

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SERITAGE KMT FINANCE, LLC

(Case No. 12004)

A hearing was held after due notice on August 7, 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 have an outdoor display for retail sales.

Findings of Fact

The Board found that the Applicants are requesting a special use exception to have an outdoor display for retail sales. 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, a site plan dated April 7, 2017, 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 Laszlo Csatay was sworn in and testified regarding the Application.
4. The Board found that Mr. Csatay testified that a new store is in the process of being built on the Property. The store will be called "And That" and is owned by Bed Bath & Beyond. The store is currently under construction and the store plans to open the fall.
5. The Board found that Mr. Csatay testified that all of their locations have outside sidewalk sales and the Applicant seeks permission to have such sales at this location as well.
6. The Board found that Mr. Csatay testified that the use will not substantially affect adversely the uses of neighboring and adjacent properties.
7. The Board found that Mr. Csatay testified that the store will be located in the old Kmart which is being subdivided.
8. The Board found that Mr. Csatay testified that the sales area will be contained within the sidewalk area in an area near the front of the store and will not be located in the parking lot. The sales area will not affect any handicap spaces or present any issues with fire protection.
9. The Board found that Mr. Csatay testified that the sales will be left outside but will be chained and secure during non-business hours. During business hours, an associate will control the merchandise outside and to make sure that access ways are not blocked.
10. The Board found that Mr. Csatay testified that the Applicant seeks permission for this use for a period of five (5) years and the Applicant intends to use the area for sales every day of the year.
11. The Board found that Mr. Csatay testified that the sales will consist of only merchandise on the sidewalks and on carts on the sidewalks.
12. The Board found that no parties appeared in support of or in opposition to the Application.

13. 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 un rebutted, the Board determined that the application met the standards for granting a special use exception because the proposed outdoor display or promotional activity 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 located outside of Rehoboth along Coastal Highway and is used as a commercial Christmas tree store on a site which has been historically used for a Kmart. The Application pertains to the use of the "And That" building site.
 - b. The tax map provided to the Board demonstrates that the Property is very large.
 - c. The Applicant intends to hold sidewalk sales every day in an area adjacent to the building. The sales area will not take up space in the parking lot or block access ways to the building.
 - d. The evidence demonstrates that the sidewalk is large enough to accommodate this use while still providing ample space for patrons to navigate outside the building.
 - e. There was no evidence that the sidewalk sales would have any impact on neighboring properties. Rather, the Property is part of a large commercial development and the sales appear to be consistent with the commercial use.
 - f. The Applicant has demonstrated that the sidewalk sales will not substantially affect adversely the uses of neighboring and adjacent properties. No evidence was presented which would demonstrate that the sidewalk sale will have a substantial adverse effect on neighboring and adjacent properties.
 - g. Per the Applicant's request, the Board approved the special use exception for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years 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. 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
Chairman

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

Date September 19, 2017