

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

**IN RE: BEACHFIRE BREWING COMPANY, LLC**

**(Case No. 12651)**

A hearing was held after due notice on January 24, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a special use exception to place a tent for more than three days.

Findings of Fact

The Board found that the Applicant is requesting the special use exception to retain a tent for a period of 5 years. 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 334-13.20-24.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Mackenzie Peet, property record information, a deed to the Property, a survey of the Property dated September 9, 2019, a portion of the Sussex County Zoning Code, photographs, an overflow parking sketch plan, a letter from the Planning & Zoning Department, Findings of Fact for Case No. 12391, a letter from Hal Dukes, Esquire, a notice of decision for Conditional Use Application No. 2042, 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 Brian Nelson sworn in to testify about the Application. Mackenzie Peet, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Ms. Peet stated that the Applicant is Beachfire Brewing Company, LLC, which is doing business as Revelation Craft Brewing Company, and the Applicant is a local microbrewery who leases the Property from EKC Brewery, LLC.
5. The Board found that Ms. Peet stated that the Property is in a General Commercial (C-1) zoning district and there are other commercial uses in the area, such as a furniture store and Tomato Sunshine, in addition to residential uses. She noted that the Applicant leases property across the street for parking as well and those leases have options to renew.
6. The Board found that Ms. Peet stated that Revelation is seeking to continue the use of a 15 feet by 30 feet tent on the Property for a period exceeding three days pursuant to §§115-80 and 115-210 of the Sussex County Code.
7. The Board found that Ms. Peet stated that the Applicant received a special use exception to maintain a tent on the Property in 2019 and that approval expired on December 31, 2021.
8. The Board found that Ms. Peet stated that the Applicant has originally planned to move the operation to a new location in Rehoboth and did not anticipate needed the special use exception for more than a couple of years but the Covid-19 pandemic changed plans as there was no income during the shutdown period. According to Ms. Peet, the Applicant still intends to move to a different location when it makes financial sense to do so.

9. The Board found that Ms. Peet stated that the Applicant extended its lease at the current location to the end of 2024 and the Applicant is now seeking the special use exception for a period of five years or, in the alternative, approval through at least the end of 2024.
10. The Board found that Ms. Peet stated that the special use exception was granted subject to three conditions and the Applicant proposes to retain those conditions.
11. The Board found that Ms. Peet stated that the use of this tent will not substantially adversely affect the uses of neighboring and adjacent properties since the Property has operated as a microbrewery since 2015 and the tent will continue to serve as additional patron space for the brewery.
12. The Board found that Ms. Peet stated that the business operates from 12:00 pm to 9:00 pm with extended hours on the weekend and that summer hours are 11:00 am until 11:00 pm with the exception of special events when they open at 9:00 am.
13. The Board found that Ms. Peet stated that parking is provided off-site and is confirmed by two letters included with the Application but most of the patrons travel to this site by foot or by bicycle as it is near the bike trail. She noted that the Applicant has bike racks on site.
14. The Board found that Ms. Peet stated that the tent has been up since the previous approval and the tent is the first thing you see when you reach the Property so it is important for the Applicant to keep it maintained as it is the first impression when patrons come to Revelation.
15. The Board found that Mr. Nelson testified that there have been no complaints regarding the tent use.
16. The Board found that Mr. Nelson testified that the lease has been renewed for the next three years on the current location and the lease for the off-site parking is concurrent with the lease for the microbrewery.
17. The Board found that Mr. Nelson testified that, in the future, Revelation would like to move to a more suitable location but remain close to the Junction Breakwater Trail.
18. The Board found that Mr. Nelson testified that the tent has been maintained and does not look dilapidated. He also noted that the tent has been replaced and gives it a cleaner look.
19. The Board found that Mr. Nelson testified that music is not played beyond the time conditioned by the previous approval.
20. The Board found that Mr. Nelson testified that the tent has temporary side walls that are removed during the summer and put back up in the colder weather. He noted that the same material that is used to cover boats is used on the tent.
21. The Board found that Mr. Nelson testified that the tent is strapped down to 500 pound concrete blocks and has not suffered storm damage.
22. The Board found that Mr. Nelson testified that there are no issues with parking and that most patrons arrive via foot or bike.
23. The Board found that Ms. Peet stated that there are no lights associated with the tent that project onto neighboring properties.
24. The Board found that Ms. Peet stated that most of the main building is not for patron use but is for the brewing operation and that the main building does not have much available seating.
25. The Board found that Mr. Nelson testified that Revelation would like the special use exception approval at least through the end of the current lease and that, if the special use exception is only granted for two years, it would put the company in a difficult situation for the remainder of the lease.
26. The Board found that Mr. Nelson testified that the tent is heated by a propane heater sending forced air into the tent and that the tent has been approved by the Fire Marshal.
27. The Board found that Mr. Nelson testified that there are string lights and TVs inside the tent.

28. The Board found that Mr. Nelson testified that Revelation abides by the 30 – 40 seat capacity and he is not aware of there being more people present than the maximum capacity.
29. The Board found that Mr. Nelson affirmed that the statements made by Ms. Peet as true and correct.
30. The Board found that no one appeared in support of or in opposition to the Application.
31. 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. The tent has been on the site since 2019 and no complaints about the tent were noted in the record.
  - 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 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, 2024.
    - 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.
    - iv. The Applicant must obtain approval for the tent from the Office of the Fire Marshal and submit documentation of such approval to the Office of Planning & Zoning.
    - v. At all times, the tent must be well-maintained such that it does not create an unsafe, unhealthy, unsanitary, or substandard condition. If at any time the tent fails to meet this condition or is unfit for human occupation and use or otherwise violates the Sussex County property maintenance code or any other applicable statute, law, regulation, or ordinance, the Applicant shall be deemed in violation of this condition.

The Board granted the special use exception application 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. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, Mr. John Williamson. No Board Member voted against the Motion to approve the special use exception application with conditions.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date March 21, 2022.