

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BEACHFIRE BREWING COMPANY, LLC

(Case No. 12391)

A hearing was held after due notice on December 16, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

The Board found that the Applicant is requesting a variance of 0.6 feet from the fifteen (15) feet corner front yard setback requirement for a proposed tent, a variance of 13.3 feet from the forty (40) feet front yard setback requirement for a proposed tent, a variance of 9 parking spaces from the parking space requirement of 16 spaces, and a special use exception to place a tent for more than three days. This application pertains to certain real property located on the northeast corner of Central Avenue and Johnston Street within the Shockley subdivision (911 Address: 19841 Central Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-24.00. After a public hearing, the Board made the following findings of fact:

Findings of Fact

1. The Board was given copies of the Application, a survey of the Property dated September 9, 2019, an exhibit of relevant code sections, a schematic of the proposed tent, overflow parking sketch plans, 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 & Zoning received 474 letters in support of the Application and one letter in opposition to the Application.
3. The Board found that Board found that Mr. Harry Metcalf was sworn in to give testimony about the Application. Ms. Taylor Trapp, Esquire and Ms. Mackenzie Peet, Esquire presented the case on behalf of the Applicant and submitted photographs showing the location of the additional parking.
4. The Board found that Ms. Trapp stated that Revelation Brewing is a local brewery whose primary clientele bikes or walks to the site.
5. The Board found that Ms. Trapp stated that the lot is non-conforming and is unique as it is both narrow and shallow. The lot measures 50 feet by 100 feet and has a corner front on Johnston Road.
6. The Board found that Ms. Trapp stated that the existing pole barn, which is used for the brewery and patrons, covers most of the lot.
7. The Board found that Ms. Trapp stated that the Applicant proposes to use a tent on the site for additional patrons and the tent measures 15 feet by 30 feet.
8. The Board found that Ms. Trapp stated that the Property cannot otherwise be developed without a variance.
9. The Board found that Ms. Trapp stated that the variances will not alter the essential character of the neighborhood but enhance it and that the Applicant has made many improvements to the area.
10. The Board found that Ms. Trapp stated that the Property and neighboring properties are zoned C-1 Commercial.
11. The Board found that Ms. Trapp stated that the micro-brewery has been in existence since 2015.
12. The Board found that Ms. Trapp stated that the Applicant will be moving to a larger space nearby when all agency approvals have been received. As such, the approvals will only be needed for a limited time.

13. The Board found that Ms. Trapp stated that, due to the uniqueness of the Property, the lot cannot be developed to conform with the Sussex County Zoning Code.
14. The Board found that Ms. Trapp stated that the exceptional practical difficulty was not created by the Applicant as the Applicant is leasing the Property and did not create the size and shape of the lot. Rather, the lot was created by a prior owner.
15. The Board found that Ms. Trapp stated that the variances are the minimum to afford relief.
16. The Board found that Ms. Trapp stated that off-site parking is available on 2 lots which are within walking distance of the site. One lot is located across the street and the other lot is located on the same side of the road. According to Ms. Trapp, there are 43 parking spaces on those lots and the reduction in parking on this lot will be addressed by allowing patrons to park on other lots close by.
17. The Board found that Ms. Trapp stated that the special use exception request is for a temporary period of time and that the tent will not substantially affect adversely the uses of adjacent and neighboring properties as the area is zoned commercial and is mostly surrounded by commercial uses.
18. The Board found that Ms. Trapp stated that the tent will provide patrons cover in the rain.
19. The Board found that Mr. Metcalf testified that he has applied to the Fire Marshal for approval.
20. The Board found that Mr. Metcalf testified that there will be a couple of televisions and live music under the tent at times but the business' clientele is not a late-night crowd.
21. The Board found that Mr. Metcalf testified that the tent is required to add additional seating for his patrons.
22. The Board found that Mr. Metcalf testified that there are 13 seats and 2 tables inside the facility and the tent will add 30-40 seats, which are important during the off-season.
23. The Board found that Mr. Metcalf testified that there is live music but usually just one or two people singing and playing a guitar.
24. The Board found that Mr. Metcalf testified that the pole building is also used for brewing and only has approximately 250 square feet for patrons because the rest is used for the brewery operation.
25. The Board found that Mr. Metcalf testified that the Applicant hopes to relocate its business to the new location in 2020.
26. The Board found that Mr. Metcalf testified that the tent will project no lights.
27. The Board found that Mr. Metcalf testified that the Applicant paved part of Johnston Street.
28. The Board found that Mr. Metcalf testified that the area is a mixed use area but Johnston Street is commercial.
29. The Board found that Mr. Metcalf testified that there have been no parking complaints and he disputes the allegations raised in Mr. Hall's letter.
30. The Board found that Mr. Metcalf testified that the hours of operation are generally noon to 9:00 pm with extended hours on the weekend off-season. Summer hours are 11 am – 11 pm and there are three occasions during the year when they participate in charity events when they open at 9 am. The facility never opens before 9 am.
31. The Board found that Mr. Metcalf testified that there is no smoking permitted on the property.
32. The Board found that Mr. Metcalf testified that his lease ends in May 2020 but he is working with the landlord to extend if necessary.
33. The Board found that Mr. Metcalf testified that parking is not an issue as many of the customers cycle or walk to the location and there are bicycle racks on the lot across the street for patrons.

34. The Board found that Mr. Metcalf affirmed the statements made by Ms. Trapp as true and correct.
35. The Board found that the following people were sworn in to testify in support of the Application: Mr. Brian Grawehr, Mr. Benett Allen, Mr. Jake Shepherd, Mr. Ray Grabiak, and Mr. Rich Rohde. Mr. Grawehr, Mr. Allen, and Mr. Shepherd work for the Applicant and Mr. Grabiak and Mr. Rohde are patrons of the business who generally either walk or bike to the facility.
36. The Board found that Mr. Shepherd testified that many people who use the trail system are patrons of the brewery.
37. The Board found that Mr. Rohde testified that he has not seen parking issues.
38. The Board found that eleven (11) parties appeared in support of and no parties appeared in opposition to the Application.
39. 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 variance. The findings below further support the Board's decision to approve the variance Application.
 - a. The Property is unique due to its size, shape, and historical use. The lot has unique characteristics as the lot is only 50 feet wide and consists of only 5,000 square feet. The Property is also unique because it is a corner lot. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to use a tent for additional seating for its brewpub operation. The existing brewpub facility has very limited seating and a reasonably sized tent is needed to afford additional seats for patrons. The Board also notes that the situation is unique because the business utilizes off-site parking which allows its patrons to park off-site. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a tent and to reduce parking spaces on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code. As noted above, the unnecessary hardship and exceptional practical difficulty are being created by the lot's unique conditions.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to use a tent on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the reasonably sized tent to be used on the lot. The Board is convinced that the shape and location of tent are also reasonable, which is confirmed when reviewing the exhibits provided by the Applicant. The Board notes that the tent will allow the Applicant a safe area for which to serve its patrons. The parking variance is also needed for the tent.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The lot is exceptionally small and narrow and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
 - e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of

adjacent property, nor be detrimental to the public welfare. The Board is convinced that the tent will have no effect on the character of the neighborhood. The Property has been developed with a brewpub since 2015 and is near other commercial properties. The brewpub is near a bike trail and many customers of the brewpub bike or walk to the facility. Opposition raised concerns about the variance requests and noted that nearby properties are used residentially. It is clear to the Board, however, that the community has a mixed-use characteristic with homes and businesses. The Board was not convinced that the variances would somehow alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property or be detrimental to the public welfare. The Board notes that the off-site parking, which the Board finds to be material to its determination that the Applicant has satisfied this requirement, should alleviate parking concerns.

- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to use a reasonably sized tent on the lot. The Applicant was significantly constrained by the size and shape of the lot and it is quite clear that, due to unique conditions of the lot, the Applicant was unable otherwise utilize this space without a variance. The Board notes that the tent is smaller than a prior tent used on the lot.
 - g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
40. 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 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 located in a mixed-use area with other commercial uses nearby.
 - b. The Property has been used as a brewpub since 2015 and the use is consistent with that use.
 - c. Many patrons use the facility and arrive via bike or walking. Off-site parking is available nearby. The Board notes that the off-site parking is material to its determination that the Applicant has satisfied the special use exception standards.
 - d. The hours of the business are reasonable and it was made abundantly clear that the facility is not used much late at night.
 - e. The Board was not convinced that the tent would have an impact on traffic, noise, or emissions such that the tent would substantially affect adversely the uses of neighboring and adjacent properties.
 - f. The special use exception approval is subject to the following conditions;
 - i. The special use exception approval is valid only until December 31, 2021.
 - ii. No music shall be played in the tent from the hours of 8:00 pm to 9:00 am.
 - iii. This approval shall in no way supersede any conditions created by Sussex County Council in the approval of a conditional use for the Property and the Applicant must remain compliant with those

conditions. A violation of a condition of the conditional use approval shall constitute a violation of this special use exception approval.

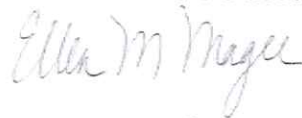
The Board granted the variance and special use exception application finding that it met the standards for granting a variance and a special use exception.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve the variance application.

Upon motion duly made and seconded, the special use exception application was approved. The Board Members in favor of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Mr. Brent Workman voted against the motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date February 18, 2020.