

Meeting Minutes  
Town of Dewey Beach Planning Commission Public Hearings and Meetings  
Meeting Date: February 22, 2014

**February 22, 2014 Planning Commission Meeting**

The meeting was reconvened by Chair David King (11:00 am). Commission members present: Jim Dedes, Mike Harmer, Don Gritti, and Mike Paraskewich. Town Attorney Fred Townshend and Code Enforcement Official Bill Mears were present in their official capacities. Also in attendance were Mayor Diane Hanson, Georgia Leonhart, Gary Keith, Dale Cooke, Clint Bunting, Brandon Smith, Mike Reilly, Chris Flood and Leigh Giangreco. As noticed for the meeting, no public input was sought or accepted.

**Purpose.** To continue the Planning Commission’s February 1, 2014 review of application materials submitted under a conditional-use application for operation of a restaurant with ABCC restaurant alcohol and brewery-pub licenses at 2100 Coastal Highway and relevant law 1) to ensure the application package is complete, that the members of the Planning Commission understand what it entails, and that it meets all applicable State and Town codes and requirements for such an establishment and 2) to possibly amend draft ordinance recommending conditions under which this application would merit a positive recommendation from the Zoning Commission to the Town Commissioners.

**PLANNING COMMISSION DISCUSSION**

**Relevant code and regulations**

**Town Attorney Townsend** gave an overview of relevant code and regulations as they provide guidance on the Planning Commission’s review and disposition of this conditional-use application.

**Town Attorney Townsend** addressed the following points during the meeting:

- The Planning Commission’s responsibility is to gather information and make a recommendation to the Town Commissioners regarding a certification of compliance/conditional-use application for a restaurant including a brewery-pub/beer-brewing function as an accessory use as requested by the Town Commissioners.
- A threshold question deals with whether or not a restaurant/brewery-pub is an appropriate use in the Town of Dewey Beach. Attorney Townsend has given the Town Commissioners an informal opinion that a brewery-pub is not an inappropriate accessory use in a restaurant for the proposed zoning district. While this opinion could be challenged in the courts, the courts would likely find that brewery-pubs are not a new use in Delaware and are licensed and recognized in the Delaware code as a secondary function or accessory use in a restaurant. The Planning Commission cannot simply exclude it as an accessory use because it is “manufacturing” or “brewery-pub” is not specifically enumerated in the code because all potentially allowable accessory uses are too numerous to call out by name.
- The issue before the Planning Commission is to determine if the characteristics of the proposed facility – including restaurant and brewery-pub operations – are essentially those of a restaurant as defined by the Town of Dewey Beach and if not, then base such a determination on what is it about the intensity of this particular use that might require further regulation to protect the public. If the addition of the proposed brewery-pub function changes its character as a restaurant, then this accessory use would be inappropriate. This is a determination that requires looking at the proposed operations of the entire facility – including such standards of operation as provided for in the state

1 code regulating brewery-pubs – and comparison to the previous restaurant at this site and other  
2 restaurants in this zoning district in terms of intensity of some or all such operations.

- 3 • Municipalities have very little control over the production or sale of alcoholic beverages; this is the  
4 purview of the ABCC Commissioner. A county can adopt an ordinance that prohibits all alcohol sales  
5 or make all bars & restaurants close at 11:00 pm – applying to all licensees equally. While the Town  
6 might be able to require all alcohol-serving establishments close at 11:00 pm, it cannot restrict  
7 operations of any one facility.
- 8 • The Town does have the authority to not approve a brewery-pub, for example if the operations of the  
9 proposed facility are inappropriate for the designated zoning district or location. However, the state  
10 has enacted a set of regulations to ensure that a brewery-pub operates as a restaurant and once  
11 approved by the Town, regulation of all aspects of the production and sales of beer is granted to the  
12 ABCC Commissioner (the Commissioner is also restricted in what sanctions he might be able to  
13 impose on a violator) – the Town cannot change nor enforce ABCC licensing requirements.
- 14 • That said, the public can attend the ABCC’s licensing hearing and request more restrictive conditions  
15 to be imposed as part of the ABCC licensing process (but such action would be in opposition to the  
16 position of the Town, which would have by that time approved operations as regulated by the  
17 ABCC).
- 18 • If an applicant volunteers to operate under a set of less intense/more restrictive conditions as a  
19 condition of Town licensure the Town may be able to enforce those more-restrictive/less intense  
20 conditions – such as closing at 11:00 pm rather than remaining open to 1:00 pm – but it is not at all  
21 certain that this would be upheld under challenge.
- 22 • In response to the simple question, “does the Town have the authority to limit the number of days a  
23 brewery-pub brews beer or limit hours of operation”, Attorney Townsend answered with a clear “no”  
24 to each.
- 25 • Attorney Townsend was very clear: a recommendation for or denial of by the Planning Commission  
26 needs to focus on specific areas where the proposed facility and operations meet or might fail to meet  
27 the Town’s zoning code requirements and/or represent a threat to the health, safety and welfare of the  
28 community because it is too intensive (smells, wastes, traffic, etc.) use for the character of this  
29 location.

30 **Town Code Enforcement Official Mears** provided his opinion that the current application package  
31 meets the requirements the Town typically applies to building renovations of this scope and scale;  
32 specifically, ones that do not entail any modifications to the exterior footprint or use of the existing  
33 structure. He noted that 1) there is zero side-yard setback on the north side-yard property line (permitted  
34 by code in RB-2), 2) there were discrepancies among the submitted survey and engineering site plan, and  
35 3) he will need an updated/accurate site plan and clarification of the nature and proposed use of the north-  
36 side addition before issuance of any building permit(s) and certificate of occupancy. Bill also noted that  
37 determinations of “substantial improvement” will be made when detailed engineering plans are submitted  
38 for building permits, and that there is an approval process that will include review by Sussex County (e.g.,  
39 building, fire, and health departments), DNREC and County water and waste treatment amongst others.  
40 He also stated that it is his understanding from the submitted plans that everything proposed in the  
41 application falls within the confines of the applicant’s property (but that this can only be confirmed with a  
42 current, accurate survey).

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**Application and public record**

This is an application to change the use of the commercial portion of an existing building in the RB-2 zoning district – a non-conforming structure, which encroaches in the front yard setback and seems to have an adverse use on the north side of the building, and contains 3 seasonal residential dwelling units on the first floor, a non-conforming use based on number of units and location on ground floor – from a 110 seat non-conforming restaurant without an ABCC liquor license and small coffee shop to a much larger, year-round restaurant with ABCC restaurant and brewery-pub licenses which would enable the facility to produce up to 4,000 barrels of beer each year and sell most of that production for consumption off site. These changes will likely result in new and increased intensities of deliveries, pick-ups and possible bus traffic.

The physical change aspects of the application were summarized as entailing: exterior modifications limited to doors & windows associated with the existing commercial-use space and no expansion of use into any exterior yard or open space; interior modifications limited to the commercial space with no change to the residential spaces; deliveries and trash pick-up to use the parking area fronting on Saulsbury St.; any and all improvements will comprise less than 50% of the present value of the commercial portion of the structure; the restaurant seating will remain at 110, but the restaurant will operate with ABCC liquor and brewery-pub licenses; voluntary agreement to close at 11:00 pm and to only brew 5 days a week and not on weekends; operations of a brewery pub as per DE state code (annual production of 4,000 barrels and up to 75% of production sold for consumption off site); a guarantee from the Applicant that there will be no odor or noise from the brewery operation; operations to include manufacture of beer on site, sale of alcohol to patrons for consumption on site, retail sales for off-site consumption and wholesale sales to other bars & restaurants for off-site consumption; and analogies to operations of Dog Fish Head Brewery and Eats and Iron Hill Brewery & Restaurant (which previously raised Planning Commission concerns related to how these facilities manage trash, delivery & storage of raw and waste materials and product, propane storage tanks, and refrigeration requirements that have not been addressed in the Applicant's current submissions).

There had been a lot of public input in regard to a prior hearing of the Planning Commission for amendment of the Town Zoning Code to establish a new conditional-use category "microbrewery". Although the present application is for a different and specific use, the prior public record demonstrated both strong support for a restaurant offering craft food paired with craft beer and strong opposition to manufacturing within the Town limits. While not as much public input has been received to date related to this specific conditional-use application, it has been approximately evenly split and follows along the same two lines or argument.

**Planning Commission Discussion**

There was a lot of discussion about the change of use – from a 110 seat restaurant to a larger restaurant that incorporates a state-licensed brewery-pub able to manufacture up to 4,000 beer barrels per year and sell most of that production for consumption off-site – and how this might affect an increase in intensity of deliveries, storage and removal of trash and waste, offensive odors, traffic and parking concerns for the entire facility when compared to similar operations of the prior restaurant.

1 There was also concern that the Planning Commission was not provided sufficient information to really  
2 understand the proposed brewery-pub operations, i.e., heating for the boiling & hopping step (e.g., will  
3 this require a large propane tank stored in the rear yard abutting residential properties), cool-down for the  
4 subsequent steps, storage volume for the conditioning step and packaging operations (e.g., where will  
5 these happen and will these processes be conducted in a manner that does not overshadow or impair the  
6 restaurant operation). Certified drawings accurately showing the existing use and footprint, and proposed  
7 use and footprint, including the apparent encroachment on the north side of the building had been  
8 requested but not provided to the Planning Commission. Commissioner Paraskewich noted the site plans  
9 were not accurate in at least one obvious regard, and that this raised concerns about the accuracy of other  
10 regards and if the plans could reliably be used by the Planning Commission to make appropriate zoning  
11 decisions. For example there was insufficient information as to where and how the expanded  
12 restaurant/brewery-pub operation proposed to accommodate storage and pick-up of new types and  
13 increased levels of waste and trash. Also, provisions in the site plan for storage (e.g., in the conditioning  
14 step of the brew process and for brewery function wastes), exterior placement of propane tanks,  
15 refrigeration capacity and equipment, and packaging/kegging areas are not clearly delineated.

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17 Building Official Mears noted that prior to issuance of any Town building permits, full engineering plans  
18 would be reviewed and approved by the Fire Marshall, Sussex County, Board of Health and DNREC,  
19 amongst others, for compliance with all related codes and it is typical that these regulatory authorities  
20 would require modifications of the initial engineering drawings; also that anyone installing, e.g., a  
21 propane tank, is bound by specific regulations. Also, that ultimately the issue of “substantial  
22 improvement” will be determined in the issuance of building permits after all other Federal, State, County  
23 and Town reviews have been completed and the engineering plans found to meet all appropriate  
24 regulations.

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26 While it was acknowledged by the Planning Commission members that some of these issues might not be  
27 directly tied to making a proper zoning decision, it was felt by many of the Planning Commissioners that  
28 the applicants did not provide sufficient information for the commissioners to even decide if these  
29 answers would have a zoning relevance and therefore this information was important to their decision-  
30 making process (e.g., whether or not operations of the proposed brewery line would substantially  
31 encroach into proposed seated dining area resulting in a much smaller restaurant that represented in the  
32 application).

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34 Attorney Townsend summarized this discussion by providing the following guidance, whether voting to  
35 support or oppose this application to look to the Town’s zoning code to determine where this application  
36 supports or might fail to meet Town zoning code requirements at this location.

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#### 40 **Planning Commission requests**

41 The Planning Commission was in agreement as to two informational needs to assist in making a final  
42 recommendation: 1) The logistics related to deliveries and trash & waste removal for the restaurant and  
43 brewery function, and parking for patrons and tours; and 2) Layout and operations for the brewery  
44 function: from grain in the door to kegs out, including storage, clean-out and sanitization and

1 packaging/kegging. These are to be sent by the Chair to the applicants for them to address at our March 1  
2 meeting.

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4 A minority of the Planning Commission felt getting an accurate, sealed survey/set of engineering  
5 drawings showing all aspects of the proposed operation was required for making an appropriate decision.

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7 There was a lot of concern about the lack of information – especially regarding certified surveys and site  
8 plans – being used to make important zoning decisions, resulting in a consensus that the Planning  
9 Commission should, at some later time, review section 185-76 of the zoning code regarding preliminary  
10 site plan submissions and review, and recommend appropriate amendments. Mike Harmer took  
11 responsibility for leading this effort.

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13 The Planning Commission members also noted its report to the Town Commissioners should note that, 1)  
14 while not required by zoning code, the applicant should seriously consider the additional condition of  
15 adding at least one more women's or uni-sex restroom for patron use, especially if planning to host  
16 brewery/brewery-pub tours, and 2) our recommendations were based on preliminary site plans that were  
17 not certified as being accurate, and therefore any approval would have to be conditioned on all  
18 renovation/redevelopment being contained in the existing commercial space as attested to earlier by the  
19 applicant and prohibit any additions or modifications to the existing residential or exterior open spaces or  
20 uses.

### 21 22 23 **Draft ordinance amendments**

24 The Planning Commission went through the draft conditional-use approval ordinance condition by  
25 condition. Discussions largely focused on areas in which the Town did/did not have regulatory authority  
26 (e.g., where regulated by state agencies, including ABCC and health, building code and fire departments),  
27 areas of zoning versus building standards, and whether or not the draft language met the needs of the  
28 Planning Commission as a body.

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30 Language was tweaked for some conditions, some conditions were significantly modified to reflect the  
31 Town's actual authority, standard language for other restaurant operations, or recognize voluntary  
32 restrictions offered by the Applicant (subsequent to preparation and posting of the working draft), and  
33 some conditions were deleted in their entirety. A few conditions were called out for further review and  
34 advisement by the Town Attorney (e.g., attempts to quantify an acceptable level of "accessory" use and  
35 the relevance of the International Building Code's definition of "accessory use").

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37 A major change in the draft ordinance entailed the deletion of most conditions regulating the production  
38 or sale of alcohol by the proposed restaurant/brewery-pub because the Town Attorney made it clear to the  
39 Planning Commissioners that the Town does not have the authority to regulate these issues (up until this  
40 meeting many of the members of the Planning Commission believed the Town had some authority to  
41 impose more restrictive conditions or to try to define a level of brewery-pub operations that would be  
42 more appropriate for the Town than that defined in State code).

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44 The six enumerated conditions on pp 8 & 9 under "Requirements to be addressed ..." were deleted in lieu  
45 of the above mentioned request for additional information. The resulting amended working draft (dated  
46 February 23, 2014) is attached hereto.

### 47 48 49 **Adjournment.**

50 The meeting was recessed at 2:32 pm; this Planning Commission Meeting and associated Public Hearing  
51 will reconvene 10:00 am Saturday March 1, 2014, at the Dewey Beach Life Saving Station.