

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: AMERICAN LEGION, OAK ORCHARD-RIVERDALE POST,
DEPARTMENT OF DELAWARE, INC.

(Case No. 12701)

A hearing was held after due notice on June 6, 2022. The Board members present were: 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 operate a temporary sales tent.

Findings of Fact

The Board found that the Applicant is requesting the special use exception for a period of five (5) years during the 4th of July season. This application pertains to certain real property located on the southwest side of Legion Road approximately 0.7 miles from John J. Williams Highway (911 Address: 31768 Legion Road, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 234-29.00-263.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a tent location plan, a lease agreement, property record information, schematics of the proposed tent, certificate of liability insurance, a letter from Keystone Novelties Distributors, LLC, 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 or in opposition to the Application.
3. The Board found that Fred Young was sworn in to testify about the Application.
4. The Board found that Mr. Young testified that he is employed with Keystone Novelties Distributors which is leasing the Property for the purposed of placing the temporary sales tent.
5. The Board found that Mr. Young testified that they plan to sell fireworks and novelties from June 22 through July 4 and ask for additional time for the setup and break down of the tent. He noted that they typically request the breakdown of the tent and it is completed within 3 days.
6. The Board found that Mr. Young testified that the sales period would be 13 days.
7. The Board found that Mr. Young testified that they have been granted special use exceptions in the past and they have had no issues with those tents.
8. The Board found that Mr. Young testified that the tent is manned 24 / 7 due to the tent not able to be locked to protect the merchandise.
9. The Board found that Mr. Young testified that they also have a storage unit to secure some product but need a designee to be on-premise to secure the other product.
10. The Board found that Mr. Young testified that there is a dirt lane on the Property and grass area for parking of patrons of the tent.
11. The Board found that Mr. Young testified that the hours will vary being open to 9 pm from June 22 to July 1, until 10 pm on July 2 and 3 and until 11 pm on July 4 but they would abide by any other local based laws or rules on those sales.
12. The Board found that Mr. Young testified that the Delaware law does not allow for sales of fireworks beyond the 4th of July.
13. The Board found that Mr. Young testified that they have requested additional time for setup and breakdown just to be on the safe side in the event of emergency.
14. The Board found that Mr. Young testified that their lease agreement with the Legion is until the 10th of July but the tent companies tend to break the tent down as soon as possible. He noted that, at other locations, the tent was removed within two (2) days.

15. The Board found that Mr. Young testified that the granting of the special use exception will not adversely affect the use of the Legion's property.
16. The Board found that Mr. Young testified that the Legion's board reviewed their proposal and agreed.
17. The Board found that Mr. Young testified that the Legion is promoting this sales event which they believe will draw in patrons and that traffic increases closer to the 4th of July but they cannot determine the impact of traffic.
18. The Board found that Mr. Young testified that there will be no parking in the Legion's parking lot but patrons typically are not there for more than 10-15 minutes. He noted that the encourage patrons to get and out of the tent quickly.
19. The Board found that Mr. Young testified that there are lights activated at dusk in the tent and are turned off once the tent closes each night but they are temporary halogen lights.
20. The Board found that Mr. Young testified that the tent is closed off at night.
21. The Board found that Mr. Young testified that he believes the buildings to the rear of the Property are storage for the American Legion but that they are distanced away from the placement of their tent.
22. The Board found that Mr. Young testified that they sell novelty items that are ground based.
23. The Board found that Mr. Young testified that they do not foresee any spark issues with their products being close to either residential or commercial properties.
24. The Board found that Mr. Young testified that there is no music permitted in their tent and they do not permit employees to attract attention to the tent.
25. The Board found that no one appeared in support of or in opposition to the Application.
26. 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 un rebutted 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 runs a fireworks sales business that will sell ground-based fireworks during the July 4th holiday season. The Applicant has leased space at a portion of the Property which is adjacent to the American Legion Post.
 - b. The Applicant intends to erect the tent for sales to run from July 22 to July 4th on an annual basis. The Applicant anticipates that three days before and after the sale will be needed for the setup and tear down of the tent.
 - c. There was no evidence that tent will not block the visibility of any neighboring businesses or signs.
 - d. The Applicant will still have adequate parking even with the tent in place.
 - e. The tent will be used only on a temporary basis during limited times of the year.
 - f. The approval is conditioned on the following:
 - i. The tent shall only be used for sales from June 22 to July 4 on an annual basis. The Applicant shall be able to erect the tent on or after June 17 and the Applicant shall remove the tent from the Property no later than July 11.
 - ii. The approval is valid for a period of three (3) years.

The Board granted the special use exception application for a period of three (3) 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 three (3) years. The Board Members in favor were: 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. Dr. Kevin Carson did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date August 1, 2022