steinhardt's job is to visit the franchisees and make sure their operating properly by using the right curriculum, which their using all the procedures that the Learning Experience has perfected in doing that. One thing that I've see is that they're extremely strict with their franchisees if they don't follow procedures. They are monitored, they know how many children are in every building every day, and it's done on computer systems. Kaminsky: could you show us the area the children should be brought to? Jarmel: I will, but it's not decided upon without the input of your fire department. *Referring back to Exhibit A3.* My decision would be not to put them in the parking lot at all. I would put them in the back corners of the playground, there's a fenced area that is safe, that would be my personal preference. The playground has an egress but there are other options as well. Mr. Jarmel displayed a large color board that shows what Learning Express building would look like; this exhibit was marked as A4. Also Marked was A5, first and second floor plan of the proposed building. *Discussion on fencing of the site.* Jarmel: My client agreed that if it's the Board's privilege and desires to approve this application with the recommendation that we put a secondary fence outside of the playground fence that would be acceptable. *Mr. Jarmel discussed the procedure once the child enters the building.* Parking is in front of the building. Once the child enters the environment they stay in the environment and they don't leave until the parents come, pick them up and sign them out. If they go outdoors to the playground they still stay within that situated environment. The playground is divided into two areas based on the age group of the children. There are cameras throughout the building in every class, every stair, and every elevator, inside and out. There are circuit TV cameras and all classrooms have windows in them. There is also a pantry at this facility that provides warming of pre-prepared meals that are delivered. This building being a 2-story building is very similar to Roseland N. J. Children under 4 ½ on the first floor and the upper floor for older children. One student allowed per every 35 sq. ft. and a teacher ratio of one for 15. These are all mandated by the state and approved and looked at. This chart which I project and I project 175 and the staff at 22. As most staff comes in they move the children around, not everybody comes at once and by law they wouldn't be allowed to have more than the licensed capacity.

Questions from Board Members: Moricz: Just looking at the numbers, a staff of 22, that's 22 parking spaces, handicap spaces being utilized as two more, that leaves you 11 spaces for potentially 175 drop offs. From my standpoint I have three kids and when I drop them off; I see how crazy some of these parking lots are. I can't imagine that kind of number. Jarmel: I'm not the traffic expert; the traffic engineer will give you raw data. Spialter: How many of the applications that you worked on are site specific with a single tenant with the Learning Experience as compared with Rivervale where it shares the space with other commercial ventures and compared to Woodbridge where it shares space with residential upstairs? Jarmel: I would say that 95% of ours are stand facilities as proposed here. Spialter: out of the 95% of the stand alone, do you know what the parking requirements are? Yes, they range anywhere from 30 spaces on the low side to about 42-45 on the high side. Union has very low parking and functions very well. *Fire truck entering the site was discussed. Also several people from the audience asked questions regarding emergency evacuation, fencing and a question regarding the amount of time it takes to drop off a child into the facility.*

This application will be continued on December 7, 2015.

RESOLUTION

Calendar #5-15, Michael Simone, 5 Westfield Avenue. Attorney Spialter read onto the record Resolution 4-R-15. John Tierney brought a motion to accept the resolution as read. Motion was seconded by Ed Ruth. *Vote*: Ruth, Krok, J. Tierney, C. Tierney, Caliguire, Moricz and Kaminsky: *All Ayes.*

ADJOURNMENT

Ed Ruth brought a motion to adjourn. Motion was seconded by Douglas Krok and carried unanimously by voice vote.

Meeting adjourned at 11:04 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

Dec 7, 2015

Dated

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, DECEMBER 7, 2015

A public meeting of the Clark Board of Adjustment was called to order at 8:06 p.m. by Vice Chairman Edward Ruth. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings to the Star Ledger and Union County Local Source, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Douglas Krok, Chris Tierney, John Tierney, John Moricz, John Caliguire, William Helm and Ed Ruth

Members Absent: Thomas Meade and Steve Kaminsky

Also Present: Richard O'Connor; Township Engineer, Kevin O'Brien; Township Planner, Gordon Meth; Township Traffic Consultant, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the November 19, 2015 public meeting were reviewed. John Tierney brought a motion to accept the minutes. Motion was seconded by John Moricz and carried unanimously by voice vote.

NEW BUSINESS

Calendar #4-14, Iselin Realty, LLC, 1208 Central Avenue. James Turteltaub is the Attorney representing the Applicant from the law office of Carlin & Ward. Mr. Spialter stated that proof of mailings and publication are in order. Mr. Turteltaub: we are here this evening to discuss a settlement of a pending litigation we have right now between my client, Iselin Realty LLC and this Board regarding Site Plan approval for 1208 Central Avenue.

Mr. Daniel J. Dougherty, Licensed Commercial Engineer, Partner of Dynamic Engineering. Attorney Mel Herster came forward and stated that he represents 1180 Raritan Road LLC and stated that he does not object to this gentleman's qualifications. Mr. Dougherty marked as Exhibit A-1; a Site Plan rendering dated December 7, 2015. What we did was incorporated comments that were received at the time of the original application to make revisions to the site plan. The primary changes that occur are for traffic flow. The new plan utilizes the existing curb cuts and driveways both on Central Avenue and Raritan Road. We clarified the access at each of those driveways by adding stripped arrows. *Exit and entrance patterns were discussed in detail.* Parking is provided so that there are two parallel stalls now and improved the handicap stall located along the property line. The trash enclosure has been moved to the west corner of the site. The restrooms have been re-located to the Kiosk located in the southern filling island. The restroom will be ADA compliant and for employees only. *Discussion on location of tanks.* The pumps will contain extended hoses on all the pumps for the purposes of allowing each filling position to fill from either side of the vehicle, the hose will reach around so the attendant can fill the car from either side. The canopy will not have a lit facade; the only writing on the canopy will be shell logo symbol. There will be LED price points on the sign but will be white LED, not typical red and green colors. Deliveries on site will be restricted from the hours of 10 p.m. to 6 a.m. No retail sales on site will be permitted with the exception of auto items such as washer fluid, motor oil and anti-freeze. No display banners or temporary signs posted on the site at all. O'Brien: Conditions that were raised by the board that was a concern has been dealt with by the applicant which would include ADA Kiosk, parking spaces, tank location, trash enclosure, new directional arrows, stripped islands, traffic signage on site, canopy size and be limited only to the Shell logo, time of deliveries, illuminated led lights and the driveways are also as requested by the board. So based upon the Boards original list of recommendations, I would point out to the Board that those recommendations have been taken into this applicant's presentation. O'Connor: In general, the Court had ruled that the site was not abandoned and that the site was able to be used as a fueling station as of rights which basically left us with the existing gas station with the gasoline service station that the board had denied and was appealed by applicant or some hybrid that came through as a settlement. The applicant has worked with us through a number of settlement hearings, meetings and discussions and has adjusted the plan to the point where we believe it's a significant improvement to both the plan that the board had previously seen and voted upon and that it is a tremendous improvement over the existing; what had been the existing condition, at that site. The applicant has upgraded the lighting since the board had seen the original application through the use of LED's and pulling them up into the fixtures to eliminate any point sources and the applicant has essentially shifted the tanks towards the westerly side of the site which facilitates to open the site up for site circulation. So what the applicant has proposed as a settlement is in my opinion a significant improvement over what you've seen previously. *Mr. Hirster discussed settlement proceedings, egress and ingress driveways to the site, bathroom facility and parking.* Hirster: the old building is gone, subsequently you have to plan a gas station on a site that should be 40,000 sq. ft. and is far less than that, it's a postage stamp. Essentially you're trying to put ten pounds of trash in a five-pound bag and I suggest to you that the decision you make should be based upon the best deal that you could make for the town and the safest decision.

Mr. Turteltaub discussed the site plan; conditions/concerns of the Board. Turteltaub: This is a plan that really gives onsite circulation, an issue that this board was concerned about. I believe that this is a manifestation of what the Boards' desires were for a site plan for this site and my client; hopefully can live with it.

Douglas Krok brought a motion to approve Calendar #4-14. Motion was seconded by John Caliguire. *Vote: All Ayes*

RECESS

Chris Tierney brought a motion to take a 5-minute recess. Motion was seconded by John Caliguire and carried unanimously by voice vote.

ROLL CALL

Members Present: Douglas Krok, Chris Tierney, John Tierney, John Moricz, William Helm and Ed Ruth

Also Present: Board Member John Caliguire; in audience

Members Absent: Thomas Meade and Steve Kaminsky

Also Present: Richard O'Connor; Township Engineer, Kevin O'Brien; Township Planner, Gordon Meth; Township Traffic Consultant, Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

NEW BUSINESS CONTINUED

Calendar #6-15, V & R Developers, 1132 Westfield Avenue. Stanley Fink is the Attorney representing the Applicant.

Board Member John Caliguire stepped down for this application; he is within the 200 radius.

Spialter: A Certification from William Helm was received that he has reviewed the tapes due to his absence from this application.

Fink: This matter is for the child care center proposed on Westfield Avenue. What I would like to do tonight is to recall both Mr. Jarmel and Mr. Gesario since there have been some concerns along the way. Some members also questioned whether Police and Fire Dept. spoke with us, so we have to follow up on that also.

Mr. Gesario stated that he spoke with Fire Chief Cerasa and received an e-mail from him regarding his memo. We discussed the parking space in front of the building and he would prefer to leave that open but a handicap space would be accepted. I assured him that the building would be sprinkled with a fire alarm. I asked him if he needed access around the entire parking lot, he said no I do not, just get me into the site. But I did submit an exhibit that shows a 28' vehicle with access around the parking lot. We talked about the area where children should go in case of an emergency and he said that the rear of the parking lot would be fine as long as it's out of the way of emergency vehicles and personnel. We also talked about a fence to further separate the parking lot from Westfield Avenue to further secure the children. At the end of our conversation, as stated in his memo, he has no issues with fire safety in regards to the site. *Detention basin and parking was discussed.* O'Connor: He can put the detention underground in the parking area and that frees up the lawn and landscaped area for a use such as this. It would be far more preferable to both us and to his own client then to try to lose another five spaces off the site. *Size of firetruck was discussed.* Mr. Gesario: I don't need to get it around the parking lot. O'Connor: typically, the vehicle for the fire dept. is usually a 40' pumper. At the time of their site plan, if it became necessary; to run the fire vehicle around that site then that curb would go from being a vertical curb to a mountable curb to accommodate the fire dept. O'Brien: Can a 40' truck safely get into the site from Westfield Avenue? Gesario: yes.

Mr. Matthew Jarmel came back up to answer several questions from the board. Mr. Tom Kowalceyk, 27 Garside Place. Do you have an elevator in the building? Yes. If there's a fire in the building, the elevators shut down? Yes. How do you get the handicapped students down stairs? The facility is not licensed for handicap students, but a teacher, for instance who is not ambulatory can go to an area of refuge, a fire rated enclosure, until fire department arrives. Is that on the second floor? Yes. *Mr. Jarmel stated that he e-mailed Ms. Steinhardt regarding children being evacuated from the building in an emergency; she investigated and identified several local businesses within close proximity where they can go.* Beyond that, the high school is across the street, city hall, police department and library all within a short walking distance. There are ample opportunities to seek shelter in case of emergency. *Ages and number of children were discussed.* Fink: They have to meet all state requirements with safety and evacuations, they can bring in buses and take them out that way.

Mr. Charles Olivo, Licensed Professional Engineer in N.J. and Traffic Expert. I've worked on ten to twenty-day care projects similar to this one. We received comments about our traffic assessments that were done in July of last year but there were some concerns that school was not in session. We received comments from Lieutenant Pollock as well as the Township Engineer. After that another report was submitted October 13th and a supplemental analysis and submitted to the board on Friday of the past week. I met with Mr. Pollock last week at the site to discuss any issues. We did counts on November 12th so we did perform counts before and after the summer months. Referring to A-1, The site is located on Westfield Avenue and is under County jurisdiction. There is one lane in each direction across the street frontage. Our proposed driveway is approximately 235' back from stop bar location. On Cutler and Garside, you do have stop bars to prevent blocking, but generally that area during peak hours is kept clear but we do see some queuing that occurs in that east bound approach as you come from the site towards the intersection of

Raritan Road. Westfield Avenue speed limit is 25 mph and Raritan Road also a County road, two lanes in each direction and speed limit is 35 mph. Westfield Av has about 10,000-15,000 vehicles on a daily basis, certainly an important roadway. In addition to traffic counts, we also looked at the percentage of times that the driveway would be blocked with queuing during the morning and evening peak hours which are typically the times of day when a daycare facility may experience its peaks as well, we looked at whether or not the queuing extends back from Westfield, back to the proposed driveway location, it does for about 8% of the times in the morning and about 5% of the times in the evening. So the blocking of the driveway is minimal. I know the question has been raised 175 students, 20-22 staff members and 35 parking stalls. We conducted our own sample counts now at four locations. This is not a school, it does not act as a school and it doesn't generate traffic like a school. There are children that come here and learn but most of your schools have an arrival time and a dismissal time. About 100% of your traffic volume with trips in and out occurs within an hour period, both in the morning and in the evening. This particular day care does not operate in this fashion. What we found during the peak hours of this use, about 45% of the trips occur. What you have is over a 3 ½ to 4-hour period where you have 100% of in and out's. Our trip generation figures are 78 vehicles in the morning peak and 70 vehicles out in a single peak hour, 71 in evening and 80 vehicles going out. Generally, what we found is the peak hour occurs 8-9 am and 5-6 pm. approximate time for drop off was 5 ½ minutes and 8 minutes for pickup. We studied four of the sites from rooftop, Cedar Grove, Ramsey, Parsippany and Union all similar to size and height. During the peak time which was between 5-6 p.m. we observed 25 vehicles parked. Marked as A-3 is a site plan exhibit. Mr. Olivo continued to discuss onsite parking. The parking demand associated with the drop off pick up, comes in and leaves so it leaves empty stalls. You constantly have filling and emptying of the parking stalls on the site and that is truly what provides the parking capacity within a facility like this. In my opinion the parking that's being proposed is adequate to accommodate the demand. So in terms of traffic, circulation, on site, lacks of impacts, off site intersections and in my opinion there's more than adequate parking. The development of this site in this manner would not be expected to have a significant impact on the roadway or the area. Mr. Fink asked Mr. Olivo if he had any discussions with Mr. Lieutenant Pollock or Mr. Meth, Townships Traffic Consultant. Mr. Olivo stated that his discussion with Lieutenant Pollock was hopefully a right in with both regards, whether it was the comments that were raised about the turning movements at the driveway, we provided a supplemental analysis that go deeper into whether those movements could be accommodated by the subject driveway where it is located. We also provided information about queuing and blocking and things of that nature. Mr. Olivo discussed Mr. Meth's comments from his report. Mr. Spialter reviewed Mr. Meth's report and requested a trip generation plan which will be submitted before the next meeting. Signage during certain hours limiting traffic to right in and right out and only left in and left out, full movement at non peak hours was discussed. <u>Olivo</u>: I would recommend that this driveway be a full movement driveway based on what we saw. *Existing driveways were discussed.* Mr. Fink stated that he will look into it regarding moving the driveways. Mr. Meth discussed

intersections at Westfield Avenue and Old Raritan Road and also Westfield Avenue and Terminal Avenue. Lieutenant Mike Pollock. You are proposing a full movement driveway. I've been here 25 years on a daily basis and I see what happens. If that traffic backs up slightly toward the driveway, it doesn't have to go beyond it or pass it or kill it. I find it unsafe to make a left hand turn out of there. You have no line of site of anything coming around that corner. I totally disagree with making a left out of there. I know there's a gap, you're going to have conflicting left and right hand turns coming out of Garside, you could have some making a left and some coming out of Cutler making a left at the same time. The capacity is 170 but the building is 10,000 sq. ft. building based on it being possibly at full capacity. We have to look at all possibilities as if everything's in play from a police prospective, from a traffic standpoint. I have to look at the traffic pattern, the impact and full capacity. Any left hand turn movement across any roadway is the most dangerous maneuver you could make. ***Discussion continued on full movement pattern during peak hours.***

This meeting is being carried to the January 25th. Public Meeting

ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by Chris Tierney and carried unanimously by voice vote. Meeting adjourned at 11:07 p.m.

Taken and Transcribed by:

Janet Gentry

Janet Gentry-Secretary

Feb 22, 2016

Dated