

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FURNITURE & MORE

(Case No. 12169)

A hearing was held after due notice on July 23, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a special use exception to use a tent for special events. This application pertains to certain real property located on the west side of Beacon Drive, north of Lighthouse Road (911 Address: 38993 Beacon Drive, Fenwick Island); said property being identified as Sussex County Tax Map Parcel Number 1-34-23.00-3.04. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the Property, a site plan dated March 29, 2000, 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 the Application and seven (7) letters in opposition to the Application.
3. The Board found that Derek Millman was sworn in to testify about the Application. Mr. Millman is the manager of Furniture & More.
4. The Board found that Mr. Millman testified that the Applicant had a tent sale 2 times in 2017 and the Applicant traditionally holds tent sales on Memorial Day and Labor Day weekends. The Applicant seeks permission to conduct tent sales twice a year for a ten (10) days each time as that time frame will allow the Applicant time to set up the tent, conduct the sale, and tear down the tent.
5. The Board found that Mr. Millman testified that a tent costs \$2,500 to rent and it takes 2 days to set up a tent sale. The first weekend pays for the tent and the second weekend is where the Applicant makes its profit off the tent. Memorial Day and Labor Day weekends are important times of year for their sales.
6. The Board found that Mr. Millman testified that many businesses in the area close down in the off-season and the Applicant uses the profits from the tent sales to pay for the business to remain open the rest of the year.
7. The Board found that Mr. Millman testified that there is a community adjacent to the Property.
8. The Board found that Mr. Millman testified that the tent will be positioned 40 feet away from building, the entrance, and the community to the rear of the property. The tent will take up 7 parking spaces on the east side of the Property and additional space not reserved for parking. The Applicant is willing to move the tent closer to the building as well and there is room to do so. He believes that moving the tent would alleviate parking concerns expressed by neighbors.
9. The Board found that Mr. Millman testified that the tent will be set back farther from Route 54 than the existing building.
10. The Board found that Mr. Millman testified that the Applicant shares an entrance onto Route 54 with the adjacent community and other businesses on the site but the tent will not impede traffic coming to and from the neighboring property or impact neighbors' ability to access their property.

11. The Board found that Mr. Millman testified that this special use exception will not substantially affect adversely the uses of adjacent neighboring properties.
12. The Board found that Mr. Millman testified that the Applicant does not use all of its parking spaces even with the tent in place.
13. The Board found that Mr. Millman testified that there are no safety issues with the tent as the tent recently withstood winds of 50 miles per hour.
14. The Board found that Mr. Millman testified that there were some complaints about the placement of the tent and that it created a visibility issue the first time they used it but there were no complaints the following 2 times the tent was put up.
15. The Board found that Mr. Millman testified that store hours are as follows: Sunday 11am – 6 pm, Monday through Thursday 10 am – 6 pm, and Friday and Saturday 10 am – 7 pm.
16. The Board found that Mr. Millman testified that the nearby restaurant (High Stakes) has a lot of business and cars park all over the site when the restaurant is busy. High Stakes receives deliveries from tractor trailers.
17. The Board found that Mr. Millman testified that there is a right-of-way around the building and a car can navigate around the building.
18. The Board found that Mr. Millman testified that parking is always an issue and that High Stakes is a busy location and uses the majority of parking. High Stakes pay for 30% and Furniture & More pay for 70% of the parking lot but High Stakes uses the Applicant's parking spaces.
19. The Board found that Mr. Millman testified that, during the day, the Applicant will pull out some furniture outside the tent. At night, the Applicant shuts down the tent and retains a security guard to secure the premises overnight.
20. The Board found that Mr. Millman testified that the cars in the picture presented by the opposition were parked in the right-of-way to the development in the rear but he could not confirm if they were patrons of the business or if they were family members visiting the development in the rear. He testified that cars park near the gate even when the tent is not erected.
21. The Board found that Mr. Millman testified that the tent measures 40 feet by 60 feet and he believes that includes the stakes and tie-downs.
22. The Board found that Mr. Millman testified that he has not noticed any traffic issues for the neighboring properties related to the tent and that any traffic issues are related to vehicular traffic on Route 54. He does not believe that the tent affects traffic.
23. The Board found that no parties appeared in support of and ten (10) parties appeared in opposition to the Application. Randy Wallenhurst, Linda Bauers, George Bennett, and Sandra Simkins were sworn in to give testimony in opposition to the Application. Mr. Wallenhurst, Ms. Simkins, and Ms. Bauers submitted pictures to the record.
24. The Board found that Mr. Wallenhurst testified that he is a part-time resident at the community across from Furniture & More on Route 54 and. He bought his property for the view of the bay but his view is impeded by the tent and he is concerned about the effect of the tent on property values. He noted that Route 54 is a mess with many accidents.
25. The Board found that Ms. Bauers testified that she is a resident at Lighthouse View Condominiums which is the building at the rear of the applicant's property and is accessed through the Applicant's parking lot. She noted that her community is filled during Memorial Day and Labor Day weekends.
26. The Board found that Ms. Bauers testified that tent stays up 2 weeks when it is erected.
27. The Board found that Ms. Bauers testified that furniture extends beyond the tent and that customers mill around the parking lot. She also noted that furniture is placed on the sidewalk thereby limiting use of the sidewalk. She believes that the tent creates a safety issue.

28. The Board found that Ms. Bauers testified that cars have been parked in the right-of-way to her development blocking both a fire hydrant and the key pad entrance to her community.
29. The Board found that Ms. Bauers testified that there is not enough parking and the tent makes it worse as visibility is blocked by the tent and it is difficult to see around the tent.
30. The Board found that Ms. Bauers testified that the tent substantially affects adversely the uses of neighboring and adjacent properties.
31. The Board found that Ms. Bauers testified that 2 cars cannot pass each other when the tent is erected and that moving the tent closer to the building will not help the situation because cars will not be able to navigate around the building.
32. The Board found that Ms. Simkins testified that there is a parking problem even when the tent is not present but the tent amplifies the issue because a car cannot enter the development when cars are parked in the easement.
33. The Board found that Ms. Simkins testified that, even if the tent was moved, it would still be a safety issue.
34. The Board found that Ms. Simkins testified that the tent poses a safety issue and that large vehicles have difficulty accessing the community when the tent is erected.
35. The Board found that Mr. Bennett testified that the tent in place affects sixty (60) homeowners, their family, and friends and the tent creates a safety issue which magnifies the parking problem. He believes that placing the tent elsewhere on the Property still substantially affects adversely the use of the neighboring property.
36. The Board tabled its discussion and vote on the Application until August 6, 2018, at which time the Board discussed and voted on the Application.
37. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered 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 Applicant owns a furniture retail store and wishes to hold tent sales during Memorial Day and Labor Day weekends. The Applicant has held such sales on the Property previously and the Applicant intends to erect the tent before and after each of those holiday weekends on an annual basis.
 - b. The Property is a commercial site used for a furniture store and a restaurant. A majority of the parking spaces are to be used for the furniture store and the Applicant presented credible testimony that the customers of the store do not use all of the Applicant's designated parking spaces.
 - c. The opposition presented concerns about the blocking of the drive aisle accessing their community. The Board, however, was not convinced that the blocking of the drive aisle was due to the tent or even due to the Applicant's business. The opposition noted that the neighboring community is often "filled" during these holiday weekends and that the restaurant has a steady business as well. The Board notes that the site plan and tax map demonstrate that only a small portion of the drive aisle is actually located on the Property and that much of the lane is located off the Property.
 - d. The opposition expressed concerns about traffic but both sides acknowledged that traffic along the adjacent Route 54 is often hectic during summer months. It was clear to the Board that cars using the drive aisle may have to wait to turn onto Route 54 at times. The Board was not convinced that the existence of the tent somehow contributed to traffic concerns along Route 54.

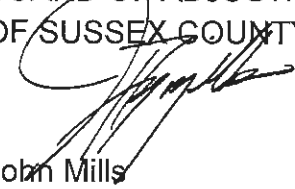
- e. To the extent the tent has an impact on the drive aisle, the Board does not find that the impact is a substantial adverse impact. To reduce whatever impact may exist, however, the Board, as part of its approval, conditions that the tent must be placed adjacent to the Furniture & More building away from the drive aisle.
- f. The location of the tent should provide neighbors of the nearby community with an opportunity to shop for additional furniture without having to traverse onto Route 54 and this opportunity would benefit neighboring and adjacent properties.
- g. The tent will be used only on a temporary basis during limited times of the year.
- h. The approval is conditioned on the following:
 - i. The tent shall be no larger than 40 feet by 60 feet as proposed by the Applicant.
 - ii. The tent shall be placed on the east side of the Furniture & More building on the Property as shown on the site plan submitted by the Applicant. The tent must be adjacent to the building and away from the entrance to Route 54.
 - iii. The tent is allowed to be used two (2) times per year for a total of sixteen (16) days per year. The sixteen (16) days are to be divided equally between the Memorial Day and Labor Day holiday weekends. The Applicant is permitted two (2) days at the beginning of each tent sale to set up the tent and two (2) days at the end of each tent sale to disassemble and remove the tent. The times for erection and disassembly of the tent shall be included as part of the sixteen (16) days allotted for the tent sale to occur.
 - iv. The approval is valid for a period of one (1) year.

The Board granted the special use exception application for a period of one (1) year 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 with conditions for a period of one (1) year. The Board Members in favor were Mr. Dale Callaway, Mr. John Mills, and Mr. Brent Workman. Ms. Ellen Magee and Mr. Bruce Mears voted against the Motion to approve the special use exception application with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date October 2, 2018