

Minutes of the
TOWN OF DEWEY BEACH
PLANNING and ZONING COMMISSION
PUBLIC HEARING AND MEETING
Saturday, April 30, 2016, 2:00 pm
At the
Dewey Beach Life Saving Station
1 Dagsworthy Ave., Dewey Beach, DE 19971

The Chairman of the Planning Commission, Michael Paraskewich, convened the Planning Commission and opened the meeting with the "Pledge to the Flag" at 2:00 pm. The chairman took roll call. Commissioners Jim Dedes, Chuck McKinney, Mike Paraskewich, Gary Persinger and Marty Seitz, were present. Present and representing the Town Planning Commission was attorney Noel E. Primos. Also, members of the public were present including Mayor Diane Hanson, Commissioner Dale Cooke, Mr. Dave Davis, Mr. Rich Hanewinckel, Ms. Marcia Schieck, Mr. Bill Mears, Mr. Chris Flood, Mr. Clint Bunting, and others.

The commissioners adopted the agenda for the meeting, as published, by unanimous vote.

The Chairman briefly discussed the procedure for the public hearing. The applicant would describe the application and respond to questions and comments from the commissioners. The Chairman would then ask for all testimony in favor of the application. Then the Chairman would ask for all testimony opposed to the application. The public hearing is in response to the conditional use application by Dewey Beer and Food Company, LLC, (map 3-34-20.14, Parcel 237, Resort Business 2 District), located at 2100 Coastal Highway, Dewey Beach, Delaware, for a deck expansion and extension of business hours.

The Chairman opened the public hearing and asked for a presentation describing the application. Mr. Clint Bunting, a full partner of the Dewey Beach Beer and Food Company, offered that he would make the presentation. Mr. Bunting was sworn in by Attorney Noel Primos. Mr. Bunting described the application to be in two parts. The first part was to ask for an expansion in the hours of operation. By closing at the now prescribed time of 11:30 pm, the management often had to ask patrons to leave, for example, during a football game on Monday or Thursday evenings. Closing at the requested time of 12:30 am would allow completion of the football games and generally become more compatible with the schedule for many of the business's patrons.

The second part of the application was to expand the service area by building a deck on the south side of the business. The deck would occupy some of the space now allotted to parking, but the parking spaces are long enough to allow for the deck and the parking, according to Mr. Bunting.

The commissioners then questioned Mr. Bunting on the application. The Chairman expressed concerns that the property to the south of the building at 2100 Coastal Highway could not accommodate the deck and parking. Parking perpendicular to the street nominally requires a 9-foot by 18-foot space. The distance from the building to the street right of way is 28.7 feet; so subtracting 11 feet for the width of the deck leaves a distance of 17.7 feet which is 0.3 feet below the limit for a parking space. Also, the drivers rarely utilize the entire length of the parking space, which would generally lead to the parked cars extending into the street right of way, especially because a driver may not wish to park close to patrons on the deck.

Other issues with the premises are that the garage doors do not match the plans submitted for the application that led to the issuance of the Dewey Beer Conditional Use Approval (Ordinance # 712). Also, the rope that separates the service area from the parking lot while the garage doors are open appears inadequate to contain people and to deter people from passing food and drink in and out of the service area. The commissioners expressed that noise from the deck would be of concern, especially after 11:00 pm when the doors and windows of the facility are closed (per Ordinance # 712). Grotto's Pizza stops seating patrons at 10:00 pm and closes their deck at 11:00 pm, something the commissioners may consider.

Mr. Bunting responded that they could build a narrower deck and that the rope matches the roping on top of the building; but that the rope could be replaced with a more substantial barrier.

The Chairman asked Mr. Bill Mears to testify as an expert witness on the size of the service area in the facility. Mr. Mears is the Building Official for the Town of Dewey Beach. After being sworn in, Mr. Mears testified that he believed that the service area of the facility was about 1130 square feet. Mr. Mears was not certain of the number and believes that he does not have a current engineering-certified drawing of the existing facility. This is important because additional requirements such as parking apply to a facility greater than 2,000 square feet. The deck would add more than 400 square feet to the service area.

After questions and comments from the commissioners, the Chairman asked for any members of the public in favor of the application. None of the public offered a response.

The Chairman then asked for any comments from the public in opposition to the application.

Mr. Dave Davis was sworn in and testified that the town does not need any additional alcohol-fueled hours at night. Mr. Davis owns a property one lot away, or about 30 feet, from the restaurant. With an outdoor deck, even if it closes at 10:00 pm, would be a problem with 16 to 32 patrons.

Ms. Marcia Schieck was sworn in and testified that she had reservations about the additional 1.5 hours of operation of the business into the night. Ms. Schieck expressed

no problems with the present operations and commended the benefits of the business; but an outdoor deck may change the neighbors' compatibility with the business. Ms. Schieck owns or has interest in properties at 23 and 21 Saulsbury Street, immediately adjacent to the business.

Mr. Rich Hanewinckel was sworn in and testified on behalf of his property at 23 Saulsbury Street. Mr. Hanewinckel opposed the deck based on arguments already made in opposition to the application.

Mr. Bunting asked that he be allowed to make additional comments. Mr. Bunting wished to withdraw the application for a deck and asked the commissioners to consider only the extended hours of operation. Commissioner Seitz asked Mr. Bunting about the facilities compliance with closing the windows and doors of the restaurant at 11:00 pm, as specified in the conditional use approval. Mr. Bunting said that the restaurant complied and often closed the windows and doors before 11:00 pm.

The Chairman then closed the public hearing and opened the Planning Commission meeting for the regular agenda. The commissioners dealt with item 1 on the agenda, to discuss and possibly vote on the Conditional Use Application by Dewey Beer & Food Company LLC for deck expansion and to strike the closing hour limitation.

Because the applicant withdrew the application to add a deck, the commissioners focused on the extended hours. Because of the acceptable response of the public to the current operations, the commissioners considered the extended hours. One idea was to allow the extended hours for a period of time; then for the Town could consider the appropriateness of continuing those extended hours. Operations in the months of July and August seemed to be adequate to evaluate the impact on the community of the extended hours.

As specified in Ordinance # 712 (approved March 8, 2014), The Dewey Beer and Food Company now operates with a closing time of 11:30 pm and a last seating at 10:45 pm. The extended hours would allow the restaurant to operate until 12:30 pm with the last seating and bar service at 12:00 midnight.

Also, as part of the discussion of the commissioners, the Chairman pointed out that the tee-shirt shack, as now positioned, lies substantially outside of the building restriction line, as evident by the dashed line on the drawings submitted by the applicant. The dashed line runs through the existing building; so the existing building is not in compliance, a fact that was known to the Planning Commission during its hearings on the establishment of the Dewey Beer Company. The tee-shirt shack is a portable building and was added after the hearing on establishing the restaurant; so, it must be moved in the opinion of some of the commissioners.

Commissioner Marty Seitz moved that the Planning Commission recommend that the Town Commissioners enact a temporary expansion of the operating hours with the impact to the community to be evaluated by the Town Commissioners after September

30, 2016, by way of a public hearing, review of police reports, or other appropriate means. The action would establish the temporary hours of operation from 7:00 am to 12:30 am with the last seating and bar service at 12:00 midnight. The patrons must leave the premises by 12:30 am.

Further, by this motion the Planning Commission also recommends to the Town Commissioners that the Town work with the manager of the beer company to have the tee-shirt shack relocated to within the building restriction line for the property, or to be removed altogether.

The motion was seconded by Commissioner McKinney and discussed by the commissioners. The commissioners felt that the trial period was a reasonable approach to testing the impact of the extended hours. The Town commissioners could rescind the extension if the extended hours adversely impacted the community. Also, the commissioners agreed with the rationale for the Town to have the tee-shirt shack moved into the building restriction line or to be removed, altogether.

The Chairman asked the commissioners to vote individually and provide any rationale for their votes, as deemed appropriate. In the following order, Commissioners McKinney, Dedes, Seitz, Persinger and Paraskewich voted in favor of the motion. The commissioners commented that their specific reasons for their vote have been covered in the discussion of the motion.

The commissioners then moved on to item 2 on the agenda to discuss and possible adopt the minutes of the April 9, 2016, meeting. Commissioner Seitz stated that there was some uncertainty about the time sequence within the meeting because of the absence of a recording to refer to during preparation of the minutes. The battery in the recorder had failed at the commencement of the meeting on April 9, 2016.

Commissioner Seitz stated that Attorney Primos had provided comments on the draft minutes and wished to review the proceedings of the meeting with the commissioners. Mr. Primos explained his comments on the draft minutes to the commissioners and heard comments regarding the proceedings of the minutes. Part of the discussion included resolution of the uncertainty as to why the Town Commissioners wished for the Planning Commission to consider the definition of MAJOR STREET OR HIGHWAY. According to the minutes, Commissioner Dale Cooke was asked to clarify with the other town commissioners the purpose of reviewing this definition. Commissioner Cooke, now being at the April 30 meeting, described that the rationale to review the definition was to explain why Bayard Avenue was a major street. The rationale, as Commissioner Cooke understands it, is that the Delaware Department of Highways had specified Bayard Avenue to be a major street or highway. No one could verify whether this designation is currently valid.

Commissioner Seitz moved that the commissioners adopt the minutes as modified by the attorney and explained in the discussion. Commissioner Dedes seconded the

motion. After very little further discussion, the commissioners voted to adopt the minutes, as modified.

The commissioners then moved on to item 3 on the agenda, to establish a schedule for future meetings. Chairman Paraskewich discussed a schedule for the next and subsequent meetings of the Planning Commission. The suggested schedule was to have the meetings 3 weeks after the meeting of the Town Council. With this schedule, the Planning Commission could respond quickly to requests by the Town commissioners. Consequently, the next two meetings of the Planning Commission were scheduled for Friday, June 3, at 6:00 pm, and Friday, July 3, at 6:00 pm.

Per item 4 on the agenda, at 4:11 pm, the chairman asked for a motion to adjourn the meeting. Commissioner Persinger so moved. Commissioner Dedes seconded the motion and the commissioners passed the motion by unanimous vote.

Respectfully submitted,

Martin G. Seitz
Secretary, Planning Commission