

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TOMATO SUNSHINE

(HAROLD E. DUKES & ANTHONY CRIVELLA)

(Case No. 12436)

A hearing was held after due notice on June 15, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

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 place a 30 foot by 40 foot tent for a five (5) year period between May 1st and November 1st of each year. This application pertains to certain real property located on the northeast side of Central Avenue approximately 40 feet southwest of Canal Crossing Road (911 Address: 19827 Central Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-22.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated February 6, 2019, a deed to the Property, a building permit 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Donna DeAngelis was sworn in to testify about the Application and Mackenzie Peet, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Ms. Peet stated that Tomato Sunshine has been in business for 26 years and was previously located on Route 1. The business, which is a garden supply and farm market, is now operated at 19827 Central Avenue, Rehoboth Beach by Ms. DeAngelis and her son, Julian.
5. The Board found that Ms. Peet stated that there was a plan to build a structure on this site by the owner but there have been delays to that plan due to the Covid-19 pandemic.
6. The Board found that Ms. Peet stated that the Applicant is requesting a tent to operate their business to supply shade for employees and produce.
7. The Board found that Ms. Peet stated that the Property is zoned C-1.
8. The Board found that Ms. Peet stated that the tent will meet setbacks and, therefore, will not require a variance.
9. The Board found that Ms. Peet stated that the tent is similar to a tent at the Revelation Brewery on the same street.
10. The Board found that Ms. Peet stated that the tent will consist of 1,200 square feet and will be open on the sides.
11. The Board found that Ms. Peet stated that there is onsite parking and on a neighboring lot owned by the landlord.
12. The Board found that Ms. Peet stated that the hours of operation will be Monday – Friday 9:00 am – 5:00 pm and on weekends from 8:30 am – 6:30 pm.

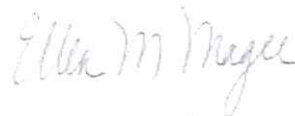
13. The Board found that Ms. Peet stated that there will be no noise or outdoor lighting associated with the tent.
14. The Board found that Ms. Peet stated that the use of the tent will not substantially adversely affect the uses of adjacent or neighboring properties.
15. The Board found that Ms. DeAngelis affirmed the statements made by Ms. Peet as true and correct.
16. The Board found that Ms. DeAngelis testified that there are additional straps to keep the tent in place during inclement weather.
17. The Board found that Ms. DeAngelis testified that the tent will be removed after the season is over.
18. The Board found that Ms. DeAngelis testified that she seeks approval for the tent from May 1st to November 1st each year for the 2020 season and four years thereafter.
19. The Board found that no one appeared in support of or opposition to the Application.
20. 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 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 garden supply and farm market and requests a tent to use from May 1st to November 1st to provide shade for its employees and produce.
 - b. The Property is a commercial site and the Applicant previously operated the business nearby.
 - c. There is a similar tent used nearby for another business.
 - d. There is adequate parking on the site.
 - e. The location of the tent should provide neighbors of the nearby community with an opportunity to shop for produce and garden supplies and this opportunity would benefit neighboring and adjacent properties.
 - f. There was no evidence that the tent would produce smells, noises, emissions, or lights which would create a substantial adverse effect on neighboring and adjacent properties.
 - g. The tent will meet all setback requirements and will be secured with straps to protect it from high winds.
 - h. The tent will be used only on a temporary basis during limited times of the year.
 - i. The approval is conditioned on the following:
 - i. The tent shall only be used on the Property from May 1st to November 1st beginning on May 1, 2020.
 - ii. The tent shall be removed when not in use.
 - iii. The approval is valid for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) 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 five (5) years. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to approve the special use exception application with conditions. Mr. Brent Workman did not participate in the discussion or vote on this 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 August 4, 2020.