



STATE OF DELAWARE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

CARVEL STATE BUILDING, 3RD FLOOR
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J.P.'s on the Wharf, Ltd. :
t/a J.P.'s on the Wharf :
42 Murderkill Avenue : **DECISION AND ORDER**
Frederica, DE 19946 : **Protested Application**
License No. 11861 :

SUMMARY OF EVIDENCE

1. The above entity (“Licensee”) holds a restaurant license to include a patio issued by this Office. The Licensee applied to this Office to amend its liquor license, requesting variances to allow two wet bars, external speakers, additional kitchen services on the patio with a food truck, and an entertainment area on the patio for games, live entertainment, and movie nights.

2. A valid protest petition was filed against the application pursuant to 4 Del. C. § 543. A public hearing was held on February 16, 2023 in accordance with Delaware law.

3. Stephen Spence, Esquire, with the law firm of Baird, Mandalas, Brockstedt, Federico & Cardea, LLC represented the Licensee. One person who submitted a protest against the application also participated in the hearing.¹

4. Mr. Spence presented evidence in addition to the Record exhibits, including testimony from Ms. Sarah Clark, daughter of the owners of Licensee. The testimony included detailed

¹ 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 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. This Office determined the following, who was a valid protestor, testified at the hearing and is a party to this matter: Mr. Leo Tocco. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at *2 (Del. Super. July 1, 1993).

descriptions and explanations of the property owned by the Licensee, including improvements made to the premises, and how the property would be used. Ms. Clark testified as to the location and use of a food truck for food service to meet the needs of patrons on the patio, explained the improved decking along the water's edge with additional seating for dining, and explained the improved patio area. Ms. Clark testified the requested wet bars would offer greater convenience for servers and customers. Ms. Clark testified the entertainment area would be used for games like corn hole and Jenga, for live entertainment and for proposed movie nights. The testimony described how these areas would provide convenience for the patrons, permitting them to play games while waiting for a dining table.

5. One protestor, Mr. Leo Tocco, testified about flooding and traffic concerns, specifically that cars park on the side of the road and block traffic.

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 Licensee made significant improvements to its property to improve the outside patio area, which included new decking, railings, and fencing to control ingress/egress.

2. The Licensee intends to provide outside food service with a food truck for the convenience of its patrons. In addition, Licensee identified areas on its patio that would be used for live entertainment, to include games like corn hole and Jenga, movie nights and other forms of live entertainment, and use of speakers on the patio.

3. One protestor testified about traffic and flooding concerns. The Office explained that such concerns were outside the scope of the Office.

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 to refuse exists. 4 Del. C. § 543.

2. Licensee noticed requests for variances to include live entertainment, external speakers, and two wet bars on the licensed patio, pursuant to Commissioner’s Rules. See DE Admin. Code § 704 6.1, 6.2, and 6.4, respectively. Licensee put forth substantial evidence on the record how the patio and the requested variances will provide entertainment and convenient service for its patrons that will not unduly burden its neighbors.

3. This Office concludes the Licensee has satisfied the legal standard of good cause for the requested variances on the licensed patio. 4 DE Admin. Code § 704 7.0.

DECISION AND ORDER

IT IS THIS 18th day of May, 2023, the Decision and Order of this Office that the Licensee’s application to amend its liquor license to include variances to allow two wet bars, external speakers, additional kitchen services on the patio with a food truck, and live entertainment to include games, movie nights, and live entertainment on the newly extended patio, is approved. The issuance of the amended license shall be 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 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.