

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KMART CORPORATION

(Case No. 11977)

A hearing was held after due notice on June 5, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to place a tent for special purposes.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place a tent for special purposes. This application pertains to certain real property located at the northeast side of Coastal Highway (Route 1) approximately 1,800 feet northwest of Holland Glade Road (Route 271) (911 Address: 19563 Coastal Highway, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.33. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Monica Cohen was sworn in and testified regarding the Application.
4. The Board found that Ms. Cohen testified that the tent will measure 20 feet by 40 feet and will be located in the K-Mart parking lot.
5. The Board found that Ms. Cohen testified that the store has recently been divided in half and leased to a different tenant so K-Mart has less space for merchandise. The Applicant intends to sell summer merchandise in the tent and the tent will only be used during the summer season.
6. The Board found that Ms. Cohen testified that the tent will be located in front of the building and will take up ten (10) parking spots. None of the spots are handicapped parking spaces and the tent will not impact the fire lane.
7. The Board found that Ms. Cohen testified that the Applicant is requesting approval to use the tent through Labor Day and there are no other outside tent specials and events scheduled on the Property.
8. The Board found that Ms. Cohen testified that the neighboring properties are used for restaurants and retail buildings. The other part of the building will be used for a Petsmart and a Christmas Tree Shop affiliate. The outlet stores are also located nearby.
9. The Board found that no parties appeared in support of or in opposition to the Application.
10. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and unrebutted, the Board determined that the application met the standards for granting a special use exception because the proposed tent will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Property is used for a K-Mart store and the Applicant proposes to use a portion of its parking lot for a sales tent from June 4 to September 9 each

- year. The tent will sell summer merchandise and will be located in the Applicant's parking lot.
- b. The Property is a reasonably sized lot and the Applicant has testified that the tent will not adversely affect parking in the area. The tent will only take up ten (10) parking spaces and will not affect handicapped spaces or the fire lane.
 - c. The neighboring properties are used for commercial uses such as restaurants and shops. The tent will be located away from the other businesses.
 - d. No evidence was presented which would demonstrate that the tent will have a substantial adverse effect on neighboring and adjacent properties.
 - e. The special use exception was approved for a period of five (5) years with the condition that tent only be used from June 4 to September 9 each year.

The Board granted the special use exception application for a period of five (5) years with conditions finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved for a period of five (5) years with conditions. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date August 8, 2017