



STATE OF DELAWARE  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
 CARVEL STATE BUILDING, 3RD FLOOR  
 820 NORTH FRENCH STREET  
 WILMINGTON, DELAWARE 19801

TELEPHONE: (302) 5775-ABC (222)  
 FAX: (302) 577-3204

Rosenfeld's Bethany, LLC	:	
t/a Rosenfeld's Bethany	:	
34444 Coastal Highway, Unit 1	:	<b><u>DECISION AND ORDER</u></b>
Bethany Beach, DE 19930	:	Protested Application
License No. 15428	:	

SUMMARY OF EVIDENCE

1. The above entity ("Applicant") filed an application for a beer and wine restaurant license, to include Sundays, and a patio permit on March 30, 2021. In addition, Applicant applied for a variance to include speakers on the patio. The Applicant notified the Office on May 7, 2021 that it was withdrawing the request for a variance for speakers.

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 July 14, 2022 at 5 p.m. via Webex, in accordance with Delaware law.

4. Exhibits 1 through 38 were noted for the record, including Exhibits 19-23 which were letters of protest signed by 18 protestors who lived within 1 mile of the Applicant's premises.

5. Eric Sugrue appeared as the authorized representative of the Applicant.

6. No person who signed or submitted a protest against the application pre-registered to testify at the hearing.<sup>1</sup> During the hearing, no one indicated a desire to testify other than Mr. Sugrue.

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<sup>1</sup> A "party" is defined by the Administrative Procedures Act as "each person or agency named or admitted in any agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party

7. During the hearing, this Office noted that: 1) the request for a variance to the patio permit had been withdrawn by the Applicant and thus would not be considered; and 2) while there were 18 valid protestors who timely filed their oppositions to the application, none of those protestors pre-registered to testify or otherwise submitted evidence to this Office in advance of the hearing (other than their initial letters of protest) or at the hearing against the application.

8. The Applicant's owner, Mr. Sugrue, testified that the proposed premise is located in a strip shopping center in South Bethany Beach known as York Beach Mall, which includes eight other commercial businesses, including other restaurants. Mr. Sugrue also testified that York Beach Mall is located on Delaware Highway One (also known as Coastal Highway), is a busy road, and is near other commercial businesses, including a gift shop and other restaurants. Mr. Sugrue testified that two restaurants in the York Beach Mall serve alcoholic liquors and have been located there for at least ten years.

9. Mr. Sugrue testified he did not have any recent conversations with those in the neighborhood who expressed concerns about the application. He testified that he did, however, receive positive comments from patrons.

#### 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 pre-registered to testify at the hearing.

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to an agency proceeding.” 29 Del. C. § 10102(g). A person acting as a “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. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at \*2 (Del. Super. July 1, 1993).

2. No evidence was presented at the hearing against the application for a beer and wine restaurant license or patio permit.

### CONCLUSIONS OF LAW

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

1. 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).<sup>2</sup>

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.<sup>3</sup> In this case, protest letters with signatures were 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 a beer and wine restaurant license and patio permit, as requested here, are generally set forth in 4 Del. C. § 512 and 4 Del. Admin. Code § 704. The Act authorizes refusal of an application, including for a patio 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).

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

<sup>3</sup> *Alfred I. Dupont Sch. Dist., v. Delaware Alcoholic Beverage Control Comm.*, 343 A.2d 600, 603 (Del. Super. 1975).

4. In the present matter, no protestors pre-registered to testify at the hearing. In addition, no testimony or evidence was presented at the hearing against the application. This Office, therefore, had no evidence of a substantial objection to consider in order to refuse the application.

5. Based upon the evidence presented by the Applicant, this Office concludes the application meets the requirements for a beer and wine restaurant license, to include Sundays, and a patio permit. The Office confirmed that the application did not include a request for a variance on the patio.

#### DECISION AND ORDER

IT IS THIS 5<sup>th</sup> day of August, 2022, the Decision and Order of this Office that the application for a beer and wine restaurant license and patio permit is approved. No variances to the patio were requested; thus, variances are prohibited on the patio.<sup>4</sup>

IT IS SO ORDERED.



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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 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.

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<sup>4</sup> This Office noted that ten residents of the neighborhood could file a petition with this Office to hear complaints about a liquor licensee's conduct of business. 4 Del. C. § 304(a)(5). The Applicant was encouraged to be a good neighbor.