

**TOWNSHIP OF EVESHAM  
ZONING BOARD OF ADJUSTMENT**

**Minutes**

**January 22, 2023**

**7:00 P.M.**

**Municipal Building**

**Call to Order**

Meeting brought to order by Chair Thomas at 7:03 p.m.

**Flag Salute**

**Statement of Conformance with Open Public Meetings Act**

Chair Thomas made the Statement of Conformance with the Open Public Meetings Act and the Municipal Land Use Legislation and in accordance with the April 2, 2020 recommendations of the New Jersey Department of Community Affairs in hosting the Planning Board meeting

**Roll Call**

**Present:** Grantner, Masson, Smith, Thompson, Willmott, Ganju, Lynn, Carragher, Thomas

**Absent:** Graterol, Humphrey

**Staff:** Wieliczko, Dochney, Newton, Kinney

**Minutes 12-18-2023**

Motion to approve – Thompson

Second – Lynn

Ayes: Thompson, Ganju, Lynn, Thomas

**Resolutions**

Motion to approve 2023-ZB-32 - Reeves – Z23-16 - Thompson

Second - Lynn

Ayes: Thompson, Ganju, Lynn, Thomas

**Continuation of Scheduled Matters – None**

**New Business**

**1. 701 Route 70 West**

**Z23-14**

Block 5, Lot 2.08 (C-1/EVCO Zone)

Bertino, FHG, Inc. (Fantasy Gifts)

Applicant requests interpretation of ordinances related to an Adult Retail Use from Dennis E. Block, Attorney for Applicant

Robert Bertino, sworn

Dee Bertino, sworn

Chris Dochney, sworn

Ms. Dee Bertino gave a brief statement read into the record

Has been in business since 1980

4 stores in New Jersey, 8 stores in Minnesota

Has changed the face of the business

Supports the community

October 2020 relocated to new space, (from one unit to another in center - same block and lot/structure) – 701 Route 70 is the address

Less than 20% of merchandise is adult products

Applicant does not feel a variance is required as the property is in one continuous parcel and taxable entity and the non-conforming use

Applicant does not agree that their business falls within the definition of adult use

Mr. Wieliczko, Board Attorney, gave an overall explanation of Judge Covert's opinion

Chris Dochney, CME Associates, letter dated January 11, 2024

Applicant is seeking interpretation of the Zoning Code

It has been determined that this is an adult business

Agrees with Judge Covert

Applicant moved from one unit to another, losing their rights

Township issued a zoning violation notice due to adult retail uses not permitted in the C-1 Zone district

A variance would be required

7:50 p.m. – Break

7:55 p.m. – Meeting resumed

Mr. Block questioned Mr. Dochney's review

Mr. Dochney referred to the Violation issued by the Township

Questions on the size of the store and what percentage is adult merchandise

Ms. Bertino – less than 20%

Mr. Dochney – based his information from Township violation and Judge Covert

Board Comment

Board Member Smith - the business website basically shows close to 100% adult merchandise

Ms. Bertino – don't sell lingerie, novelties, greeting cards online, only higher ticket items are online

Board Member Masson – questioned the address of property. Is 701 for the entire property and is there a separate one for the units?

Mr. Bertino – both are used – 701 is the whole center

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Board Member Grantner – asked Mr. Dochney, in his opinion, if a tenant moves from one unit to another what is required

Mr. Dochney – as stated in 160-9, a permit is required – a use variance will need to be granted by the board

Board Member Carragher – asked applicant what determined him not getting a permit

Mr. Bertino – did not think it was required

Board Chair Thomas – was a breakdown of sales provided?

Ms. Bertino – can provide this information and how the store is laid out

Board Member Thompson – what is the square footage of 731 Rt. 70 and 735 Rt. 70

Mr. Bertino – unit 731 – 2,000 sq. ft. – retail use 1,800 sq. ft. – 735 – 2,400 sq. ft. – retail use 1,300 sq. ft. (due to existing wall)

Board Member Thompson – in searching website for adult products – Fantasy Gifts is available  
Is your website and your store two different stores?

Mr. Bertino – the internet is different than a building

Board Member Masson – when you relocated, did the utilities change – one unit to another?

Mr. Block – there are individual meters for each unit

Public Comment – None

Mr. Wieliczko

Applicant comes before the Board for an interpretation that the move from one location to another is permitted

This is a retail business and does not fall under adult retail

A motion to accept the opinions of Board Planner and Judge Covert – that a use variance is required – Thompson

Second – Masson

Ayes: Grantner, Masson, Smith, Thompson, Willmott, Carragher, Thomas

On the second – the conclusion this is an adult retail business and not permitted in the zone

Chair Thomas – does not feel enough information has been presented to make a decision

Applicant would like to carry application to the March 18, 2024 meeting to present break down.  
Will give break down of store (mortal) and website sales

Board agrees to carry application to March 18, 2024

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Mr. Wieliczko advised Board that this application is not to be discussed amongst the members

**Board Comment** - None

**Public Comment** - None

**Communications/Organization –**

Board Secretary Newton advised the Board that a policy will be implemented by Township Council for posting of non-residential applications in advance of Planning and Zoning Board of Adjustment Meetings for the public

Board Secretary Newton – communicating with Board will not change

**Meeting Adjourned – 9:05 p.m.**