

RESOLUTION # 170

**A RESOLUTION OF THE COMMISSIONERS OF THE TOWN OF DEWEY BEACH
APPROVING A CONDITIONAL USE APPLICATION
SUBMITTED BY GROTTO PIZZA DEWEY, LLC
FOR AN OUTSIDE SERVICE AREA TO BE LOCATED AT
1603 HIGHWAY ONE, DEWEY BEACH, DELAWARE 19971**

WHEREAS, Grotto Pizza Dewey, LLC (the “Applicant”) has submitted an application for approval of a conditional use regarding a new outside service area;

WHEREAS, the proposed use is a conditional use requiring conditional use approval under Table 3, Uses in Resort Business Districts, of Chapter 185, Zoning, of the Dewey Beach Municipal Code, 2005, as amended;

WHEREAS, Section 185-25(D)(1)(a)[1][i] of the Dewey Beach Municipal Code, 2005, as amended, incorporated by reference in Section 185-25.1(D), provides that, “Restaurants conforming to this subsection shall be permitted to apply for a conditional use permit for an outside service area”; and

WHEREAS, Section 185-40 of the Dewey Beach Municipal Code, 2005, as amended, provides that, “[s]pecial requirements may be imposed as conditions to any site plan approval, conditional use approval, special exception approval, or any other approval to protect the health, safety, and welfare of the general public.”

NOW, THEREFORE, BE IT RESOVED BY THE TOWN COMMISSONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION MET THIS 1st DAY OF OCTOBER, 2011, THAT:

Section 1. After reviewing the proposal, the Commissioners of the Town of Dewey Beach find that the location is appropriate, the public health, safety, morals and general welfare will not be adversely affected, adequate off-street parking facilities will be provided, the use will not contribute to a traffic problem on congested roads, the necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

Section 2. The Town Commissioners of the Town of Dewey Beach hereby grant conditional use approval to Grotto Pizza Dewey, LLC for an outside service area to be located at 1603 Highway One, Dewey Beach, Delaware 19971 as proposed.

Section 3. This conditional use approval shall be subject to all applicable provisions of the Town Code, and the following enumerated conditions, which are applicable to the Applicant’s entire property at 1603 Highway One, Dewey Beach, Delaware 19971:

- (1) Seated dining for 35 or more patrons must be provided;
- (2) A minimum of 80-percent of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, must be permanently committed to seated dining, and said seating areas may not be altered, moved, or removed;
- (3) A maximum of 20-percent of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, may be designated as bar area, where stand-up consumption of alcoholic beverages by patrons is permitted;
- (4) In the area designated for seated food service, alcoholic beverages shall only be served to dining patrons;
- (5) No stand-up consumption of alcoholic beverages in the area designated for seated food service is permitted;
- (6) All tables and chairs shall be maintained in the configuration shown in the approved conditional use application;
- (7) If the bar area is separated from the dining area by walls or partitions, the number of patrons in the bar area cannot exceed the Fire Marshall's occupancy limit for that area;
- (8) Kitchen facilities shall be under the direction of a chef or cook;
- (9) The outside service area may be used for seated dining only;
- (10) No stand-up consumption of alcoholic beverages is permitted in the outside service area;
- (11) No external speakers or amplifiers are permitted in the outside service area;
- (12) The outside service area shall be cleared of patrons by 11:00 p.m.
- (13) The Applicant shall obtain a Certificate of Compliance per Chapter 144 of the Code of the Town of Dewey Beach prior to constructing the proposed outside service area.
- (14) The hours of operation shall be limited to until 11:00 p.m. for the outside service area, 1:00 a.m. for the restaurant, and 2:00 a.m. for the take-out area. The Applicant shall stop seating patrons in the outside service area at 10:00 p.m.
- (15) The chain-link and razor-wire fencing in the rear of the restaurant shall be removed, and replaced with Code-compliant materials.
- (16) All impervious materials located under the outside service area and new plantings shall be removed and replaced with pervious materials, as appropriate.

(17) The Applicant shall redesign the Read Street parking lot to maximize the number of available parking spaces.

(18) The Applicant shall reduce the patron area on the proposed outside service area (as proposed during the Planning Commission meeting on August 19, 2011) by replacing the two tables (and related seating) located adjacent to the North entrance with an outside service station.

(19) The current "Beach Bar" sign shall be revised to remove any reference to a bar or other non-family-friendly activity.

(20) Smoking shall be prohibited on the outside service area.

(21) Tiered plantings shall be installed and maintained along the South and West sides of the current bar area, the first fifty (50) feet from Read Street along the West side of the main building, and around the Buena Road parking area (including the green space adjacent to Buena Road between the entry and exit access points) in order to protect the neighboring properties' privacy and protect said properties from light and noise resulting from the Applicant's operations. Such tiered plantings shall include ground-level plants with ground cover, mid-height shrubberies, and a tree canopy, and shall be designed in collaboration with the impacted neighbors and a professional planner or landscape architect. The tier plantings plan shall be mailed to property owners within two hundred (200) feet from the Applicant's property located at 1603 Highway One, Dewey Beach, Delaware 19971, requesting that comments from property owners and tenants be forwarded to the Town Building Official within thirty (30) days from the date of mailing. The Applicant shall conduct a meeting with the property owners and tenants if, after reviewing the comments returned, the Town Building Official requires such meeting. The tier plantings plan shall be approved by a professional planner or landscape architect, and the Town Building Official.

(22) The Applicant shall erect and maintain a fence around the Buena Road lot to discourage individuals from trespassing through the lot. This fence shall be three-feet-six-inches high for the first twenty-two feet from Buena Road, and six-feet high for the remainder of the lot. The Applicant shall also construct a similar six-foot fence along the West side of the existing building to prohibit access from Read Street and the front of the restaurant to the Buena Road lot.

(23) No live entertainment is permitted outdoors on the Applicant's property.

(24) No outdoor public address system, amplifiers, or speakers are permitted on the Applicant's property.

(25) Public access to the outside service area shall be restricted after 11:00 p.m. through the use of gates. All tables and chairs shall be stowed in a manner that prevents after-hours use and deters congregation in the outside service area.

(26) All exterior windows and doors, except those used in the Take-Out area, shall be closed at 11:00 p.m.. The doors between the outside service area and bar area shall not be used after 11:00 p.m., except in an emergency.

(27) Live music is prohibited in the Take-Out area after 11:00 p.m.

(28) All interior speakers in the building shall be directed towards the interior space and away from any exterior door, window, or wall.

(29) The Applicant shall provide and maintain appropriate lighting on the outside service area that does not unreasonably impact the residential neighbors. A lighting plan shall be developed in collaboration with the neighbors and a professional planner or architect. The lighting plan shall be mailed to property owners within two hundred (200) feet from the Applicant's property located at 1603 Highway One, Dewey Beach, Delaware 19971, requesting that comments from property owners and tenants be forwarded to the Town Building Official within thirty (30) days from the date of mailing. The Applicant shall conduct a meeting with the property owners and tenants if, after reviewing the comments returned, the Town Building Official requires such meeting. The final plan shall be approved by the Town Building Official.

(30) The Buena Road lot shall be limited to employee parking, restaurant deliveries, and trash removal. There shall be no more than a total of ten (10) employee parking spaces designed for normal passenger vehicles. These parking spaces shall not be used for the parking or storage of panel or larger trucks or commercial vehicles.

(31) Access to the Buena Road lot between the hours of 6:00 p.m. and 8:00 a.m. shall be controlled by the use of a gated entry/exit system, hang tags, or equivalent means. Use of the parking spaces after 6:00 p.m. shall be restricted to entry/exit of employees at shift changes and closing. The Applicant shall require oversight by a manager at such shift changes and closing to ensure a minimum amount of noise and disturbance, and to prevent employees from loitering in the parking lot.

(32) Use of the Buena Road lot for restaurant deliveries and trash removal shall be limited to the hours between 8:00 a.m. and 6:00 p.m., except for emergencies.

(33) No patron access to the Buena Road lot shall be permitted except in the event of an emergency. "No Loitering" signs shall be posted.

(34) Appropriate low-level lighting (i.e. as short as possible) shall be provided and maintained in the Buena Road and Read Street parking lots to ensure patron and employee safety and to discourage groups from congregating in a manner that negatively impacts residential neighbors. A lighting plan shall be developed in collaboration with the neighbors and a professional planner or architect. The lighting plan shall be mailed to property owners within two hundred (200) feet from the Applicant's property located at 1603 Highway One, Dewey Beach, Delaware 19971, requesting that comments from property owners and tenants be forwarded to the Town Building Official within thirty

(30) days from the date of mailing. The Applicant shall conduct a meeting with the property owners and tenants if, after reviewing the comments returned, the Town Building Official requires such meeting. The final design shall be approved by the Town Building Official.

(35) Security, either through a security officer or monitored closed circuit cameras, shall be provided in all parking areas between the hours of 8:00 p.m. and one-hour after closing.

(36) A designated manager shall be on-site during all hours of operation to enforce noise levels and other relevant behavior in all outdoor areas. Noise levels on all outdoor patron areas shall be maintained below a level that would annoy or disturb a reasonable person of normal sensitivities, as determined by the Dewey Beach Police. Enforcement shall be consistent with the Dewey Beach Code.

(37) All restaurant deliveries shall occur within the Buena Road lot. No deliveries shall be permitted from Coastal Highway.

(38) The Applicant, during periods of normal operation, shall remove loose trash along the West-side of Coastal Highway between Rodney and Dagsworthy Avenues, and along Read Street and McKinley Street from Coastal Highway to Rehoboth Bay a minimum of three times a day. This loose trash removal shall occur in the morning before 9:00 a.m., again in the early evening before 6:00 p.m., and at closing.

(39) No outgoing delivery service shall be permitted from any portion of the Applicant's property.

(40) Restricted access signs shall be placed in the parking lots. Direction signs to be placed on Buena Road access to show proper turning radius.

Section 4. Ordinance 314, "Conditions for Grotto Pizza Expansion", is hereby repealed in its entirety.

Section 5. If any provision of this Resolution shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Resolution which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Resolution are hereby declared to be severable.

Section 6. This Resolution shall become effective immediately upon adoption by a majority of the Commissioners of the Town of Dewey Beach.

DIANE HANSON
Mayor

Attest: _____
SAM MACKERT
Acting Town Manager

Synopsis: This Resolution approves the Applicant's request for a conditional use regarding an outside service area. This Resolution is intended to incorporate the conditions placed upon the Applicant during a prior expansion (i.e. Ordinance 314). In order to avoid inconsistency, the Commissioners have repealed Ordinance 314 and incorporated into this Resolution all relevant prior and new conditions.