

Town of Dewey Beach  
Board of Adjustment  
November 10, 2015  
Meeting Minutes  
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The Dewey Beach Board of Adjustment held a duly noticed public hearing and meeting on **Tuesday, November 10, 2015 at 7:00 p.m.** at the **Dewey Beach Lifesaving Station** to consider a **Variance** concerning certain property in the Town of Dewey Beach located at, and known as, 1306 and 1308 Coastal Highway, Dewey Beach, Delaware, Nalu LLC, and Whiskey Beach (Ponos LLC) being further identified as being in Sussex County Tax District 3-34, Map 23.06, Parcel 20.00 and 3-34, Map 23.06, Parcel 35.00. The **Applicant**, Regan Derrickson, requests a variance from the parking requirements of the Dewey Beach Code for restaurant establishments regarding parking requirements.

Present for the **Board of Adjustment (the Board)** were Chairperson Leonard Read and members Phillip Davenport, Rick Dryer, Kathy Cherico, and Beverly Corelle. Present, as well, were Noel Primos, Esquire, Board Attorney, and William Mears, Building Official. Regan and Kimberly Derrickson were also present. Mr. Jay Becker, Esquire, was present on behalf of the Applicants.

The **Board** first unanimously accepted the agenda.

The first agenda item was to review and accept the minutes from the September 22, 2015, hearing. The minutes were unanimously accepted, after spelling corrections and one minor change.

The **Board** first introduced the matter and Chairperson Read read the descriptive information regarding the location and reason for the hearing. Chairperson Read then asked Mr. Bill Mears, Dewey Beach Building Official, to give a brief explanation of the variance request.

Mr. Mears related that the **Applicant** wished to combine two separate smaller restaurants into a single restaurant with more than 2,000 square feet of patron space, which would require off-street parking at a ratio of one parking space for every 200 square feet of serving area. The newly configured restaurant would have 3360 square feet of patron space, requiring a total of 17 off-street parking spaces. The survey submitted by the **Applicant** confirmed that one of the current restaurants (Nalu) has 11 off-street spaces and the other existing restaurant (Whiskey Beach) has none. Mr. Mears stated that, as a result, the **Applicant** was required to provide 6 (six) additional parking spaces and was asking for a variance from that requirement.

Mr. Jay Becker, Esquire, represented Mr. Derrickson. He stated the Nalu restaurant had been in business for 8 (eight) years and that Ponos was originally opened at the

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same time. Four years ago, Whiskey Beach replaced Ponos, which had not been economically viable. The owners plan to merge the two restaurants into one – Nalu. Mr. Becker stated there will be a reduction of 25 seats when the restaurants are combined. However, the amount of serving space will be over the 2,000 square foot threshold requiring the modified restaurant to supply off street parking as required in Dewey Beach Zoning Code Chapter 185-35 paragraph 6(a). Mr. Becker stated that the **Board** had the authority under the Zoning Code Chapter 185-67 paragraph B(2b) to allow for a waiver to the parking requirements or the **Board** may modify the requirements according to Chapter 185-36 paragraph I.

Mr. Becker further stated that the plans to modify the restaurant, if allowed, would not adversely affect the neighborhood. He reiterated that the Applicant plans to reduce the overall patron space and seating and plans to increase the off street parking.

Regan Derrickson (the **Applicant**) and Kimberly Derrickson, 3 Patriots Way, Rehoboth Beach, Delaware, were both duly sworn in and testified that by combining the two restaurants they would improve efficiency. They would have a combined staff and one menu. They stated that Nalu had always been successful, but that Ponos had struggled economically from the start. They added that they converted Ponos to Whiskey Beach four years ago in an effort to attract more customers, but that it is still not a viable operation.

Chairman Read asked why the **Applicant** built two separate restaurants initially. Mr. Derrickson stated that two restaurants were constructed to circumvent the parking requirements that existed at the time. He stated the parking requirements were much more stringent at the time they opened the restaurants, which made it impractical to open one larger restaurant on the property. Mr. Dryer stated that he thought any hardship was self-imposed.

The hearing was opened for public comment. All commenters were sworn in.

Steve Huse, 15 Van Dyke St., Dewey Beach, Delaware, testified against granting a variance. He stated that other restaurants that followed the rules would be penalized by allowing the variance.

Jill Carr, Ben Carr and Pam Carr, 1300 Coastal Highway, Dewey Beach, Delaware, are the owners of Two Seas Restaurant, which is in the same block as the **Applicant's** business. They all testified that they had to build their restaurant according to the parking requirements and that it would be unfair to allow a variance for the **Applicant**. They stated that it would also set precedence for other restaurants in the future. Jill Carr asserted that Nalu's current off-street parking spaces are used by restaurant staff, not patrons.

Seven letters were read into the record. Five were in favor of the parking variance while two were opposed.

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In favor: Alexander Pires of Highway One Companies, James Baeurle of Dewey Beach Enterprises, Harold Dukes of Ocean Front Resort, Steve Montgomery of The Starboard, and Thomas and Suzanne Evans of the Dewey Beach Villas Condominium Association.

Opposed: Dewey Beach property owners Gary and Mary Persinger and David King.

On closing, the **Applicant** and Mr. Becker restated the desire to combine the two restaurants to streamline the operation. They stated they would decrease the overall seating and square footage and increase the parking.

When questioned by the **Board**, the **Applicant** stated that the current 11 off-street parking spaces are currently used by staff and for outdoor storage, but will be reserved solely for patrons of the expanded Nalu.

Mrs. Cherico asked Mr. Mears if Dewey Beach had allowed any exceptions to the parking requirements for restaurants. Mr. Mears stated that no exceptions have been made or allowed.

The public record was closed at 8:30 p.m. and the **Board** discussed the issue.

Beverly Corelle made a motion that: The **Board** deny the request for a variance of the off street parking requirement for an expanded Nalu Restaurant as proposed by the **Applicant**. The motion was seconded by Rick Dryer.

The motion carried unanimously. Phil Davenport denied the request for a parking variance because it would set a precedent for other restaurants. Kathy Cherico denied the request based upon the precedence. Beverly Corelle denied the request based upon the precedence. Rick Dryer denied the request based upon the hardship being self-induced. Chairman Read denied the request based upon the hardship being self-induced.

A motion was made and seconded and the **Board** unanimously agreed to adjourn at 8:45 p.m.

Recorded by:

Leonard Read