

Resolution No.: 10-2022

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING MINOR SITE PLAN APPROVAL WITH USE VARIANCE RELIEF
FOR BLOCK 1211, LOT 21**

APPLICANT – TWIN KISS ICE CREAM, LLC

WHEREAS, the Applicant, Twin Kiss Ice Cream, LLC of 9 South Delsea Drive, Clayton, New Jersey, 08312, submitted an application seeking a use variance and minor site plan approval and appeared for a hearing before the Clayton Land Use Board on Monday June 27, 2022; and

WHEREAS, the subject property is located on the east side of Delsea Drive (SR 47). The lot is required as part of this relief to be consolidated with adjacent lots: Block 1211, Lot 20 and Block 1211, Lot 19. Lot 20 lies directly adjacent and south of Lot 21 and Lot 19 in turn lies directly south of Lot 20. All three lots are combined and known as Lot 20. All three lots have a combined frontage on the east side of Delsea Drive of 191 feet, and comprise an area of 28,851.40 square feet or 0.662 of an acre; and

WHEREAS, the Applicant is an ice cream parlor that offers limited seating and recreational amenities. As all lots lie within Commercial Business Zone of Clayton, sale of ice cream and limited other food and drink items is permitted under zoning ordinance. Applicant seeks use variance and minor site plan approval to allow for a recreational children's play area for patrons at Block 1211, Lot 21; and

WHEREAS, the Applicant is represented by James Carter, Esquire of Hoffman DiMuzio; and

WHEREAS, the Board's engineer Stan Bitgood, P.E., C.M.E and planner, Paul Breier, P.P. along with the Applicant's Engineer, Gregory Simonds, P.E. and John Chamberlin as an owner of Twin Kiss Ice Cream, LLC, appeared before the board and were Duly Sworn; and

WHEREAS, the Land Use Board reconstituted itself as a Zoning Board of Adjustment and Board members Darlene Vondran and Tony Saban stepped down from hearing; and

WHEREAS, Applicant presented two exhibits to the board in support of application listed as follows: **Exhibit (1)**: a minor site plan of the property from Ewing Associates, signed and sealed by Gregory Simonds, P.E, and **Exhibit (2)**: a lighting plan for the property also from Ewing Associates and signed and sealed by Gregory Simonds, P.E.; and

WHEREAS, the Applicant's Attorney, James Carter, Esquire, gave an overview of the site and its present operation as an ice cream parlor with amenities for patrons. It was argued that the High-Density residential zone allows for daycare facilities with play areas and that would present a similar if not a more substantial impact on the surrounding community. Mr. Carter said that he and his client met with neighbors who have been critical of the ice cream business as a nuisance due to noise, bright lights, casually discarded items, etc. These meetings were an attempt to mitigate concerns regarding the use of the site and to craft changes for the Clayton ZBA hearing; and

WHEREAS, the concerned neighbors that spoke at the meeting complaining of Twin Kiss were collectively represented by Leonard Schwartz, Esquire who appeared at the June 27th hearing and participated in the meeting with James Carter, Esquire and Twin Kiss representatives. Mr. Schwartz' participation was valuable and appreciated in helping interested parties develop solutions; and

WHEREAS, Gregory Simonds, P.E, went over the review letter signed by Stan Bitgood, P.E., C.M.E and stated the Applicant would meet landscaping and buffering requirements under UDO §88-33. Lots to the east of the site are in the RC district and buffering requirements will be fulfilled and any refinement may be accomplished with input from the Board's professionals; and

WHEREAS, Gregory Simonds, P.E, testified that no additional curbing is needed for the site as the existing drainage is sufficient, however, any new paving will require a topographic analysis to make sure there is no upset to drainage; and

WHEREAS, the Applicant agreed to removing existing lights in the play area (Lot 21) save for the presently existing string lights. The parking area will have LED lamps facing downward and the Applicant has agreed to work with the Board professionals to develop a lighting package; and

WHEREAS, Twin Kiss' present hours of operation during their "season" which runs from March to November are as follows: Friday and Saturday open from 11:00 A.M. to 11:00 P.M., all other days will be limited to 11:00 A.M. to 10:00 P.M. However, during the summer months when school is no longer in session, Twin Kiss will operate from 11:00 A.M. to 11:00 P.M. Lighting is generally allowed to remain on during late evening hours even after closing, but the Applicant has agreed to work with the Board's engineer, Stan Bitgood, P.E., C.M.E. to develop a comprehensive site lighting plan that shall also include what lights and at what hours the lights are permitted to operate; and

WHEREAS, the Applicant has agreed to use reflective paint in striping out the crosswalk between the lots, and will use reflective paint to outline any

areas that pedestrians will or may traverse, as well as to construct the proposed fences with a material that does not compromise the area's aesthetic, e.g. avoiding chicken wire, in favor of softer materials, e.g. black vinyl or similar material, and;

WHEREAS, the Board's Engineer, Stan Bitgood, P.E., C.M.E., suggested shrinking the one-way ingress driveway aisle from 19.4 feet to 15 feet; this would allow the Applicant to pull in the 3 parallel parking spaces that currently sit 0.7 feet from the southern property line over 4 feet away from the southern property line which results in a safer condition; and

WHEREAS, Applicant stated that no existing trees on the premises are planned to be removed but existing trees shall be properly maintained; and

WHEREAS, as there is little alteration of the presently existing land included in the site plan, Board grants waiver to Applicant from providing plans and assessments for contours, soil information, spot elevation, etc. except for where new pavement is installed or required by the Board engineer; and

WHEREAS, Applicant testified regarding the play area as is, and described the area with a volleyball net, a 12-foot-high net, a swing-set, and an open area where patrons may toss beach balls and similar toys, as well as play light lawn games such as cornhole. The audio speakers that were once in the play area, but have since been removed per request of neighbors, and are not planned to return to the play area. Speakers may remain at the building so long as they face away from adjacent residents. Applicant agreed to lower the 12-foot-high net to 6-feet high until surrounding bushes grow in. Following growth of the bushes, the net will be removed altogether. Remaining volleyball net will be angled perpendicular to Delsea Drive and will be pulled closer to the road. Applicant agrees to install a sign at the play area determining it as play area for patrons only and will include hours of operation; and

WHEREAS, the play area in question shall be gated and contained within a wooden fence in order to prevent errant tosses or any similar problems, the play area will be closed each night one (1) hour prior to the ice cream shop closure, and the Applicant and counsel assured the Board that the play area is free to operate without State of New Jersey approval; and

WHEREAS, the plan for parking includes a slight expansion of the existing parking lot in the northeast corner by approximately 466 square feet, planned for 21 spaces which include employee parking and a handicap space; and

WHEREAS, the Applicant shall utilize bollards on the north side of the parking lot perpendicular to the one-way egress lane and adjacent to the

proposed crosswalk to the play area. Bollards will facilitate right-of-way for exiting cars and help fortify safety for patrons and parked cars on the northwest side of the parking area; and

WHEREAS, the Applicant assured the Board that it has no plans to excavate the property and that there are no fuel or oil tank known to exist, nor has there ever been a fuel or oil tank known to exist on the premises. The Applicant further testified that neither they nor neighbors may dig greater than 15 feet, as the nearby Rite-Aid at 236 South Delsea Drive, was once the site of an operation that leaked hazardous chemicals into the peripheral area, and no excavation is permitted while this area is in remediation; and

WHEREAS, Board inquired about security cameras on the premises, and the Applicant testified that entire area is comprehensively covered by existing cameras; and

WHEREAS, Board asked about stockade fence in the rear of the play area at the eastern side of the lot and found that fence was erected by and belongs to a neighbor, property owner of Block 1211, Lot 2. The Applicant agreed to plant Giant Green Arborvitae trees along the fence-line as suggested by Gregory Simonds, P.E.; and

WHEREAS, the Applicant agreed with Mr. Bitgood's comment that the Trash dumpsters are to be relocated between the parking lot and play area, and are to be shielded from public view through either an enclosure or landscaping; and

WHEREAS, Clayton Borough Fire Department Chief David Rehm reviewed the site plan as presented and did not suggest any changes; and

WHEREAS, members of the public were permitted to speak on the application at the regularly scheduled Planning Board Meeting held on June 27, 2022 and several members of the public appeared, five of whom were represented by Leonard Schwartz, Esquire: Patrick McNeil, Ralph Molock, Warren Collins, and Patricia and Howard Shinn; and

WHEREAS, resident Patrick McNeil of 21 East Linden Street, expressed concern over his fence sitting just rear of the parking lot at the property line. Parking bumpers on site are currently 4.4 feet from the property line, and Applicant agreed to pull bumpers back 1 foot for a spacing of 5.4 feet; and

WHEREAS, Warren Collins, property owner at 1 South Delsea Drive, expressed concerns about the existing netting and the possibility of errand balls damaging tenant cars on his property. Applicant agreed to install netting on the north side of the lot to divert errand balls from the property; and

WHEREAS, resident Howard Shinn of 20 East Clayton Avenue, stressed he was displeased with toys and other miscellaneous items tossed onto his property as a result of the play area, a couple of which he brought to meeting include a plastic bowling pin and a bookbag. Mr. Shinn also expressed concern over the lighting and netting on the property. Patricia Shinn, wife of Howard and resident of 20 East Clayton Avenue, expressed they experienced significant upset to their daily activities due to light intrusion, noise, items tossed onto the property, etc. moving in. Mr. Shinn was clearly upset at the hearing and his wife continued testimony noting some of the issues they have experienced. This site plan is designed to address these issues; and

WHEREAS, Virginia Watkins, resident of Franklin Township, expressed that she is a frequent patron of Twin Kiss Ice Cream, LLC, and expressed support for their continued success and is in favor of the application; and

WHEREAS, the Board has considered and incorporates herein at length the review letters of Stan Bitgood, P.E., C.M.E., dated May 12, 2022 and Paul D. Breier, P.P., dated May 12, 2022; and

WHEREAS, the Board has carefully considered all the documents submitted and the testimony of the witnesses and members of the public; and

WHEREAS, the application for the grant of minor site plan with use variance relief by the Borough of Clayton Combined Planning and Zoning Board of Adjustment sitting as a Zoning Board of Adjustment, by a **6** yes to **0** no vote.

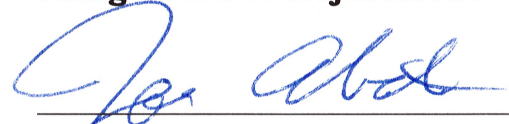
NOW, THEREFORE, BE IT RESOLVED by the Borough of Clayton Planning Board constituted as a Zoning Board of Adjustment, that it does hereby **Approve** the grant of use variance for the aforementioned mixed use together with minor site plan contingent upon the following:

1. Compliance with all requirements as hereinbefore stated.
2. Applicant must secure any and all outside approvals for the project.

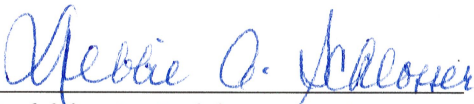
BE IT FURTHER RESOLVED that certified copies of this Resolution shall be forwarded to the Applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and the Borough Zoning Officer.

THIS RESOLUTION DULY ADOPTED at a regular meeting of the Borough of Clayton Planning Board held on Monday, July 25, 2022.

**Borough of Clayton Combined Planning Board
and Zoning Board of Adjustment**


By: Joe Abate, Chairman

Attest:


Debbie A. Schlosser, Secretary

ROLL CALL VOTE


THOSE IN FAVOR 6

THOSE OPPOSED 0

THOSE ABSTAINED 0

CERTIFICATION

I hereby certify that the foregoing Resolution is a true copy of a Resolution adopted by the Borough of Clayton Combined Planning Board and Zoning Board of Adjustment at a regularly scheduled meeting of the Board held on July 25, 2022 at the Borough of Clayton Municipal Building, 125 Delsea Drive, Clayton, New Jersey 08312 at 7:00 p.m. and memorializes the decision reached by said Board on the herein application at the Board's June 27, 2022 meeting and public hearing.


Debbie A. Schlosser, Secretary