

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: FURNITURE & MORE**

**(Case No. 12393)**

A hearing was held after due notice on January 27, 2020. 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

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 seeking a special use exception for the placement of a tent for twenty (20) days each calendar year for a period of five (5) years. 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 public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, findings of fact for Case No. 12169, a site plan dated March 29, 2000, letters in opposition to the Application, photographs, 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 no correspondence in support of and twelve letters in opposition to the Application.
3. The Board found that Natasha Massey and John McCann were sworn in to give testimony about the Application. An exhibit booklet was submitted to Board members.
4. The Board found that Ms. Massey testified that the Applicant seeks the approval for a tent sale event at its Fenwick Island location for a ten (10) day period during the Memorial Day and a for a ten (10) day period during Labor Day – for a total of twenty (20) days a year for a five (5) year period. The Applicant previously received a special use exception for this use but that approval has expired.
5. The Board found that Ms. Massey testified that these tent sale events are important to the Applicant's business and mean the difference of ending the year with a profit instead of at a loss.
6. The Board found that Ms. Massey testified that the landlord permits tent sales.
7. The Board found that Ms. Massey testified that Furniture & More pays for 78% of the parking lot assessments for the site. According to Ms. Massey, the Property has 75 parking spaces and the Applicant has 57 spaces but is only required to have 36 spaces. She noted that most of the parking is taken up by the adjoining restaurant and bar (High Stakes) on the Property; which should have 86 spaces.
8. The Board found that Ms. Massey testified that the Applicant also operates a U-Haul business on the site and the U-Haul business has, at most, 4 employees and 6 customers and needs 15 spaces.
9. The Board found that Ms. Massey testified that the Applicant almost never uses its full allotment of spaces.
10. The Board found that Ms. Massey testified that the tent would take up only six parking spaces and approximately 2,400 square feet.
11. The Board found that Ms. Massey testified that there were no incidents or any accidents during the tent sales in 2019.
12. The Board found that Ms. Massey testified that there is 24-hour security during this period and the store closes at 6 PM.

13. The Board found that Ms. Massey testified that the neighboring restaurant is busier at night and there have been problems with patrons of the bar.
14. The Board found that Ms. Massey testified that staff have asked people to move when they are blocking access to the neighboring community.
15. The Board found that Mr. McCann testified that the tent will be located to the side of the building closest to the rear and will project out 40 feet.
16. The Board found that Mr. McCann testified that they drive off the Property to access parking spaces and that delivery trucks go off the Property to access the rear.
17. The Board found that Mr. McCann testified that they have a storage container which takes up 5 spaces.
18. The Board found that Mr. McCann testified that the Applicant is supposed to have 36 spaces but pays for 75 spaces and that the Applicant uses, on average, 20% of its spaces.
19. The Board found that Mr. McCann testified that it is rare to have more than 6 customers in the store at one time.
20. The Board found that Mr. McCann testified that the bar consists of 4,000 square feet and the Applicant has constant problems with the patrons of High Stakes.
21. The Board found that Mr. McCann testified that he tries not to tow cars but High Stakes has been a problem and he has complained to the landlord.
22. The Board found that Mr. McCann testified that the neighboring community is a development and another neighboring lot is being developed. Those neighboring communities use the same entrance as the Applicant.
23. The Board found that Mr. McCann testified that, in addition to the furniture store, the Applicant also has a U-Haul business and they typically have 3-5 U-Haul trucks on site at any one time.
24. The Board found that Mr. McCann testified that he is sympathetic to neighbor concerns about access and he is willing to meet with neighbors.
25. The Board found that Mr. McCann testified that the owner of High Stakes painted lines for parking spaces in the easement area but they were later covered up.
26. The Board found that Mr. McCann testified that there were 12 U-Haul trucks on the site in May as there is a lot of U-Haul business during Memorial Day weekend.
27. The Board found that Mr. McCann testified that the U-Haul business was not considered at the last hearing.
28. The Board found that Mr. McCann testified that the trucks project off the Property.
29. The Board found that Ms. Massey testified that the U-Haul business could be suspended during the tent sales to allow for additional customer parking
30. The Board found that Mr. McCann testified that the tent measures 40 feet by 60 feet.
31. The Board found that Mr. McCann testified that the Memorial Day sale lasts 6-7 days and the Labor Day event is longer.
32. The Board found that Mr. McCann testified that the Applicant also uses space for furniture.
33. The Board found that Mr. McCann testified that he received lots of complaints but there were no safety issues. He noted that 3 cars blocked a fire hydrant but were removed. He claimed that he experienced no issues with access and he polices the site.
34. The Board found that Jeffrey Geiges and Eunice Carpitella were sworn in to give testimony in opposition to the Application. Ms. Veronica Faust, Esq., appeared on behalf of the opposition.
35. The Board found that Ms. Faust stated that there is a 24 unit condominium to the rear of the site, which is where Mr. Geiges and Ms. Carpitella live, and there is an 8 unit condominium under construction adjacent to the site as well. She noted that both communities use the same entrance as the Applicant and that the entrance is the only access for those communities.



36. The Board found that Mr. Geiges reviewed and described pictures of cars parking in the easement area and blocking the fire hydrant.
37. The Board found that Mr. Geiges testified that the concern for Lighthouse View residents is that the tent sale creates considerable safety concerns for the neighbors.
38. The Board found that Mr. Geiges testified that the furniture and tent occupy more than 6 spaces and there are only 14 spaces in the tent area.
39. The Board found that Mr. Geiges testified that the addition of the U-Haul trucks creates further safety concerns and there are usually 8 U-Haul trucks parked on the site and some are parked in the easement area.
40. The Board found that Mr. Geiges testified that only one type of U-Haul truck can fit in the normal parking space.
41. The Board found that Mr. Geiges testified that one car parked and blocked egress entirely and that cars park in the easement area when there is no tent.
42. The Board found that Mr. Geiges testified that there were no issues with parking when the Property was used for a Walgreens.
43. The Board found that Mr. Geiges testified that the tent and U-Haul business affect access.
44. The Board found that Mr. Geiges testified that the area is heavily congested and that children walk in that area.
45. The Board found that Mr. Geiges testified that people were blocked from gaining access to their homes and from leaving their home.
46. The Board found that Mr. Geiges testified that he had to ask people to move so they could get their car out.
47. The Board found that Mr. Geiges testified that, in addition to the six parking spaces taken by the tent, the Applicant also has some parking spaces taken when displaying furniture outside the tent.
48. The Board found that Mr. Geiges testified that he believes it will be impossible to get out of his community with the new development, the tent, and the U-Haul business.
49. The Board found that Ms. Carpitella testified that they are also competing with the construction on the nearby lands and that has led to creative parking and the tent aggravates traffic in the area as well.
50. The Board found that Ms. Carpitella testified that, when the permit for the tent was granted, none of them could foresee the addition of the U-Haul trucks and the violations that have occurred.
51. The Board found that Mr. McCann testified that the Applicant left the tent up longer than allowed previously because it was cheaper to take it down later. The tent was up 12 days for Memorial Day and 19 days for Labor Day – including set up and tear down.
52. The Board found that Mr. McCann testified that the Applicant makes money on the U-Haul rentals but he is willing to suspend the U-Haul operation during the tent sale.
53. The Board found that Mr. McCann testified that they put furniture outside to entice passers-by to come to the sale and it is a necessary part of the sale and the outside furniture takes up 8 spaces.
54. The Board found that Mr. McCann testified that it is not often that more than 3 cars back up trying to turn.
55. The Board found that no one appeared in support of and three parties appeared in opposition to the Application.
56. 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 failed to meet the standards for granting a special use exception because the proposed use will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to deny the Application.

- a. The Board notes that the record for this application differs from the record presented with the prior application and that the opposition has presented credible and persuasive evidence that the tent substantially adversely affects the uses of neighboring and adjacent properties.
- b. There was clear and undisputed evidence that parking is a problem on the Property and in the surrounding area yet the Applicant proposes to place its tent to occupy parking spaces adjacent to its store. The Applicant also proposes to place furniture outside the tent to better market the store. The furniture will also occupy additional spaces. According to the Applicant, the Applicant has more parking spaces than it needs and the use of these spaces will allow the Applicant to sell more furniture. That being said, the Applicant clearly admits that there is a parking problem on the site. This parking problem is confirmed by the testimony and evidence presented by the opposition. The Applicant accuses its neighbor (High Stakes) of using most of the parking spaces. Whether this is true or not, the record is clear that patrons and employees of the businesses located on the Property often fill the parking lot and spill over onto neighboring lands.<sup>1</sup> Accordingly, the effective reduction of the parking spaces due to the occupation of the tent and furniture only exacerbates this clear parking problem on the site. Opposition presented clear evidence of cars parked on the drive aisle to their community. One neighbor even testified that he had to track down the owner of a car which blocked the entrance. There was also evidence of cars blocking the fire hydrant and access to the neighboring condominium community. This problem persists and presents many safety and access concerns. If cars are parked in the drive aisle, it is unclear how an emergency vehicle could adequately access the neighboring condominiums. As this drive aisle is the only access for that community, it is imperative that the drive aisle be clear. The Board also notes that a new condominium project is under construction and that development will also use the same drive aisle. The additional development further underscores the need to keep the drive aisle clear. Notably, the site plan indicates that the drive aisle is not on the Applicant's property though the entrance to Route 54, which is apparently shared by the Applicant and the neighboring developments, is part of the Property. Despite the fact that the drive aisle is not part of the Property, the opposition, however, presented photographs and testimony that patrons of the businesses on the Property actually park off-site and onto the drive aisle. Someone even painted parking lines in the drive aisle to allow patrons or employees of the businesses on the Property to park.
- c. Additionally, the parking problem exists even at times when the tent is not in place so the effective removal of usable parking spaces - particularly during busy holiday weekends – greatly worsens this problem.
- d. The Applicant argues that the tent will not create parking problems but the evidence presented by the opposition clearly indicates otherwise. The parking problems lead cars to park off-site and to block neighbors' access to their homes. This lack of a reasonable and safe access is a clear substantial adverse effect on neighboring and adjacent properties. Frankly, it is difficult to imagine a more substantial adverse effect than the actual blocking of a neighbor's sole access to its property.
- e. The Board also has concerns about the Applicant's credibility. The Board previously granted approval in 2018 for the tent but restricted the Applicant's

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<sup>1</sup> The opposition argued that the parking problems did not exist until the tent sales started and that there were no parking problems when Walgreens occupied the site – even when High Stakes was in business at the same time.

use of the tent to 16 days to be split evenly between Memorial Day and Labor Day. This time period included time for set-up and tear-down. The Applicant, however, admitted to using the tent for 31 days; nearly double the allotted time.


- f. The Board also notes that, since the prior application, the Applicant has initiated a U-Haul business which has led to occupation of even more parking spaces on the site. The Applicant argued that the U-Haul business was minimal but, based on the evidence presented by the opposition, the U-Haul business appears more substantial than previously let on. The number of spaces occupied by the U-Haul trucks and the projection of the U-Haul trucks onto the drive aisle are clear. The Applicant even admitted that its truck project outside the parking area. While the Applicant has offered to suspend the U-Haul business during the period of the tent sale, the Board is troubled by the Applicant's use of that business and occupation of the parking spaces at all. During the hearing of the prior special use exception application, concerns were raised about parking yet the Applicant's subsequent actions demonstrate a clear disregard for the access issues complained of by its neighbors. Rather than work to minimize the parking problems, the Applicant exacerbated them by taking even more parking spaces. Though the use of the U-Hauls is not determinative on the Board's finding that the tent will substantially affect adversely the uses of neighboring and adjacent properties, the Board notes that it is troubled by the Applicant's actions to limit available parking spaces.
- g. It is clear to the Board that the proposed special use exception application would substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application because the application failed to meet the standards for granting a special use exception.

#### Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the motion to deny 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 deny 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 March 17, 2020