

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

**IN RE: POT NETS BAYSIDE, LLC**

**(Case No. 12754)**

A hearing was held after due notice on November 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 for an off-premises parking lot.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for an off-premises parking lot. This application pertains to certain real property located on the southeast side of Pot Nets Road approximately 600 feet from Long Neck Road (911 Address: 26463 Burton Road, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 234-24.00-51.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a list of proposed conditions, a site plan of the Property dated July 25, 2022, 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 or in opposition to the Application.
3. The Board found that Robert Tunnell, III, was sworn in to testify about the Application. Timothy Willard, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Willard stated that the Applicant proposes an off-premises parking lot to be used by patrons of the nearby Paradise Grill and it is the Applicant's position that the proposed parking lot will not substantially affect adversely the uses of neighboring and adjacent properties. Rather, the Applicant believes that the proposed parking lot will benefit the neighborhood.
5. The Board found that Mr. Willard stated that the site plan has been approved by the Soil Conservation District.
6. The Board found that Mr. Willard stated that Paradise Grill is a bar and restaurant frequented by patrons who arrive via vehicle, golf cart, and boat. According to Mr. Willard, there have been past issues with overflow parking from Paradise Grill onto Pot Nets Road, which is a private road. Mr. Willard noted that patrons parked along Pot Nets Road near residences and the Applicant experienced issues with patrons who remained in the parked area along nearby roads after Paradise Grill closed.
7. The Board found that Mr. Willard stated that the Applicant proposes to divert the overflow parking to an isolated parking lot that is not adjacent to the Paradise Grill location but the Applicant believes the proposed parking lot will improve the situation. He noted that the Applicant started using this area as a parking lot last summer until it received notice from Sussex County that a special use exception was necessary. According to Mr. Willard, the Applicant was previously unaware that such approval was necessary.
8. The Board found that Mr. Willard stated that the purpose of this proposal is to relieve congestion in the streets that would best be served by permitting such parking off-premises.
9. The Board found that Mr. Willard stated that the Applicant seeks no other waivers from the parking requirements.

10. The Board found that Mr. Willard stated that the parking lot in the area of Paradise Grill is located within Pot-Nets Bayside off Pot Nets Road and Paradise Grill is a very popular place visited by large amounts of people.
11. The Board found that Mr. Willard stated that the Tunnel Company owns the land where the restaurant is located but is not involved in the operation of the restaurant.
12. The Board found that Mr. Willard stated that, in the area around Paradise Grill, there are 241 parking spaces and 150 golf cart spaces.
13. The Board found that Mr. Willard stated that, since the zoning is GR, golf carts are allowed and considered to be an amenity to the residents of Pot-Nets Bayside and many residents use their golf carts and park at the restaurant.
14. The Board found that Mr. Willard stated that, even with the large amount of spaces near the restaurant, there is still overflow parking issues which spill onto Pot Nets Road where the residences are lined up. He noted that there are approximately 350 parking spaces around Bay Road and the Main Road which have been used for restaurant parking but there was concern regarding the street parking resulting in traffic and pedestrian safety issues, as well as inconvenience and nuisance to the residents.
15. The Board found that Mr. Willard stated that, as a result in Summer 2022, land owned by Pot Nets Bayside, LLC, and the Tunnell Company was converted to an overflow parking lot for the restaurant and non-residents and guest parking was prohibited on the development streets.
16. The Board found that Mr. Willard stated that the proposed parking lot was created for 336 spots and the site plan shows a gravel lot with spaces marked and lighting. According to Mr. Willard, the parking lot will have 24-hour surveillance.
17. The Board found that Mr. Willard stated that the parking lot is located on Pot Nets Road, just off Long Neck Road and is surrounded by lands owned by the Tunnell Company and mature trees. He noted that the Tunnell Company has greenhouses located adjacent to the parking area and they also store landscaping materials, such as mulch and stone, on the Property.
18. The Board found that Mr. Willard stated that the parking area is 1.5 miles from the restaurant but shuttles are used to transport patrons to and from the restaurant at no charge to patrons. He noted that the type of shuttle used depends on estimated demand and parking area and that shuttles are only used on Friday, Saturday, Sunday, and holidays such as Memorial Day and Labor Day.
19. The Board found that Mr. Willard stated that the hours of operation would be from about noon until shortly after closing of Paradise Grill.
20. The Board found that Mr. Willard stated that the use of the parking area was a great improvement during the summer as it was convenient and established safety for customers and residents.
21. The Board found that Mr. Willard stated that there are practical difficulties in that there is no other place to locate a parking area near the restaurant and this parcel is the closest available land. He noted that the location of the parking lot is also ideal due to being isolated and surrounded by trees.
22. The Board found that Mr. Willard stated that the purpose of these regulations are to relieve congestion in the streets that would be best served by permitting such off-premise parking.
23. The Board found that Mr. Willard stated that the Applicant proposes conditions to apply to the special use exception.
24. The Board found that Mr. Willard stated that, at a minimum, the parking lot will be open Friday, Saturday, Sunday, and holidays.
25. The Board found that Mr. Willard stated that he believes this is an amenity to the restaurant and it is beneficial for them to operate is correctly.
26. The Board found that Mr. Willard stated that, if they do not abide by all of the conditions, sanctions could be imposed by the Board.

27. The Board found that Mr. Tunnell testified that Mr. Willard's statements were true and correct.
28. The Board found that Mr. Tunnell testified that, historically, any overflow parking for Paradise Grill was down the main boulevard in a grassy area with trees where the cars lined the inbound and outbound lanes and this year they decided to not allow individuals to park in this location but directed them to the overflow parking lot and had them shuttled to Paradise Grill. He noted that they made this decision after receiving a large amount of complaints from residents about safety concerns due to individuals hanging out and partying after leaving the restaurant.
29. The Board found that Mr. Tunnell testified that, with the parking lot, they are better able to control individuals with one way in and one way out and they are able to enforce safety and move people along better in this controlled area.
30. The Board found that Mr. Tunnell testified that the purpose was to alleviate issues that they were having.
31. The Board found that Mr. Tunnell testified that they went through a process with DeIDOT before the pandemic began, and had two (2) public hearings and, at these hearings, they had their Pot Nets Road Easement vacated because their long term plans were to build a parking lot and move the main entrance to Bayside closer to the parking lot and change some interconnections through the community. He noted that Phase One was the parking lot and, once it was created, they had the easement extinguished by DeIDOT in late 2020.
32. The Board found that Mr. Tunnell testified that there has been a lot of thought put into this and that they have gone through public hearings and spent a great deal of time explaining to the residents what the long term plans area.
33. The Board found that Mr. Tunnell testified that they had a handful of complaints during their operation this summer but the main complaint was lack of signage. He noted that they had a DeIDOT type road sign that would flash parking and that they put up better signage.
34. The Board found that Mr. Tunnell testified that they also received complaints about people hanging out to which they increased patrols of the parking lot prior to installing lighting.
35. The Board found that Mr. Tunnell testified that there were a few complaints but far less than before the parking lot was established and that it has been a large improvement that has been very well received. He noted that most of the feedback about the parking lot he has received was positive.
36. The Board found that Mr. Tunnell testified that the parking lot is about a mile and a half from the restaurant.
37. The Board found that Mr. Tunnell testified that the schedule of the shuttles would be determined by the demand and that Paradise Grill operates the shuttles and would determine the need based on events. He noted that, when certain acts are playing at Paradise Grill, more shuttles would be provided. He believes they try to cycle in every 15-20 minutes and maintain regular shuttle service.
38. The Board found that Mr. Tunnell testified that the person who runs Paradise Grill lives closest to the parking lot so he has a huge incentive to maintain everything correctly and not receive complaints.
39. The Board found that Mr. Tunnell testified that Paradise Grill will handle the direction of traffic and operation of the parking lot.
40. The Board found that Mr. Tunnell testified that he approves the conditions outlined by Mr. Willard.
41. The Board found that Mr. Tunnell testified that patrons of the restaurant can still go to park closer to the restaurant and will be directed to the overflow parking should the need arise. He also noted that they have parking attendants that will also direct people to the overflow lot if they know the parking at the restaurant is full.

42. The Board found that Mr. Tunnell testified that the parking lot is to fill the need for overflow parking at the busiest times of the season.
43. The Board found that no one appeared in support of or in opposition to the Application.
44. 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 parking lot 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 on a parcel near lands owned by the Applicant which is used for a restaurant and bar called Paradise Grill and is operated by a different entity. The restaurant and bar is frequented by patrons in vehicles, boats, and golf carts and is provides significant on-site parking.
  - b. Due to the demand at Paradise Grill, the Applicant has experience problems with overflow parking on other lands the Applicant owns and that overflow parking has resulted in complaints from nearby residents. The Applicant also received complaints about health and safety concerns from residents. In response to those concerns, the Applicant established an overflow parking lot for patrons of Paradise Grill.
  - c. The off-premises parking lot is located in an isolated area surrounded by large trees and provides additional parking for the restaurant's customers and employees.
  - d. The off-street parking area relieves congestion in the streets and the neighborhood is best served by permitting parking off the premises where the restaurant is located. While the parking lot is not adjacent to the restaurant, the parking lot should provide customers and employees with room to safely park their vehicles and the proposed shuttle service should provide them with a safe access to the restaurant.
  - e. There was no evidence that the parking lot has created problems with dust, noise, vibration, light, or emissions in the neighborhood.
  - f. The Property has been used for a parking lot this past summer and, despite the use of the Property in this fashion and notification to neighbors, no complaints were noted in the record.
  - g. No evidence was presented which demonstrated that the offsite parking lot will have any adverse effect on neighboring and adjacent properties; let alone a substantial adverse effect.
  - h. The Board also finds that the Applicant has encountered practical difficulties and undue hardships, including the acquisition of property, in locating additional parking areas on the premises where Paradise Grill is located and that the proposed parking lot relieves congestion in the streets near Paradise Grill and otherwise benefits the surrounding area by isolating the additional parking in one area that can be adequately monitored and maintained.
45. The special use exception approval is subject to the following conditions;
  - a. The remote parking area shall be lighted and monitored by security when in use;
  - b. Signage shall identify remote parking area when available;
  - c. Remote parking area shall be available Friday, Saturday, Sunday, and holidays from May 1<sup>st</sup> to October 1<sup>st</sup>; and
  - d. When the remote parking area is in use, free shuttle service will be available to meet the demand.

The Board granted the special use exception application with conditions finding that it met the standards for granting a special use exception and the standards of §115-23(b)(1) of the County Code.

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



Jeffrey Chorman  
Chair

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

Date January 9, 2023.