

**Mount Olive Planning Board
Summary Minutes
December 15, 2022**

Meeting began: 7 pm

In accordance with Township Ordinance # 26-09 the Mount Olive Planning Board is authorized pursuant to N.J.S.A. 40:55D-25(c)(2) to hear all variance applications including the six variance categories set forth in N.J.S.A. 40:55D-70d.

ATTENDANCE: Board members and professionals

Mr. Weiss, Ms. Natafalusy, Mr. Schaechter, Mr. Scapicchio, Ms. Mott, Mr. Galop, Mr. Batsch
Chuck McGroarty, PP/AICP
Mike Vreeland P.E., P.P., C.M.E.
James Bryce, Esq.

RESOLUTIONS

PB 21-21(1) Hunkele Equities, LLC – approved to modify Condition D

PB 22-17 Kerusso Development – approved to rebuild dwelling on substandard lot

The following Resolutions were all approved to dismiss without prejudice for applicants who elected not to proceed:

- PB 22-24 Arnesen, James
- PB 22-05 Majeed, Tariq (Khan Market)
- PB 22-15 Mount Olive Commerce Center, LLC
- PB 22-19 Speicher, Michael
- PB 22-02 Wang, Leonardo

APPLICATIONS

PB 22-14 Garden State Groundskeeping, Inc.

Application is carried to February 9 public hearing

PB 22-16 NJRD Invest LLC

325 & 327 Rt. 46 / Block 7702, Lots 21 & 22

Nature of application: Preliminary & Final Site Plan with d-1 variance for retail use

Names of applicant, attorney, professionals, other witnesses: Michael Selvaggi, Esq., Scott Johnston, applicant (other experts present, not called)

Mr. Selvaggi provided a brief overview of the application including need for d-1 variance for shared driveway on Lot 22. He then called Mr. Scott Johnston, owner and CEO of NJRD Invest LLC as his first witness to address the question as described by Mr. Bryce, whether this application should be classified as “adult entertainment” per § 550-80 of the Township’s Land Use Ordinance. Mr. Johnston testified that NJRD Invest LLC would lease the store to Romantic Depot, also under his ownership. He explained that he intends to sell women’s clothing, specifically lingerie and also shoes, dance wear, games, novelties, lotions, perfumes, and candles. The witness stated he would not sell or have available

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videos, CDs, magazines or the like at this location. His intended hours of operation would be 10 am to midnight, seven days a week. Two, possibly, three employees are anticipated.

When asked, he indicated agreement with an age restriction of 18 years of age/older for store access. He further testified that no more than five or six customers at any given time would shop at store including couples. The witness agreed to clean up rear of property as called for in Mr. McGroarty's report and stated he had no current plans for vacant, concrete one-story building but would prefer to keep it for potential future use. Mr. McGroarty noted it is a preexisting, nonconforming use on the residential portion of the property [Lot 21] and should be either removed or incorporated into the present application. When questioned, the witness confirmed he will not use the second level of the building for any sales or customer purposes.

Much discussion between the Board and the witness followed as to nature of products to be offered, the extent of floor space and market share associated with various lines of products (lingerie, shoes, novelties, games, etc.), the type of packaging for certain products, and the marketing focus on social media and website(s). Testimony established that some 30 percent of products to be sold in store might constitute items that would fall under the ordinance classification of "*...instruments, devices or paraphernalia which are designed for use in connection with a specified sexual activity*".

It was established that applicant did not conduct any formal market research before deciding on the location here in Budd Lake, that his other stores in New Jersey also operating under name of Romantic Depot are not near residential areas, and that the witness would prefer to have mannequins in window display but would consider alternatives. He stated willingness to consider building color(s) acceptable to the Board. Mr. Johnston testified that the types of products that would fall into the "*instruments, devices or paraphernalia*" category, while constituting some 30 percent of the products offered, is "important" to his business and therefore would not eliminate same from his inventory but argued that it is not the principal part of the business.

Mr. Weiss opened the floor to the public for questions of the witness. Nine persons came forward with a variety of questions regarding the business, the products, etc.

The Board then took up the request initially put forward by Mr. Selvaggi for an interpretation of the "adult entertainment" regulations as applied to the present matter. Mr. Bryce explained the process as established in N.J.S.A. 40:55D-70b and read subsection A(1) of § 550-80 into the record in its entirety along with item (2) under *Specified Sexual Activity* in this section. After more discussion among the Board members, a motion was offered by Mr. Galop, seconded by Ms. Natafalusy to classify certain products to be included in Mr. Johnston's store as "*...instruments, devices or paraphernalia which are designed for use in connection with a specified sexual activity*". Accordingly, this would place the proposed retail store under the Adult Entertainment category which is a permitted Conditional use in the C-1 zone district. A vote resulted in 4 members in favor of such classification with three opposed.

Mr. Selvaggi acknowledged the need to renote as such and a hearing was scheduled for February 9, 2023.

With no further business the Board adjourned at 8:55 pm