

1 Meeting Minutes
2 Town of Dewey Beach Planning Commission Public Hearings and Meetings
3 Meeting Date: March 1, 2014
4
5

6 **March 1, 2014 Planning Commission Meeting**

7 The meeting was reconvened by Chair David King (10:00 am). All Planning Commission members were
8 present, including Jim Dedes, Mike Harmer, Don Gritti, Mike Paraskewich and Marty Sietz. Town
9 Attorney Fred Townshend and Code Enforcement Official Bill Mears were present in their official
10 capacities. Also in attendance were Mayor Diane Hanson and Town Commissioners David Jasinski,
11 Georgia Leonhart, Dale Cooke, James and Eleanor Tyler, Clint Bunting, Brandon Smith, Mike Reilly,
12 Chris Flood amongst others.
13

14 **Purpose.** To continue the Planning Commission's Public Hearing and deliberations on application
15 materials submitted under a conditional-use application for operation of a restaurant with ABCC
16 restaurant alcohol and brewery-pub licenses at 2100 Coastal Highway, to consider and possibly vote on
17 amendments to draft ordinance regarding conditions under which this application would merit a positive
18 recommendation from the Zoning Commission to the Town Commissioners, and to possibly vote on such
19 a recommendation.
20
21

22 **PUBLIC HEARING**

23 At the onset of the public hearing Chair King noted that amendments made to the working draft ordinance
24 at the February 22 meeting were largely related to areas in which the appropriate regulatory authority is
25 vested with other agencies, e.g., DE ABCC, fire, health and building departments, DNREC and DelDoT,
26 and that some areas were identified for legal review and will be discussed here later. Also, the applicant
27 was asked for additional clarification in two specific areas, and has provided the Planning Commission
28 written responses which will be reviewed at this meeting.
29

30 An opportunity was provided to the applicant to provide the Commission with any new information
31 regarding their application. Mr. Bunting, a partner of Dewey Beer & Food Company went over the new
32 material presented in support of their application.
33

34 **Deliveries/Trash/Waste/Storage.** The property has a large parking area (shown on the site plan and
35 schematic) that will accommodate large trucks as used in deliveries and trash removal. All such activities
36 will take place from this parking area/loading zone. No storage will occur outside the existing building
37 footprint. Deliveries to and shipments from the brewery area will use the sidewalk along the West side of
38 the building, e.g., hand trucks.
39

40 There was commissioner concern about the ability to simultaneously use this parking area for deliveries
41 and customer parking. Building Official Mears noted in the case of parking issues creating an unsafe
42 situation that the Town Police would get involved and see that any problems were rectified.
43

44 **Parking/Tours**

45 There are seven existing parking spaces; one has been designated for use by a handicap van. While there
46 are 6 spaces grandfathered for the apartments, the applicant provides their tenants with parking permits so
47 as to be able to use these spaces for patron parking and deliveries.
48

49 Tours will be limited to 20 people and will include food tastings. Any type of van or small bus used for
50 such tours would be parked at an out of town location already identified by the applicants.
51

Brewery Area Layout and Operation

Brewmaster Mike Reilly discussed the brewery operation.

First process is grain delivery: delivered in 50 pound bags on a pallet; hand trucked into the brewery area; stored in the dry storage area; and milled to crack open (GM).

The Hot Liquor Tank (HLT) holds the hot water needed for the brew process; the Boil Kettle (BK) is where the beer is boiled; there is a working platform between the BK and Mash Tun (MASH); four fermentation vessels (FV); and three Bright Tanks (BT) where the beer is conditioned and dispensed.

In response to a commissioner question, Mr. Reilly noted that a barrel of beer is about 217 gallons and, depending on the type of beer, takes about 250 to 500 pounds of grain. He stated that this quantity of spent grain would fit in a 40 gallon trash container/drum and that they plan on storing the spent grain in such tightly sealed, wheeled containers inside the facility until being picked up by a local farmer (three to four times a week, probably using a pick-up truck).

Mashing (converting starch to sugars) and lautering (filtering) does not produce air borne emissions, all waste water from these steps and cleaning/sanitizing steps will be treated with food-grade cleaners and sanitizers prior to then disposed into existing sanitary sewer floor drains (200 gallons of beer creates about 400 gallons of run off; for comparison, typical restaurants use 3,000 to 5,000 gallons of water in their dish washing process).

The boiling process produces steam, a by-product that produces about 6% steam (about 13 gallons of steam per batch; much less than produced by a typical restaurant dish washing process and should not be noticeable outside the 30' required vent setback from residential properties). If there is a problem with odors they will add a steam condenser at the top of the kettle which would condense the steam and eliminate odors. In response to a commissioner question if they would commit to installing a steam condenser if odors became a public nuisance issue, Mr Reilly noted that the emissions coming off the boil kettle are just sugary water and should not create any odors, but if odors became a problem they would definitely consider installing a condenser or other appropriate technology. The boil process only lasts for one hour each brew cycle – this would be the only time during which steam emissions would occur.

The bright tanks are used for conditioning. They are also used for kegging and dispensing. There is space in the walk in refrigerator area with the bright tanks for keg storage for about 10 six gallon kegs.

In response to commissioner questions regarding his credentials to run a brewery, Mr. Reilly noted he has had experience in the different areas of a brewery operation and has managed a restaurant, and will be taking a certified brewers course this Spring.

Voluntary Conditions

Mr. Bunting reiterated their intent to be primarily a restaurant: to close at 11:00 pm and not be a bar (to stop seating at 10:45 pm and not admitting any new customers after that time); to limit beer creating from 9 am to 5 pm; to limit five days per week during in season and during days when the restaurant is actually operating off season; to sell 60% food to 40% alcohol (including wholesale sales); to limit beer creation to 2 times a day. While Mr. Bunting indicated he did not know if such conditions were enforceable, he confirmed they would voluntarily operate under them. These above conditions were stated in a letter provided by the applicant dated February 28, 2014.

Mr. Buntin also introduced a letter of no contention from DelDoT and a similar letter from DNREC (Conservation District), as requested by the Commission, and referred to the applicant's earlier letter in rebuttal to a letter submitted by Mr. Steinle regarding the International Building Code's definition of

1 “accessory use”. Chair King noted that Dewey Beer & Food Co’s letter was distributed to the members of
2 the Planning Commission at its last meeting and will be included in the proceedings record.
3

4 In response to a commissioner question if the applicant would accept a condition that spent grain would
5 be stored in air tight containers within the facility pending pick up for disposal as noted in their
6 “powerpoint” presentation, Mr. Bunting responded, “yes”.
7

8 In response to a commissioner question if the applicant would agree to install condensers to capture steam
9 evaporation if odors become a problem, Mr. Bunting stated that “yes”, and that they would accept such a
10 condition in their conditional-use approval.
11

12 A commissioner question if the applicant would accept a 60-40 split between food to alcohol sales
13 resulted in some discussion amongst the commissioners about how such a restriction could be enforced.
14 Chair King indicated he was concerned about off-site sales dominating the restaurant function of this
15 entity and wondered if the Town could ask for voluntary limits on sales for off-site consumption as a
16 different approach to ensuring food sales dominate the focus of this restaurant. Commissioner Seitz was
17 concerned that the Town establish a record indicating it was not their desire or intent to approve a
18 “manufacturing facility” that would wholesale most of its production and, if necessary, to ask the ABCC
19 to so restrict operations in their licensure hearing. While a 60-40 requirement was deleted from the draft
20 ordinance reviewed at the Planning Commission’s February 22 meeting in response to advice that the
21 Town cannot impose such a restriction, Chair King asked Mr. Bunting if the applicant would operate their
22 restaurant in a manner consistent with more than 60% of their total revenue stream, including sales of
23 alcohol for off-site consumption, coming from the sale of food, to which Mr. Bunting responded, “yes”.
24 Mr. Bunting followed up by stating that the only reason for wholesale sales is a marketing reason so
25 people can experience the beer, and make the decision to come to Dewey Beach to eat their food and taste
26 the beer.
27

28 In a commissioner question to the Town Attorney, if the Town can limit wholesale sales of beer, Attorney
29 Townsend responded that there is no limit on the amount of beer produced at a brewery-pub that can be
30 sold for off-site consumption.
31

32 **Business Model**

33 At several points during Mr. Buntings’ comments he spoke about their business model being based 1) on
34 walking customers who are in Town for other reasons, at least during the peak season; 2) operating as a
35 restaurant focused primarily on food, with more than 60% of total sales coming from food; and 3) this is a
36 flagship/marketing location for people to come to have great food and great beer, and that they will grow
37 their beer production in a more-commercial/industrial venue out of town.
38

39 **Other Public Input**

40 The Town received written input on this application. As of 9:00 am March 1, 2014 there were 6 letters
41 (representing input from 9 individuals) in support of, and 13 letters (representing input from 18
42 individuals) opposed to this application. There was no further public comment offered at this hearing,
43 and the public hearing was closed at 11:03 am.
44
45

46 **PLANNING COMMISSION DELIBERATIONS**

47 **Updates from Town Attorney**

48 Accessory uses are not going to be found expressed in a code; there are too many potential accessory uses
49 to express all, and therefore each is not prohibited. State code already recognizes that a limited brewery
50 function within a legitimate restaurant is not a significant change of use – the questions becomes not if the
51 manufacture of beer is a permissible accessory use but if proposed brewery function significantly changes

1 the restaurant use. Restaurants in Dewey Beach are not first permitted uses but are conditional uses and it
2 is appropriate for the Planning Commission to look at the entirety of the operation to determine what
3 conditions should be applied to protect the public or to decide the characteristics of the proposed
4 operations are so poorly suited to the specific location that the public cannot be protected.

5
6 Commissioner Paraskewich asked if there were prior examples of challenges to a brewpub as an
7 accessory use in a restaurant in DE case law, to which Attorney Townsend replied that he was unaware of
8 any. The Commissioner followed up with a statement about the appropriateness of an accessory use to a
9 restaurant in Dewey that involves the manufacturing and wholesale sales of beer – that there are no other
10 examples in Dewey of restaurants engaging in the selling beer for consumption off-site. Attorney
11 Townsend responded that it is likely to be inappropriate to focus on aspects of the proposed operation that
12 involve beer versus food; but that it is entirely appropriate to focus on the intensity of those aspects in a
13 predominantly retail versus predominantly wholesale environment, e.g, regarding getting material in/out
14 and traffic. Chair King noted that Georgetown code permits different levels of intensity in different
15 business districts, specifically: in the least intense business district (UB-1) brewpubs are not permitted but
16 bakeries are, provided all products produced on site are sold at retail on the premises; moving up in
17 intensity, in UB-2 brewpubs are permitted, but with restrictions giving the City the ability to regulate
18 food-to-alcohol sales and essentially ban wholesale sales of alcohol; moving up in commercial intensity to
19 the Highway Commercial district, bakeries including wholesale sales and bottling works are added to the
20 permitted uses, and in the Limited Industrial LI-1 district breweries are also added. Here we are talking
21 about an application in RB-2 our mid-level of commercial intensity which backs up directly on
22 residentially-zoned properties.

23
24 Commissioner Seitz applauded that portion of the applicant's business model wherein growth would take
25 place in a more suitable industrial location out of town. This indicates the applicant is unlikely to
26 introduce unwarranted manufacturing and truck traffic at this location.

27
28 Regarding enforcement of voluntary conditions of operation in a conditional-use ordinance, Attorney
29 Townsend stated: if the Town grants a conditional use with restrictions that the applicant voluntarily
30 accepts, it can enforce the restrictions because the courts would likely determine the owner waived their
31 rights to more intense levels of activity; and that future owners cannot expect additional rights.

32
33 There was discussion regarding the control of odors (#33 of the 2/23 draft). The interest of the town is to
34 have the ability to force the applicant to take steps to ensure their claims that their operations will have no
35 odors or harmful air-borne emissions. The resulting language clarifies this intent and is aligned with a
36 statement made earlier by Mr. Bunting to install condensers if emitted odors are a problem. (And, delete
37 item #34.)

38
39 During these deliberations the applicant provided a written statement that they would agree to limit
40 wholesale sales to no more than 800 barrels of beer produced on the premises.

41
42 Commissioner Dedes added language for two amendments to the conditions: that spent grain will be
43 stored inside the building in air tight containers, and that all deliveries will occur on the South side of the
44 property, with parking on the Saulsbury and any deliveries to the brewery area be made by hand truck.

45
46 Attorney Townsend stated it is important to get a record statement from the applicant that the conditions
47 contained in their conditional-use ordinance are acceptable to them. Commissioner Seitz noted that it this
48 should be part of the package that would go to the Town Commissioners.

49

1 Commissioner Paraskewich asked for amendment to item #26 in light of the adverse use/potential
2 encroachment on the North side, resulting in deal separately with entrances on the North versus East
3 sides.

4
5 Commissioner Dedes asked condition #37 be amended to simply state that the entire facility comply with
6 regulations of all State, County and Town fire, health and building code departments, and others as
7 appropriate.

8
9 Delete condition #35 regarding 25% gross floor area per Attorney Townsend's recommendation.
10 Commissioner Paraskewich stated that the IBC has a definition of "accessory use" that limits any
11 accessory use to 10%. Attorney Townsend stated he understood this dealt with appropriate construction
12 standards versus where a brewery-pub can be located or to say when a restaurant is not a restaurant
13 because of the brewery function. Commissioner Paraskewich wanted to go onto the record that the
14 brewery function shown on the submitted site plans exceeds 10% of the total floor area used by the IBC
15 to define accessory use.

16
17 Chair King recommended using the language supplied by the applicant in their February 28th letter for
18 those conditions for which they are agreeing to parameters more restrictive than contained in ABCC
19 regulations, e.g., condition #18 and elsewhere.

20
21 Commissioner Dedes proposed amending item #2 to add "written and agreed upon" to the first sentence
22 and deleting the rest of the sentence following "presentations".

23
24 Chair King noted that there were some clerical issues that need to be cleaned up, typos and
25 inconsistencies from prior drafts.

26
27 The applicant was offered an opportunity for final comments. Mr. Bunting asked for a final list of
28 changes, to possibly accept on the record at this time. Chair King noted that he would work up the
29 amended ordinance and distribute to the commissioners and the applicants at the beginning of the week.
30 King asked everyone to get back to him immediately if they find inconsistencies between the amended
31 ordinance and their individual recollection(s); giving Chair King final authority to make a decision in
32 case of mixed feedback. Commissioner Seitz suggested that a final record statement from the applicant be
33 made at the time the Town Commissioners are ready to vote on a final version – a process supported by
34 the Town Attorney.

35
36 Prior to voting on this application, Chair King called for a short break (11:59 am).

37
38 The meeting was reconvened (12:06 pm) and Chair King discussed his wish for three motions: approval
39 of the ordinance amendments as discussed; a yes or no recommendation to the Town Commissioners on
40 adopting this ordinance; and approval of a draft memo to represent the Planning Commission's report.

41
42 **Motion 1.** Commissioner Seitz moved that the Planning Commission accept the modifications made
43 today to the February 23 draft ordinance approving a conditional use application submitted by Dewey
44 Beer & Food Company. This motion was seconded by Commissioner Harmer. Attorney Townsend noted
45 that this frames the question and in no way reveals how an individual commissioner will vote on the
46 recommendation. Chair King called the question and it was approved unanimously by voice vote, 6-0.

47
48 **Motion 2.** Commissioner Seitz moved that the Planning Commission recommend to the Town
49 Commissioners the draft ordinance of February 23 as amended by discussion/agreement of the Planning
50 Commissioners on March 1, 2014 approving a conditional use for a restaurant business with Delaware
51 ABCC restaurant and brewpub license at 2100 Coastal Highway. This motion was seconded by

1 Commissioner Harmer. Attorney Townsend suggested the commissioners go on the record with pros and
2 cons prior to taking a final roll call vote.
3

4 **Commissioner Paraskewich.** This is an RB-2 site. There are traffic control problems; no off street
5 delivery pick up for barrels or buses; problems with truck traffic on heavily used Coastal Highway
6 especially with bicycles, pedestrians and strollers; the delivery area on Saulsbury Street infringes on
7 patron parking, cartways and traffic entering Rt 1; DelDoT doesn't control our traffic problems; doesn't
8 believe the Town can control odors to ensure it is not going to be a nuisance; strongly concerned about
9 the conflict with the definition of "accessory use" in the IBC; cited examples of brewery-pub operations
10 all have off-street parking for deliveries and areas for storage, while this site doesn't; as a possible
11 precedent setting case, the submitted site plans were incomplete and not certified; the application didn't
12 address current floor plans and the apparent encroachment on the North side. This is a proto-type
13 operation both for the applicants and the Town, which raises concerns about their ability to create a safe
14 and successful business.
15

16 **Commissioner Harmer.** It is currently a restaurant and will be a restaurant in the end, albeit with a
17 moderate amount of beer making; the tours are well planned and will not be a big issue in the off season;
18 welcomes a year-round restaurant with good food in Dewey Beach; the applicant said they would adhere
19 to agency rules and regulations and have no contest letters from DelDoT and DNREC; the owners are full
20 time residents of the Town and are likely to have a non-intrusive operation; although public input was
21 more opposed than in support, it only represented input from some a very small number of Town citizens.
22

23 **Jim Dedes.** The applicants have done a good job to address the concerns of members of the commission;
24 doesn't believe this is going to be an unsafe operation or that it will create anymore difficulties in terms of
25 parking and getting people in and out than any other restaurant in town; with the conditions contained in
26 the draft ordinance we can trust the applicants to work with the town to make this a success and be an
27 asset to the town.
28

29 **Marty Seitz.** Impressed with the new information on brand development and marketing outlets, and that
30 growth will be at an industrial site out of town for increased production.
31

32 **Don Gritti.** Came to the process with concerns that the operations as described in the original application
33 would be inappropriate for the Town. The applicant answered all my questions in a positive way.
34

35 **David King.** Entered this processed with lots of hope (year round operation of a restaurant with great
36 food and great beer, operated by people with a lot of local goodwill) and lots of reservations about this not
37 being an appropriate accessory use in a 110 seat restaurant on a busy beach block corner; if the applicant
38 were to insist on brewing to the maximum permitted by State law and selling most of their product off site
39 I would view this as primarily a manufacturing facility and not appropriate for the proposed location.
40 With the voluntary conditions they have accepted, embodied in the Planning Commission's draft
41 ordinance, especially the limit of a maximum of 800 barrels sold wholesale, and the new information on
42 their delivery/trash/storage and parking plans and operations that indicate the proposed operations will not
43 be too intense for this location, I can support this application.
44

45 **Roll Call Vote on Motion 2.** The motion to recommend approval of the draft conditional-use ordinance
46 to the Town Commissioners passed by a vote of 5 in favor (Chair King and Commissioners Dedes,
47 Harmer, Gritti, and Seitz to 1 opposed (Commissioner Paraskewich), each citing "largely for the reasons
48 given above".
49

50 Chair King read a draft report to the Town Commissioners (attached).
51

1 **Motion 3.** Commissioner Seitz moved the Planning Commission approve the report from the Chairman as
2 read by the Chairman to accompany the draft ordinance to be forward to the Town Commissioners. This
3 motion was seconded by Commissioner Harmer. This motion passed by unanimous voice vote, 6-0.

4

5

6 **Adjournment.**

7 Following a motion, second and unanimous voice vote, the meeting was adjourned at 12:40 pm. The next
8 Planning Commission Meeting will be held on April 12, 2014 at 3:00 pm.