



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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Nicola Pizza, Inc.
t/a Nicola Pizza Restaurant
17323 Ocean One Plaza
Lewes, DE 19958
License No. 11571

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DECISION AND ORDER

SUMMARY OF EVIDENCE

1. The above entity ("Applicant") filed an application to change location of its premises, change its indoor floor plan by increasing interior square footage to approximately 16,000 square feet and increasing to 35 bar seats, to have a patio permit, and for variances to the patio to allow live entertainment, external speakers, amplifiers, paging system, and wet bar.

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

3. The Commissioner held a public hearing on January 4, 2023, at 5:00 p.m. via Webex, in accordance with Delaware law.

4. Exhibits 1 through 22 were noted for the record.

5. Ciro Poppiti, III, Esquire, with the law firm of Lewis, Brisbois, Bisgaard & Smith, LLP, represented Applicant.

6. The application for change of location and substantial changes to the indoor premises were not protested. After review of the submitted application, this Office determined the application met the requirements for change of location and substantial changes to its indoor premises.

7. On September 7, 2022, Applicant withdrew the following requests for variances to the pending patio request: live entertainment, external speakers, amplifiers, and paging system. (Exhibit 5). Applicant did not withdraw its requested variance for a wet bar on the patio.

8. Ten of the eleven protesters withdrew their petition. (Exhibit 6).

9. The remaining protester did not pre-register to testify or attend the hearing.

10. Ms. Kelly Munyan, a co-owner of Applicant, testified Applicant sought a variance to have a wet bar to meet patrons' preference to be outdoors post-Covid and to serve as a gathering place for customers. She testified Applicant's location in Rehoboth Beach had indoor bars that have become gathering places for customers who visit regularly and have become repeat customers. Ms. Munyan testified that, as a result, many customers have become extended family with each other and Applicant's owners.

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. The Applicant's requested variances for live entertainment, external speakers or amplifiers, and a paging system were withdrawn by the Applicant on September 7, 2022.

2. The protest, filed by 11 protesters, was withdrawn by all but one protester in a document submitted to the Office by Applicant's counsel on September 19, 2022.

3. The only issues to be heard during the hearing were the application for a patio permit and variance request for a wet bar.

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. 4 Del. C. § 304(a)(4).¹

2. A protest is a jurisdictional requirement to cause a hearing to be held for evidence to be presented on the record and is not in itself material evidence of opposition.² In this case, a protest signed by eleven people was submitted timely, and subsequently all but one protester withdrew the protest.

3. A public hearing was held for this Office to consider Applicant’s request for a patio with a variance request to allow a wet bar on the patio.

4. This Office may authorize a variance to a patio permit, to allow live entertainment, external speakers, amplifiers, paging system, or wet bar, provided good cause is shown for the request. 4 Del. Admin. C. § 704.

5. Based upon the evidence presented, this Office concludes Applicant met the legal requirements to operate a patio as part of its licensed restaurant. In addition, this Office finds the Applicant showed good cause for the outdoor wet bar. Applicant’s witness testified during the hearing the outdoor patio with a bar would cater to its customers who prefer being outside post-Covid and would serve as a place for customers to gather.

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).

DECISION AND ORDER

IT IS THIS 6th day of January, 2023, the Decision and Order of this Office that the application for a variance for outdoor wet bar is approved. Applicant withdrew all other variances initially requested and therefore, any other variances are prohibited.

The issuance of the license is subject to a final inspection by a representative of this Office.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Jacqueline Paradee Mette, Esq." in a cursive script.

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.