

Conditional Use Process

General Requirements and Examples

The Town Code requires many types of businesses to complete a conditional use application process to receive approval to operate in Dewey Beach. Article VII of the Code provides that conditional uses are “uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations.” The types of businesses subject to a conditional use process are listed in Table 3 of the Town Code. Most frequently, the businesses affected in Dewey Beach are restaurants and eateries, but recent conditional use approvals have included a miniature golf course and a dog day care business.

General Requirements

The conditional use application process is specified in Section 185-74 of the Town Code and follows the same process as that specified for changes and amendments to the Town Code in Section 185-73. Conditional use applications can be approved only if:

- 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
- Additional standards in Article XI of the code are observed – e.g., specifications cited in site plan requirements.

Section 185-40 of the Code allows special requirements to be imposed in approving a conditional use application “to protect the health, safety, and welfare of the general public.”

Certain types of businesses have additional conditions that must be met to gain approval as a conditional use. These requirements are included in Section 185-25 D and apply primarily to restaurants, any outdoor, open air, or outside service area, and eateries or cabarets. For example, in an outside service area the requirements are:

- No stand-up consumption of alcoholic beverages
- No external speakers or amplifiers
- Any interior speakers shall not be directed outside
- The area must be cleared of patrons by 11:00 p.m.

Application and Examples

Any **new business** use or **expansion** of an existing business use that is considered by the code as a conditional use is required to undergo the conditional use application process. Recent examples include the approval processes for the miniature golf course, the dog day care business, the addition of outside seating for Mama Marias restaurant, additional seating for Dewey Kabob, and the outdoor deck expansion at Nalu that is still in process. When a business changes ownership but the business use does not change or is not expanded, current policy does not require a conditional use application, but the new owner is bound by the conditions under which the previous owner was approved and

operated. In some cases, the Town has held discussions with new owners about the conditions of operation that the business is subject to. As a result of this policy, there are several businesses that do not conform fully to the requirements of the Code and thus operate as non-conforming conditional uses. Some examples of non-conforming and conforming businesses include:

Dewey Kabob

The business owner applied for permission to add both interior and exterior seating. Commissioners were unable to take a position on exterior seating because the applicant did not own or lease the exterior space. Interior seating was approved, but because this was not deemed to be an expansion, the business is allowed to continue operation as a non-conforming business with a 3:00 a.m. closing time, rather than 1:00 a.m. as the Code requires for a new or expanded business.

Hotdog Johnnies

Recent questions have arisen regarding the operating hours for this business. Although the business acknowledged a 1:00 a.m. closing time in its business license application this year, it is currently operating under the Town Manager's temporary administrative waiver until 2:00 a.m. The town initially tried to enforce the 1:00 a.m. closing time that is specified in the Code, but the business then asked the town manager to consider allowing them to stay open later alluding to an unwritten agreement with the Town in 2017 that allowed a 2:00 a.m. closing time. Although there seems to be no record of this agreement, the business was able to operate for two seasons without a violation notice. The most recent conditional use approval for a previous business did not include any conditions related to closing time, nor did it reference any section of the Code that the business would be required to follow regarding the hours of operation. The business thus operates as a non-conforming business.

Mama Marias

The conditional use application requested approval for outdoor seating. Approval was granted, noting that the business met all requirements for restaurants and that the new outside service would meet all requirements for such areas. The business is therefore a conforming business.

Enforcement

There are obvious logistical problems associated with enforcing conditions under which businesses are approved for operation. But the foundational issue that needs to be addressed is having at hand the history of approvals associated for each business. This will require some research, but once completed it can be easily updated. Enforcement could then be complaint-generated or based on random checks.