



TOWN OF DEWEY BEACH

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ORDINANCE NO. 496

William H. Rutherford
Town Manager

**AN ORDINANCE TO APPROVE AN
APPLICATION BY THE DEWEY BEACH LIONS CLUB FOR A
CONDITIONAL USE IN A RR - RESORT RESIDENTIAL
DISTRICT FOR AN INSTITUTIONAL, EDUCATIONAL
AND/OR PHILANTHROPIC CLUBHOUSE FACILITIES AND
USE, WITH CONDITIONS, ON A PARCEL OF LAND
LOCATED IN LEWES-REHOBOTH HUNDRED AT
MCKINLEY AVENUE AND REHOBOTH BAY, DEWEY
BEACH, DE 19971; BEING A PART OF
TAX PARCEL NO. 3-34/20.18/61.00**

WHEREAS, the Dewey Beach Lions Club has submitted an application for a Conditional Use for an institutional, educational, and/or philanthropic use in a Resort Residential (RR) District pursuant to Chapter 14, Section 502.4(4) of the Dewey Beach Municipal Code to permit the construction of a clubhouse and approved activities on the eastern 1.24 acre portion of the approximately 2.8 acre parcel owned by the Dewey Beach Lions Club at McKinley Avenue and Rehoboth Bay, and

WHEREAS, pursuant to Dewey Beach Zoning Ordinance Section 14-502.4(4) a Conditional Use for ... "institutions, educational or philanthropic, including museums, art galleries and libraries..." may be approved in accordance with the provisions of Chapter 14, Subsection 800. Pursuant to Chapter 14, Subsection 14-801, the purpose of a Conditional Use is generally of a public or semi-public character and is essential and desirable for the general convenience and welfare, but because of the nature of the use, the importance of the relationship to the Comprehensive Plan, and possible impact, not only on neighboring properties, but on a large section of the town, the exercise of planning judgment on location and site plan is required, and

WHEREAS, a hearing was held after due notice on Friday, March 7, 2003, at 7:00 p.m. at the Dewey Beach Lifesaving Station before the Dewey Beach Planning Commission, after which hearing the Planning Commission recommended approval by

a vote of 4 in favor of the application and none against, and

WHEREAS, a public hearing was held after due notice on Friday, June 13, 2003, at 6:00 p.m. at the Dewey Beach Lifesaving Station before the Dewey Beach Town Commissioners, after which public hearing the Commissioners voted to table the vote on the application until the July 11, 2003 meeting.

NOW THEREFORE;

BE IT ENACTED AND ORDAINED, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware that:

The application by Dewey Beach Lions Club for Conditional Use for an institutional, educational, and/or philanthropic use in a Resort Residential (RR) District pursuant to Chapter 14, Section 502.4(4) of the Dewey Beach Municipal Code to permit the construction of a clubhouse and approved activities on the eastern 1.24 acre portion of the approximately 2.8 acre parcel owned by the Dewey Beach Lions Club at McKinley Avenue and Rehoboth Bay is hereby granted with the conditions of operation and use as addressed upon the attached Exhibit A and in accordance with the Findings of Fact as attached in Exhibit B, and the Zoning Map of the Town of Dewey Beach is hereby amended to reflect such granting of a Conditional Use.

Vote of the Commissioners

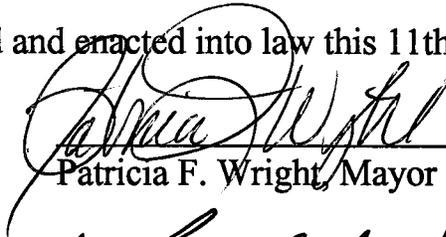
At the conclusion of the public hearing and at reconvening of the proceedings on the application at the Commissioners Meeting of July 11, 2003, a motion was presented by Mrs. Walsh and duly seconded by Mrs. Mayhew to approve the application with conditions placed upon the use and operations. Thereafter, a vote was made as follows: the application for the conditional use with the appended stated conditions was approved by a vote of 5 in favor of the motion and none against. Each Commissioner expressed the rationale for approval of the application, as further recorded upon the audio tape of the hearing, within the Decision below, and as stated in the Exhibits attached to this Ordinance.

Decision of the Commissioners

The Commissioners considered the reasonableness of the evidence presented and the credibility of the witnesses who testified. The Commissioners find that the applicant

met the necessary burden of proof in providing sufficient credible testimony and evidence that the proposed use promotes the general convenience and welfare of the Town of Dewey Beach in that there is a need for an educational, philanthropic and charitable organization clubhouse and facilities in Dewey Beach and the proposal is in compliance with the Comprehensive Plan. The conditions recommended by the Commissioners lessened the impact of the proposed use on the neighboring properties. The Commissioners further find that the prescriptive easement issues alleged by property owners to the east of the Lions Club site are not relevant to the determination of the land use issues presented in the application, and that the easement issues must be determined by a court of proper jurisdiction. The Delaware Office of State Planning and the LUPA review and report is incorporated into this Finding as is the report and findings of the Planning Commission.

Ordained and enacted into law this 11th day of July, 2003.



Patricia F. Wright, Mayor



William Rutherford, Town Manager

**EXHIBIT A
CONDITIONS ON USE**

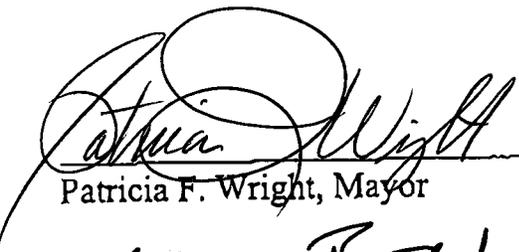
Time of operation and activities at the Dewey Beach Lions Club shall be from 7 a.m. and not later than 11 p.m. daily.

There shall be no on-premises or off-premises alcoholic beverage commercial license and any alcoholic beverage service shall be subject and in accordance with a Delaware Alcoholic Beverage Control Commission "Gathering License" as applied for and complied with by the Dewey Beach Lions Club. There shall be no outdoor service of alcoholic beverages.

There shall be no overnight accommodations of guests or tenants.

The clubhouse and facilities shall be used for philanthropic, educational and charitable institutional purposes for the Dewey Beach Lions Club and related guests and invitees.

All dumpsters shall be in an enclosed/fenced area and shall be located at least a distance of 25 feet from the northern and eastern boundaries of the parcel.



Patricia F. Wright, Mayor



William Rutherford, Town Manager

EXHIBIT B FINDINGS OF FACT

By granting approval of the application, the Commissioners adopt the following Findings of Fact:

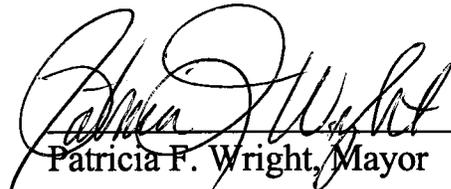
The Commissioners find that the following facts are relevant and credible in reaching its determination. The Town Attorney read the Planning Commission's recommendation of approval and the correspondence of the Office of State Planning indicating no opposition to the application into the record, and thereafter introduced all of the exhibits into the record. The applicant was represented by Jack Hammond, President of the Dewey Beach Lions Club and by James Griffin, Esquire. Mr. Hammond discussed the nature of the application and stated that the Dewey Beach Lions Club inherited the subject property from John Waples, who had placed a condition on the use of the property which would require maintenance of the existing playground. Mr. Hammond explained that the clubhouse facility and surrounding property, which is described in the proposed site plan prepared by George, Miles & Buhr, L.L.C (submitted into the record), would be developed in the proximate area of the existing tennis courts. The western portion of the property is leased to Highway One Enterprises where the Northbeach Restaurant and parking lot are located. Mr. Hammond testified that the Dewey Beach Lions Club property is the only philanthropic property in Dewey Beach and operates for the general convenience and welfare of the community. The proposed use is a multi-purpose facility that would house club operations, offices, historical and award display areas, large and small conference room areas with audio/visual presentation capabilities, a small food preparation area and bath rooms. The clubhouse structure would include complete bathroom facilities and kitchen facilities for meetings of the club members, committees, conferences and would provide space for educational displays. The proposed use includes conferences and meetings for other groups or associations. Mr. Hammond admitted into evidence four page written outline from which he testified, entitled A Request For Conditional Use. He further described that the club has had approximately 14 meetings over the past several months and that there is a specific need for clubhouse facilities and offices for the charitable institution. Mr. Hammond estimated the cost of construction between \$550,000.00 to \$600,000.00. Mr. Hammond then described the nature of the development, construction of the clubhouse, location of the entrance drives and the issue of encroachment by neighbors to the east, and type of construction referencing the proposed site plan. James Griffin, Esq., indicated that Lots 62, 63, 64 and 65 to the east have encroached onto the Lions Club property and that there is no issue of prescriptive easements. Griffin proposed that the conditions of approval should be: time of social operations and events at the Dewey Beach Lions Club be from 7 a.m.

and not later than 11 p.m. daily; that any service of alcoholic beverages be in accordance with a gathering license issued by the Delaware ABCC; that there shall be no overnight accommodations of guests or tenants; and that the clubhouse and facilities be used for philanthropic, educational and charitable institutional purposes for the Dewey Beach Lions Club and occasional guests and invitees. Thereafter, William Zolper, a member of the Lions Club, and his wife Bronnie Zolper, 12A Dickinson Street, Dewey Beach, Delaware, spoke in favor of the application stating that the Club is in need of office space and meeting areas and that the proposed use would be a clubhouse and charitable facility which would benefit the community. She further stated that the proposed use and development would not detrimentally affect the easterly neighbors' enjoyment of their property. Thereafter, several persons, Bob Forwood, Bob Barry, and Ron Crane expressed support of the application, stating that the proposal is a "plus" for the Town, that there is a need for a meeting place for Dewey Beach Lions Club functions and office space, that there should be flexibility in closing hours in that the Club will be operating off-season and will not cause problems to neighbors since the Club has proposed a 25 foot access road within the boundaries of the parcel.

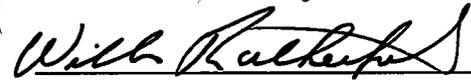
Those people who were in opposition to the application then had an opportunity to speak. Suzanne Zeigler stated that she did not really oppose the application but that hours of all operations and use should be limited to 7 AM to 11 PM. Gary Marine and Jan Marine, 113 C McKinley Street, Dewey Beach, Delaware, Walter Lekites, 113B McKinley Street, Dewey Beach, Delaware, Charles and Lee Gallagher, 113A McKinley Street, Dewey Beach, Delaware, were represented by John Sergovic, Esquire, who claimed that the Lion's Club proposed access road encroaches into lands which the neighbors have right and interest to as a result of their use of the same lands, by operation of law in the form of a prescriptive easement. Mr. Sergovic admitted into evidence the written concerns and opposition to the Application, a summary of which is that the proposed use will have a detrimental impact upon the neighboring properties, that the proposed uses of the Club are vague, that rental of the clubhouse facilities to other parties will cause disturbances to the neighbors and problems of enforcement of conditions, and that the conditions on approval proposed by the Planning Commission will not adequately address the problems. Reference is made to the exhibit for complete details of these opponents' arguments. Mr. Marine testified that he was concerned about: what activities will be conducted at the clubhouse; how the proposed use would affect his life and enjoyment of his property; and that the owners of properties on the east side of the Lions Club parcel have used the gravel lane for access. Peter Lucas, 108 Vista Road, Dewey Beach, Delaware, expressed his concern that the playground would be surrounded on three sides by roadways. Marjie Henthor, 109A Read St., Dewey Beach, Delaware, expressed her concern about

location of the entrance road on the east side of the Lions Club.

Thereafter, attorneys for the applicant and the opponents were provided brief opportunities for rebuttal, during which they re-emphasized the points previously discussed by themselves and their clients. The audio tape of the hearing is referenced and incorporated herein as a complete record of the public hearing.



Patricia F. Wright, Mayor



William Rutherford, Town Manager