



STATE OF DELAWARE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

CARVEL STATE BUILDING, 3RD FLOOR
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

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Bear Trap Spirits, Inc.
t/a Banks Wines & Spirits
38014 Town Center Road
Millville, DE 19967
License No. 12905

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DECISION AND ORDER
Protested Application

SUMMARY OF EVIDENCE

1. The above entity (“Applicant”) filed an application for an alteration of its premises with the construction of a 40’ x 60’ closed warehouse addition located at the above address.

2. A valid protest was filed against the application, requiring a public hearing on the application. See 4 Del. C. § 541.

3. The Commissioner held a public hearing on the protested application on June 1, 2022 at 5 p.m. via Webex, in accordance with Delaware law.

4. Exhibits 1 through 21 were noted for the record.

5. Ms. Kami Banks Kane appeared as the Applicant’s authorized representative.

6. No person who signed or submitted a protest against the application pre-registered to testify or appeared at the hearing.

7. As a preliminary matter, this Office noted that the protest submitted against the application raised objections about the zoning of the premises and the installation of a fence. This Office stated that an OABCC hearing was not the appropriate legal venue to address zoning and fencing issues, and those items were irrelevant to the pending application and thus, would not be considered.

8. Ms. Kane testified that she held meetings about the application for concerned neighbors, but no one attended.

9. The Applicant met the requirements for the Town of Millville and Sussex County wherein her business is located. Ms. Kane testified she removed some pine trees from the back of the property and planned to add a natural landscape to that area which is situated between her business and surrounding neighbors. No fence was required by local or county governments. Ms. Kane also testified that the Applicant reconfigured the parking lot to address neighbors' concerns. She testified the Applicant met the necessary requirements and requested approval of the application.

10. After Ms. Kane presented the Applicant's case, this Office confirmed there were no protestors of record at the hearing.

11. This Office also determined that no evidence against the application was submitted at the hearing to be part of the evidentiary record.

FINDINGS OF FACT

This Office makes the following findings of fact based upon the evidence presented, pursuant to 29 Del. C. § 10128(b)(2):

1. No protestors or anyone else appeared at the public hearing held on June 1, 2022.
2. There was no evidence presented against the application.

CONCLUSIONS OF LAW

1. This Office makes the following legal conclusions pursuant to 29 Del. C. § 10128(b)(3):

The Commissioner may grant, refuse or cancel licenses as required by the Delaware Liquor Control Act ("Act"), but she is not empowered to reject an application unless the applicant has failed to comply with statutory requirements or unless the Commissioner has

reasonable grounds to believe that a statutory basis for refusal exists. See 4 Del. C. § 304(a)(4).¹

2. A protest is a jurisdictional requirement that triggers a hearing in order for evidence to be presented on the record and is not in itself material evidence of opposition.² In this case, one protest letter with twelve signatures was submitted to this Office. A public hearing was held for this Office to consider the application and the objections of the protestors placed into evidence in the record at the hearing.
3. The requirements for an alteration of the premises, as requested here, are set forth in 4 Del. Admin. Code § 704. The Act authorizes refusal of an application, including for alteration of premises, under certain circumstances, including:

A substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term “substantial objection” shall include: ...

b. any objection, or group of objections, presented to the Commissioner either individually or as a group, the content of which gives the Commissioner reason to believe the quality of life of the community in which the license is to operate will be adversely affected by the granting of the license.

See 4 Del. C. §543(b)(11).

4. In the present matter, it was undisputed that protest documents allege that the “objections” concerned a zoning issue and the installation of a fence. This Office’s powers are set forth in Section 304 of Title 4 of the Delaware Code and do not encompass the authority to consider or determine objections based upon zoning or fencing issues.

¹ *Park Distributing Co. v. Delaware Liquor Comm.*, 54 A.2d 551, 557 (Del. 1947)

² *Alfred I. Dupont Sch. Dist., v. Delaware Alcoholic Beverage Control Comm.*, 343 A.2d 600, 603 (Del. Super. 1975).

5. Last, no protestor or any other property owner or resident within one mile of the Applicant's proposed premises appeared at the hearing. As such, no evidence against the application was submitted into the record during the hearing.³
6. Based upon the evidence presented, this Office concludes the application meets the requirements for an alteration of its premises. There was no evidence in the record at the hearing concerning a substantial objection. Therefore, this Office approves the application for construction of a 40' x 60' closed warehouse addition.

DECISION AND ORDER

IT IS THIS 7th day of June, 2022, the Decision and Order of this Office that the application for construction of a 40' x 60' closed warehouse addition for a premise located at 38014 Town Center Drive, Millville, Delaware is approved. The issuance of the license is subject to a final inspection by a representative of this Office.

IT IS SO ORDERED.



The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

Right of Appeal

4 Del. C. § 304(b):

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the

³ *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at *2 (Del. Super. July 1, 1993)(person acting as "party" at a hearing would be evidenced by the person's actual participation as a member of a group, testifying, cross-examining witnesses, and arguing a position).

Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days' notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.