



Planning, Zoning and Building Department

BOARD ACTION REPORT – APPEALABLE ITEM

Project Name: Space of Mind – Modern Schoolhouse
Project Location: 102 N. SWINTON AVENUE
Request: Similarity of Use
Board: Planning and Zoning Board
Meeting Date: May 15, 2017

Board Action:

Determined that the Space of Mind – A Modern Schoolhouse is similar to the use category of Educational and/or Instructional Activities, as listed in LDR Section 4.4.24 of the Old School Square Historic Arts District (OSSHAD) zoning district, and approved the request.

Project Description:

A Similarity of Use request was submitted for a business known as Space of Mind – A Modern Schoolhouse (Space of Mind) which located at 102 N. Swinton Avenue, within the OSSHAD Zoning District and the Old School Square Historic District. The request was to determine if the use was similar to an Educational and/or Instructional Activities as is listed in the OSSHAD zoning district. The owner of Space of Mind was looking to expand the use to a second location within the district.

LDR Section 4.3.2(C) requires an interpretation by the Director as to whether the use is allowable on the basis that it is **identical** to a listed use. If the request is not identical but has similar characteristics to allowable uses, the use may be established in a specific zoning district through action of the Planning and Zoning Board.

Delray Beach’s LDRs currently lists an Educational and/or Instructional Activities use as a permitted use within the OSSHAD zoning district. Specifically, **LDR Section 4.4.24(B)(6)** states the following regarding the use:

“Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions.”

Staff recommended denial of the Similarity of Use request, as the use as a tutoring facility was not similar to an Educational and/or Instructional Activities as outlined in the City of Delray Beach Land Development Regulations (LDR) and that the use was more similar to that of a Private Educational Facility or “school”. This was based upon the understanding that a majority of the children enrolled at Space of Mind attend the facility for a full day of instruction to meet the requirements of the State of Florida for education.

Staff recommended that the applicant prepare a privately-initiated application for a LDR Text Amendment to allow Private Educational Facility within the OSSHAD zoning district as a conditional use with reasonable restrictions addressing at a minimum outdoor area, minimum lot area loading, landscaping, parking, student capacity, concentration of similar age restricted uses (distance/separation) and compliance with health regulations and licensing.

Staff also noted the importance of meeting the purpose and intent of the OSSHAD district which is as follows:

(A) Purpose and Intent: The Old School Square Historic Arts District (OSSHAD) is a mixed use district which is intended to:

- (1) Provide for mixed uses of residential, office, and commercial activities, with an emphasis on the arts, that will encourage the restoration or preservation of historic structures and, yet, maintain and enhance the historic and pedestrian scale of the area;
- (2) Stimulate greater awareness and pride in the City's architectural heritage, and create an atmosphere and feeling of "Old Delray Beach";
- (3) Improve the environmental quality and overall livability of this Historic District and stabilize and improve property value therein, and;
- (4) Allow uses which promote preservation and adaptive reuse of all structures within the District.

Board Comments:

The Board felt the Space of Mind use was similar to the Educational and/or Instructional Activity use as listed in the OSSHAD zoning district and approved the request for a similarity of use. The Board understood staff's concerns with the LDRs and noted that the code may need to be amended to better address the use of Educational Facilities as well as the definition of such.

Public Comments:

Many members of the public spoke in support of the applicant's request.

Associated Actions: All required actions were taken.

Next Action: P&Z action is final.

**PLANNING AND ZONING BOARD MEMORANDUM
STAFF REPORT**

Meeting Date: May 15, 2016

Request: Similarity of Use Determination for an Educational Facility

Applicant: Rebecca C. Zissel
Michael S. Weiner & Associates, P.A.

Location: Applies to Old School Square Historic Arts District (OSSHAD)

Recommendation: Denial of Similarity of Use request

ITEM BEFORE THE BOARD

The item before the Board is a request for a determination of similarity of use, pursuant to Land Development Regulation (LDR) Section 4.3.2(C)(2). The request is to determine that the Space of Mind – Modern Schoolhouse is similar to that of Educational and/or Instructional activities as listed in LDR Section 4.4.24 of the OSSHAD zoning district.

BACKGROUND

An Administrative Similarity of Use request was submitted for an Educational and/or Instructional activity business known as Space of Mind – A Modern Schoolhouse (Space of Mind) located at 102 N. Swinton Avenue. The location is within the (OSSHAD) zoning and historic districts.

The correspondence (Exhibits C & D) requesting the administrative similarity of use determination provides the Applicant's justification for the determination. LDR Section 4.3.2(C) requires an interpretation by the Director as to whether the use is allowable on the basis that it is identical to a listed use. If the request is not identical but has similar characteristics to allowable uses, the use may be established in a specific zoning district through action of the Planning and Zoning Board.

Delray Beach's LDRs currently lists an Educational and/or Instructional activities use as a principal, accessory or conditional use within the OSSHAD zoning district. Specifically, **LDR Section 4.4.24(B)(6)** states the following regarding the use:

Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions.

In December of 2016, Ms. Ali Kaufman, owner of Space of Mind met with City staff regarding a proposed use within the OSSHAD. Ms. Kaufman explained the proposed use as a tutoring facility for elementary school aged children who are registered with

May 15, 2017

Planning and Zoning Board Memorandum Staff Report

Determination of Similarity of Use: Private Educational Facility in Old School Square Historic Arts District

The School District of Palm Beach County (District) under a homeschool designation. She noted that she was operating a similar use for middle school and high school aged children at 102 N. Swinton Avenue. Ms. Kaufman indicated that the Space of Mind facility located at 102 N. Swinton Avenue provides tutoring classes that includes but is not limited to: math, science and language arts, art, music, gardening, computers, yoga, and cooking.

Staff advised Ms. Kaufman that the Space of Mind use was more than a tutoring facility as it is more comparable to a school and advised her to submit either a request for a Determination of Similarity of Use for review by the Planning & Zoning Board or an application for a Land Development Regulations text amendment to permit the subject use within the OSSHAD.

On January 6, 2017, staff received a letter (Exhibit A) from Michael S. Weiner, Esq. on behalf of his client, Space of Mind, noting that the use located at 102 N. Swinton Avenue was an “educational and activity center” and should be allowed within the OSSHAD zoning district. Mr. Weiner wrote the following regarding the use:

“According to Section 4.4.24(B)(6) of the Delray Beach Land Development Regulations, one principal use that is allowed within OSSHAD as a permitted use is ‘Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums and social and philanthropic institutions.’ Space of Mind is just such a use and is therefore permitted to operate in OSSHAD without any additional approval required. The use is appropriate for the zoning district, unlike a conditional use which requires a public hearing by the Planning and Zoning Board and a final decision by the City Commission.”

Staff responded to Mr. Weiner’s letter in writing on January 13, 2017 (Exhibit B) indicating that his client was advised to submit an application for a Similarity of Use and/or an application for a Land Development Regulations text amendment to permit the subject use within the OSSHAD. Staff also advised Mr. Weiner that Ms. Kaufman would need to update her records in the City of Delray Beach Business Tax Receipt Division (the business is currently listed as “Merchants – Retail”).

On February 23, 2017, Rebecca Zissel, Esq. on behalf of Space of Mind requested an Interpretation by Director for a Similarity of Use pursuant to LDR Section 1.4.1(C) (Exhibit C). Then, on March 10, 2017, the Applicant revised the request for the determination of a similarity of use requesting it be scheduled for consideration by the Planning and Zoning Board. The letter also provides supplemental information regarding the similarity of use (Exhibit D). Ms. Ali Kaufman provided additional narrative and background regarding the use and is attached as Exhibit E.

The following sections provide an analysis of the similarity of use and recommendation for the request.

SIMILARITY OF USE ANALYSIS

Pursuant to LDR Section 2.4.5(N)(5), prior to approving a determination of similarity of use request, the Planning and Zoning Board must find that the requested use is indeed similar to a use allowed in the referenced zoning districts and as defined by the LDRs. The specific request is for a Board determination that the Space of Mind is an educational facility rather than a Public or Private Educational Facility and is similar in use to the Educational and/or instructional activities permitted within the OSSHAD zoning district.

Ms. Kaufman has indicated that her business model is to provide students with educational instruction similar to a tutoring facility with the ultimate goal of the student being able to meet the requirements for a portfolio and ultimately having enough credits to obtain a high school degree from the District. Ms. Kaufman stated that there are 25 children enrolled in the Space of Mind located at 102 N. Swinton Avenue with about 75% of these children enrolled full-time (8am to 5pm). She said that it is her goal to create a second facility also located in the district for younger aged children.

Educational Facilities are permitted in other zoning districts and include instructional and training activities such as vocational schools. These types of uses are more commercial in nature and requirements for parking, landscaping, lot size, are generally addressed through the LDRs.

Schools are listed as either Public or Private educational facilities in other zoning districts within the LDRs and are either permitted uses or conditional uses. Both public and private educational facilities are limited by Special Requirements for Specific Uses as listed in 4.3.3 (HH) and (HHH), respectively. Such requirements include but are not limited to: minimum Lot Area, Outdoor Area, Loading, Landscaping, Parking and Student Capacity. The LDRs also state that such uses are further required to comply with the American Disability Act (ADA), Standard Building Codes, Fire Codes and other regulations including State and County regulations.

As previously discussed, LDR Section 4.4.24(B)(6) states the following is a permitted principal use within the OSSHAD:

“Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions.”

There are three (3) different types of educational facilities listed in several zoning districts as permitted uses, conditional uses and accessory uses which include the following:

1. Public Educational Facilities of The School District of Palm Beach County;
2. Private Educational Facilities; and,
3. Educational Facilities.

OSSHAD is the only zoning district which allows “*Educational and/or Instructional activities*” as it is defined as a permitted use. The Planned Commerce Center (PCC) zoning district allows *Educational Facilities e.g. vocational schools, commercial schools (sales, real estate, personal development, etc.)* as a permitted use.

An analysis has been completed reviewing the use of Educational Facilities pursuant to each zoning district as established by Article 4.1 and outlined in Sections 4.4.1 through 4.4.29 of the LDRs. The following table summarizes three uses relating to Educational Facilities or *Schools* and whether these uses are identified as Permitted, Conditional or Accessory uses by each zoning district:

Zoning District	Public Educational Facilities of The School District of Palm Beach County	Private Educational Facilities	Educational Facilities; Training Centers; and/or, Vocational Schools
RESIDENTIAL ZONING DISTRICTS			
Agricultural (A)	Permitted	Not Permitted	Not Permitted
Rural Residential (RR)	Permitted	Not Permitted	Not Permitted
Single-Family Residential (R-1)	Permitted	Conditional	Not Permitted
Low Density Residential (RL)	Permitted	Conditional	Not Permitted
Medium Density Residential (RM)	Permitted	Conditional	Not Permitted
Planned Residential District (PRD)	Permitted	Conditional	Not Permitted
COMMERCIAL ZONING DISTRICTS			
Planned Commercial (PC)	Not Permitted	Conditional	Not Permitted
Planned Office Center (POC)	Not Permitted	Not Permitted	Not Permitted
Professional and Office District (POD)	Not Permitted	Not Permitted	Conditional
Planned Commerce Center (PCC)	Not Permitted	Not Permitted	Permitted
Mixed Industrial and Commercial (MIC)	Not Permitted	Not Permitted	Permitted ¹
Community Facilities (CF)	Permitted	Conditional	Conditional
Old School Square Historic Arts District (OSSHAD)	Not Permitted	Not Permitted	Permitted
Open Space and Recreation (OSR)	Not Permitted	Not Permitted	Accessory ²
Mixed Residential, Office and Commercial (MROC)	Not Permitted	Not Permitted	Conditional
MH, GC, AC, NC, CBD, RT, OS, RO, I, OS, CD, LI, CBD-RC	Not Permitted	Not Permitted	Not Permitted

¹Within the MIC zoning district the use is listed as “*Business and Professional Offices – correspondence and vocational school*”

²Within the OSR zoning district the use is listed as “*Educational facilities*” and is permitted as an accessory use when a part of, or accessory to, the principal use such as parks, golf courses, and public recreational facilities

Appendix “A” (Definitions) of the Land Development Regulations does not define educational facilities nor schools and there is not a related definition.

Pursuant to Florida State Statute 1003.21 (School attendance), all children who are 6 years of age are required to attend school regularly. Additionally, school aged children are allowed Educational Choices including: public school, private school, home education and/or private tutoring.

A child not attending public school must receive credit to meet the educational requirements of the State and the County either through private school, home education or private tutoring, which are defined by Florida Statutes as:

A “home education program” means the sequentially progressive instruction of a student directed by his or her parent in order to satisfy the attendance requirements of the State.

A “private school” is a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of [Florida Statutes] or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with [Florida Statutes].

A private tutoring program is not defined by statute, but the following is noted in Florida Statute 1002.43 – *Private tutoring programs*:

- (1) Regular school attendance as defined in [Florida Statutes] may be achieved by attendance in a private tutoring program if the person tutoring the student meets the following requirements:*
 - (a) Holds a valid Florida certificate to teach the subjects or grades in which instruction is given.*
 - (b) Keeps all records and makes all reports required by the state and district school board and makes regular reports on the attendance of students in accordance with the provisions of [Florida Statutes].*
 - (c) Requires students to be in actual attendance for the minimum length of time prescribed by [Florida Statutes].*
- (2) Private tutors shall keep and prepare records in accordance with the provisions of [Florida Statutes].*

Based on the information above, staff's opinion is that her use as a tutoring facility is similar to a school as children attend the facility for instruction to meet the requirements of the State of Florida. Whether or not the children are part of a home school program or a tutoring program is not material to the request. The facility operates like a school and in this case similar to a private school. Generally, the impacts of a tutoring facility such as Space of Mind are similar to the impacts of a private schools and as such needs to meet the requirements of the Land Development Regulations for private schools

Due to this interpretation, staff recommends that the applicant prepare a privately-initiated application for a LDR Text Amendment to allow Private Educational Facility within the OSSHAD zoning district as a conditional use with reasonable restrictions. The restrictions may address at a minimum outdoor area, minimum lot area loading, landscaping, parking, student capacity, concentration of similar age restricted uses (distance/separation) and compliance with health regulations and licensing. Additionally, it is important that such use meets the Purpose and Intent of the OSSHAD zoning district, which is as follows:

*(A) **Purpose and Intent:** The Old School Square Historic Arts District (OSSHAD) is a mixed use district which is intended to:*

- (1) Provide for mixed uses of residential, office, and commercial activities, with an emphasis on the arts, that will encourage the restoration or preservation of historic structures and, yet, maintain and enhance the historic and pedestrian scale of the area; **[Amd. Ord. 13-93 2/23/93]***
- (2) Stimulate greater awareness and pride in the City's architectural heritage, and create an atmosphere and feeling of "Old Delray Beach";*
- (3) Improve the environmental quality and overall livability of this Historic District and stabilize and improve property value therein, and;*
- (4) Allow uses which promote preservation and adaptive reuse of all structures within the District.*

For example, a Private Educational Facility use could be required to be associated with an historic structure and be residential in design, scale and character. This would ensure the protection of historic resources and structural inventory. OSSHAD currently poses this requirement upon residential-type inns.

May 15, 2017

Planning and Zoning Board Memorandum Staff Report

Determination of Similarity of Use: Private Educational Facility in Old School Square Historic Arts District

ALTERNATIVE ACTIONS

- A. Determine that the Space of Mind – A Modern Schoolhouse is similar to the use category of Educational and/or Instructional activities, as listed in LDR Section 4.4.24 of the OSSHAD zoning district, and approve the request.
- B. Determine that a similarity of use is not appropriate, but the use is recommended for inclusion in the Land Development Regulations within the OSSHAD zoning district through a formal text amendment.
- C. Determine that the Space of Mind – A Modern Schoolhouse is not similar to the use category of Educational and/or Instructional activities, as listed in LDR Section 4.4.24 of the OSSHAD zoning district, and deny the request.

RECOMMENDED ACTION

By motion, Determine that a similarity of use is not appropriate, but the use is recommended for inclusion in the Land Development Regulations within the OSSHAD zoning district through a formal text amendment.

Report Prepared by: Michelle Hoyland, Historic Preservation Planner

Attachments:

- Exhibit A – January 6, 2017, Administrative Similarity of Use request from M. Weiner
- Exhibit B – January 13, 2017, City of Delray Beach response letter to M. Weiner
- Exhibit C – February 23, 2017, Similarity of Use request letter from R. Zissel
- Exhibit D – March 10, 2017, Similarity of Use supplemental letter from R. Zissel
- Exhibit E – April 18, 2017, Correspondence regarding Space of Mind use from A. Kaufman

EXHIBIT A

LAW OFFICES

WEINER & THOMPSON, P.A.

MICHAEL S. WEINER
LAURIE A. THOMPSON
BRETT J. HOROWITZ
REBECCA C. ZISSEL
KERRY D. SAFIER

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January 6, 2017

Via: Hand Delivery and Email

Mr. Tim Stillings
Director, Planning and Zoning
City of Delray Beach
100 NW 1ST Ave.
Delray Beach, FL 33444

Re: Space of Mind, 102 N. Swinton Ave.
Our File No.: DELN093



Dear Tim,

I am writing on behalf of my client, Space of Mind ("Client" or "Space of Mind"), an educational and instructional activity center located at 102 N. Swinton Ave, Delray Beach, FL, 33444. Based on a recent conversation between my Client and Michelle Hoyland and Scott Pape at the City of Delray Beach, it appears that the City might be under the false impression that Space of Mind is a "school" as defined in the Land Development Regulations of Delray Beach, Florida ("LDR").

Space of Mind is located in the historic Clarke House on North Swinton Avenue, which is in the Old School Square Historic Arts District ("OSSHAD"). Space of Mind is an educational and instruction activity center. Space of Mind Founder, Ms. Ali Kaufman, and her staff provide education and instruction in a variety of areas, including math coaching, reading coaching, life coaching, visual and culinary arts, music, yoga, fitness, gardening, robotics, and sewing.

Space of Mind is not a school. It receives no state or federal funding. It needs no accreditation. It is not supervised by any school district, and its participants are not eligible for state scholarship programs. Any participant at Space of Mind who is not enrolled in a public or private school is registered with the school district for home education. Space of Mind's participants engage in educational and/or instructional activities at Space of Mind for varying amounts of time, sometimes as little as one hour per week.

According to Section 4.4.24(B)(6) of the Delray Beach Land Development Regulations, one principal use that is allowed within OSSHAD as a permitted use is "Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions." Space of Mind is just such a use and is therefore permitted to operate in OSSHAD without any additional approval required. The use is appropriate for the zoning district, unlike a conditional use which requires a public hearing by the Planning and Zoning Board and a final decision by the City Commission.

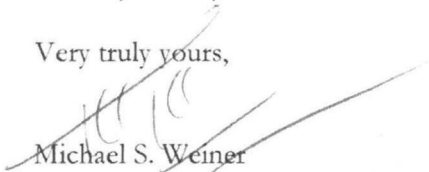
Mr. Tim Stillings
January 6, 2017
Page 2

Space of Mind is not required to locate within a Community Facilities ("CF") District in order to operate. Section 4.4.21 of the Delray Beach Land Development Regulations describes "CF" Districts as allowing Public educational facilities of The School District of Palm Beach County and religious educational facilities. As described above, Space of Mind is not a school and is properly located in OSSHAD. Classifying Space of Mind as a "school" for LDR purposes would render Section 4.4.24(B)(6) of the LDR completely meaningless and would ignore the separate category that exists for places like Space of Mind that provide educational and instructional activities.

Given the fact that Space of Mind is operating a permitted use for the zoning district, we ask that you recognize that no additional approval is necessary for Space of Mind to continue operating at the site where it has been located since April 2011.

Thank you for your time.

Very truly yours,



Michael S. Weiner
MSW:rz

EXHIBIT B

CITY OF DELRAY BEACH



100 N.W. 1st AVENUE

• DELRAY BEACH, FLORIDA 33444

• 561/243-7000

January 13, 2017

Mr. Michael S. Weiner, Esq.
Weiner & Thompson, P.A.
10 SE 1st Avenue, Suite C
Delray Beach, FL 33444
MWeiner@zonelaw.com

RE: Space of Mind – 102 N. Swinton Avenue

Dear Mr. Weiner:

I received your correspondence dated, January 6, 2017, regarding the Space of Mind Schoolhouse. Recently, Ms. Ali Kaufman, business owner of the Space of Mind Schoolhouse, met with City staff to review the potential to open a tutoring facility for elementary, school-aged children enrolled in the Home Education Program with the School District of Palm Beach County. Ms. Kaufman indicated that the proposed location of 275 N. Swinton Avenue would be the site for an expansion of the existing location at 102 N. Swinton Avenue. Both locations are within the Old School Square Historic Arts District (OSSHAD).

Ms. Kaufman explained that the existing location serves approximately 24 home education students and that students attend the school for a class or two with as many as 17 enrolled for a full day of classes (8am to 3:30pm and later if enrolled in the after school program).

Staff reviewed the existing use and determined that it is more than a tutoring facility and is more comparable to a school; thus, it does not comply with the Principal Uses and Structures outlined in LDR 4.4.24(B), the OSSHAD zoning district of the Land Development Regulations .

We advised Ms. Kaufman to submit an application for a Similarity of Use and/or an application for a Land Development Regulations text amendment to permit the subject use within OSSHAD. If approved, Ms. Kaufman would also need to update her records in our Business Tax Receipt Division.

Please let me know if you have any further questions. If you would like to discuss this further, please contact the Planning Department to schedule a meeting.

Regards,



Timothy Stillings, AICP
Planning, Zoning and Building Director

EXHIBIT C
LAW OFFICES
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February 23, 2017

Via: Hand Delivery and Email

Mr. Tim Stillings
Director, Planning and Zoning
City of Delray Beach
100 NW 1st Ave.
Delray Beach, FL 33444

Re: Administrative Similarity of Use Determination
Space of Mind, 102 N. Swinton Ave.
Our File No.: DELN093

Dear Tim,

I am writing on behalf of our client, Space of Mind ("Client" or "Space of Mind") in response to your letter dated January 13, 2017, a copy of which is attached as Exhibit A, and subsequent conversations between my client and Michelle Hoyland at the City of Delray Beach ("City").

This letter is intended to serve as a written request for a similarity of use determination pursuant to the Delray Beach Land Development Regulations ("LDR") Section 4.3.2(C). Although Space of Mind does not fit precisely into any of the permitted uses within its zoning district, it sufficiently similar to a permitted use in that district to allow for the granting of a similarity of use, the option suggested by your letter.

LDR Section 4.4.24 details the uses allowed within the Old School Square Historic Arts District ("OSSHAD"), the district in which Space of Mind is located. Section 4.4.24(B)(6) describes the following permitted use: "Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions." For clarity, I will refer to this permitted use as an "educational activity center."

Space of Mind may not precisely fit the definition of an educational activity center, but Space of Mind's use of the property is close enough to the permitted use of educational activity center to allow for a Similarity of Use determination. A similarity of use is authorized pursuant to LDR Section 1.4.1(C), which incorporates LDR Section 4.3.2(C)(1):

Interpretation by Director: In situations where a specific use is not listed in examples provided under a type, the Director may determine that a specific use is allowable on the basis that it is identical to uses listed in the examples. The Director shall maintain a list of such determinations.



Space of Mind provides educational and instructional activities in the visual arts, personal development, reading, math, culinary arts, robotics, music, yoga, fitness, sewing, gardening, and other areas. Similarly, an educational activity center provides, among other things, training, vocational activities, craft training, arts activities, and personal development activities.

While an educational activity center may not be precisely the same in every way to Space of Mind, nothing in the LDR's establishes any meaningful distinction between the two that would support unequal regulation. Both facilities provide the same types of instruction and activities to the same population. Based on these similarities, Space of Mind's use is identical to, and intended to fall within the same use category of educational activity center as that use is described within the LDR's. Space of Mind must be allowed as of right just like an educational activity center is allowed.

Space of Mind is an integral part of its neighborhood and has not presented a problem to neighbors or other Delray Beach residents. Our client wishes to resolve this matter so that they can properly plan for the future.

Accordingly, we respectfully request an expedited response to our letter so that Space of Mind can continue using the property and serving its participants and the greater Delray Beach Community. Should you have any specific questions relating to the nature of the use, please do not hesitate to ask. I thank you for your time and prompt response to this letter.

Very truly yours,



Rebecca C. Zissel

Attachments

Cc: Mr. Mark McDonnell, Assistant Director of Planning and Zoning
R. Max Lohman, Esq., City Attorney
Michael Weiner, Esq.

EXHIBIT D

LAW OFFICES

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REBECCA C. ZISSEL
KERRY SAFTER

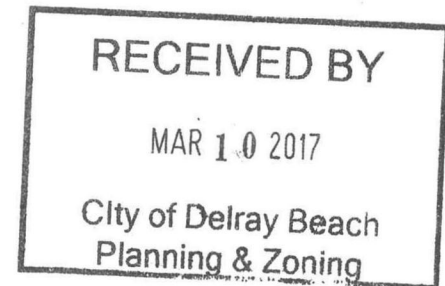
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March 10, 2017

Via: Hand Delivery and Email

Mr. Tim Stillings
Director, Planning and Zoning
City of Delray Beach
100 NW 1st Ave.
Delray Beach, FL 33444



Re: Similarity of Use Determination
Space of Mind, 102 N. Swinton Ave.
Our File No.: DELN093

Dear Tim,

I am writing on behalf of our client, Space of Mind ("Client" or "Space of Mind") in reference to the request for a Similarity of Use Determination originally submitted on February 23, 2017.

After speaking with Ms. Michelle Hoyland at the City of Delray Beach ("City"), we wish to supplement our request. Space of Mind would like to request a Similarity of Use determination by the Planning and Zoning Board pursuant to the Delray Beach Land Development Regulations ("LDR") Section 2.4.5(N).

LDR Section 4.4.24 details the uses allowed within the Old School Square Historic Arts District ("OSSHAD"), the district in which Space of Mind is located. Section 4.4.24(B)(6) describes the following permitted use: "Educational and/or Instructional activities including training, vocational, or craft schools, the arts, personal development, and libraries, museums, and social and philanthropic institutions." For clarity, I will refer to this permitted use as an "educational activity center."

Space of Mind's use of the property, as further detailed and identified herein, is similar to the educational activity center permitted use that is already allowed in the identified zoning district. Space of Mind provides educational and instructional activities in the visual arts, personal development, reading, math, culinary arts, robotics, music, yoga, fitness, sewing, gardening, and other areas. Similarly, an educational activity center provides, among other things, training, vocational activities, craft training, arts activities, and personal development activities. Therefore, OSSHAD zoning is appropriate for this use.

Both an educational activity center and the Space of Mind use provide the same types of instruction and activities to the same population. Nothing in the LDR's establishes any

Mr. Tim Stillings
March 10, 2017
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meaningful distinction between the two that would support unequal regulation. Accordingly, we request a determination by the Planning and Zoning Board that Space of Mind is similar to an educational activity center.

Space of Mind is an integral part of its neighborhood and has not presented a problem to neighbors or other Delray Beach residents. Our client wishes to resolve this matter so that they can properly plan for the future and continue serving their participants and the greater Delray Beach Community.

Accordingly, we respectfully request that this item be placed on the next available agenda of the Planning and Zoning Board.

Very truly yours,


Rebecca C. Zissel

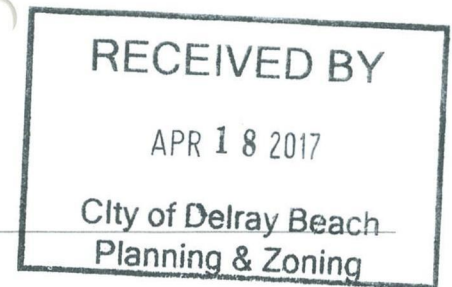
Cc: Mr. Mark McDonnell, Assistant Director of Planning and Zoning
R. Max Lohman, Esq., City Attorney
Michael Weiner, Esq.



EXHIBIT E

SPACE OF MIND

A MODERN SCHOOLHOUSE



All the reasons Old School Square Historic Arts District needs Space of Mind!

Space of Mind is an innovative provider of educational and instructional activities. As a community studio for learning, creativity and life skills, we offer programs for children, parents, professionals and families that make learning fun and less stressful. Currently, we occupy Delray's oldest home, The Clarke House, circa 1896, at 102 N. Swinton. We are so blessed to be the caretakers of this building, and have energized it with color, vibrancy and a lot of love! Your decision is very crucial to the timing of our fall enrollment cycle, as we are hoping to continue growing - and innovating - from this very beloved corner of Delray's past, present and future.

Got questions about how this all works? Here are some answers.

What are Space of Mind's programs?

We offer a variety of programs, including a full and part-time social homeschool program, an afterschool program, evening classes and workshops, special events and even some travel and retreats. Here's a breakdown of each:

The Schoolhouse is a unique alternative to a traditional school, whose mission is to reduce stress for children and parents. Although we are not a school, we use the Florida and Palm Beach County district's home education laws and guidelines as well as the Florida Sunshine State Standards as a reference in writing our project-based curriculum. Our children do not take state standardized testing. Unlike traditional schools, we assess our children's age and grade level skills in each subject matter at the beginning and end of each year. We then individualize the learning to optimize a child's attention span, skill level and interests.

The Afterschoolhouse is an afterschool program for children that offers private tutoring, group homework study halls and various classes, including academics, creative arts, gardening, cooking, music, dance, fitness and yoga.

The Community Studio is an evening (and soon-to-be weekend) program that offers coaching groups, classes, workshops and special events to adults.

Special Events are offered throughout the year, including art shows, holiday fun, retreats and even some travel.

What are the hours?

The building currently operates between 8am-8pm Mondays-Fridays with some weekend activities, including our children-run business' participation as a vendor each Saturday at the Delray Beach Green Market.

The Schoolhouse 8:45am-3:15, M-F (for full-time participants; part-time participants set a customized schedule)

The Afterschoolhouse 3:30-5pm, M-F

The Community Studio 6:30-8pm, certain days of the week (will expand to more days in the next year)

Special Events (customized hours)

How does drop-off work? Parents enter the lot on 1st St. across from the Dada valet and exit onto Swinton, across from the Delray Beach Historical Society. It is very smooth and always monitored by a staff member.

How do we handle parking?

There are 11 parking spots (including one handicapped) for the participants, staff and visitors who need it at the current building. We direct overflow parking when needed to the Old School Square garage and the public lot behind Dunkin' Donuts.

www.myspaceofmind.com

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What do we teach?

Our full-time participants come to us for a full day of classes in academic subjects as well as creative and life skills classes. Our part-time children pick and choose. Our afterschool and community studio offerings include subject-specific academic tutoring, general homework help and creative offerings like rock band, visual arts, cooking, gardening, yoga and the like.

How many group participants do we serve at a time?

The current space supports 25 participants at a time (regardless of the activity or participant age), and we generally provide a 3:1 ratio of participants to staff.

How do we handle recreation time? Where do we go?

It's important that the children get lots of recreation to stay focused and on their game. We have a treadmill desk, yoga studio, punching bag, tree swing, basketball net and picnic bench on our property, and we take advantage of our proximity to Old School Square's lawn, the Swinton Community Garden, the Delray Beach Tennis Center, the Delray Beach Community Center, Pompey Park and even Veteran's Park and the beach! We have bikes and also use the Delray Downtowner if we aren't headed out on foot.

Should we be required to meet the open space, parking requirements, etc. that a traditional school would meet?

No, we don't think so. There's nothing traditional about us, and in addition, we are not a school. Everything we do is rooted in collaboration - with the children, the educators, the parents, and most notably in this case, THE COMMUNITY. We are all over Delray - the Green Market, Old School Square, the Delray Beach Historical Society, The Delray Beach Chamber of Commerce, the Delray Beach Public Library and even the local coffee shops when the children earn a study hall there! We love getting out of the building and making Delray our extended classroom. We also always take all safety precautions when it comes to recreation on our property and elsewhere. Additionally, because Space of Mind is more than just the Schoolhouse program, the space is designed to be convertible and the programs are meant for participants of all ages and in various formats. We aren't just one thing. Plus, we have tons of parking already and have never had an issue accommodating our needs.

What does it mean for Delray Beach to have Space of Mind call it home?

Space of Mind is at the forefront of a national movement to redefine learning. Quietly for the last seven years, we have been perfecting our model, expanding our staff, documenting our programs and methodologies and readying for national growth. We have just launched our first funding campaign seeking investors to help us go to that next level. However, before we grow into new cities, we want to make our Delray flagship location beyond amazing. The addition of the partnerships we have with the Delray Beach Historical Society, the Delray Beach Chamber of Commerce and Old School Square will put us on the regional map. Our new immersive creative arts program will also help to further merge us with Delray Beach's art scene and SOM will become the South County option for children interested in the creative arts. Through this partnership with Old School Square, our participants will spearhead the creation of a Delray Beach Youth Arts Council, with the mission to celebrate Delray's creativity amongst their peers on social media and through events around town. We will also be adding our art gallery to the First Friday Art Walk through the DDA. Our entrepreneurship program is also a win for Delray! Our participants have successfully run their own business at the Green Market for the last two years, mentor with some of Delray's most successful CEOs and have taken on internships and paid positions with local companies. We will be expanding this field next year with the addition of the fashion incubator. We are less than two years away from growing to new cities, but Delray will always be our home! More specifically, OUR MAGICAL CORNER IN THE OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT WILL ALWAYS BE OUR HOME.

While we absolutely respect that codes are written as they are, it seems fitting to make an allowance for our use, as we are, by definition, outside of the box. Not only are we not the same as a traditional school, but we are very similar to the use allowed in our district already for educational and instructional activities. It is also guaranteed that you will not find tenants on this block

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who will love, value and utilize the resources around us as we do. Space of Mind has worked hard in the last seven years to be excellent neighbors and caring citizens in our town. As this is also a very timely issue, we appreciate your expedited response.

All the best,

Ali Kaufman
Founder & CEO

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