

Minutes (Draft) of the
TOWN OF DEWEY BEACH
PLANNING and ZONING COMMISSION
PUBLIC HEARING(S)

Friday, 6:00 pm, May 8, 2015

At the

Dewey Beach Life Saving Station
1 Dagsworthy Ave., Dewey Beach, DE 19971

The Chairman of the Planning Commission, Michael Paraskewich, opened the meeting with the pledge to the flag at 6:00 pm. The Chairman took roll call. All commissioners, Dale Cooke, Don Gritti, Mike Harmer, Chuck McKinney, Mike Paraskewich, Gary Persinger and Marty Seitz, were present for the meeting. Also, Fred Townsend, the town solicitor, was present for the meeting.

The Chairman then reconvened the public hearing that was recessed at the April 11, 2015, meeting of the Planning Commission for continuation at this next meeting of the planning commissioners.

Commissioner Dale Cooke suggested that the commissioners consider public comments on an application, then discuss the application and take action on the application, if warranted, before receiving public comments on any subsequent applications. This seemed reasonable to the commissioners and the Chairman adopted this format for the public hearings and commissioners' discussion and actions.

Continuation of the Public Hearing on the Application for Expansion of McShea's Beach Pub and Grill

The Chairman asked for any public comments on a draft ordinance to approve a conditional use application submitted by Mr. Rich Robinson for expansion of an existing restaurant business, McShea's, under the town zoning code and licensing requirements of a restaurant at 1705 Coastal Highway, Unit #1, Dewey Beach, DE, 19971. For clarification, the commissioners discussed that the draft ordinance consists of the application made by Mr. Robinson. The commissioners may change this draft ordinance before it is recommended to the town commissioners.

To begin the discussion, the Chairman asked that Mr. Robinson provide a verbal description of what was approved initially for the pub and any changes or expansions. Mr. Robinson stated that conditional use as a pub was approved in 2000. In 2001, Mr. Robinson applied for the use of the patio for food and beverage consumption. This use was opposed by neighboring residents and was not approved by the town. In 2004, Mr. Robinson applied for an expansion, which was approved by the town commissioners. The expansion was not acted upon by Mr. Robinson because the opportunity to lease the additional space no longer existed. The opportunity to lease additional space now exists, and the current application reflects many of the features approved in 2004, but not acted upon.

The Chairman asked for testimony from the public in favor of the application. No one testified. The Chairman asked for testimony against the application. Again, no member of the public testified.

The Chairman entered written comments from citizen David King into the record. The Chairman then read salient features of a letter. The letter was available to the public as part of the record for this application and had been received and considered by the planning commissioners. In the letter, Mr. King made comments regarding administrative process and two specific concerns regarding applications for expansion.

Regarding administrative process, Mr. King states that conditional usage is a land-use issue that is approved by ordinance, and therefore a final draft of the ordinance that will be used for recommendations on a conditional use application by the Planning Commission and approval by the town commissioners is required by town code to be available for public inspection 15 days in advance of any vote to recommend or approve. At this time, stated Mr. King, no such ordinances have been made available for public inspection -- so how can the public make informed comments or voice informed and relevant comments and/or objections.

Specific concerns expressed by Mr. King are two. The first is the delineation of "bar" area. In the town code and the standard practice the town clearly requires restaurants to delineate patron bar area (where stand-up consumption of alcohol is permitted) from other patron areas reserved for seated dining (see Section 185-25 D.(1)(a)[1][c] and [d]). The second concern is grandfathering of a prior approval. At the Planning Commission's last public hearing (April 11, 2015), the applicant representing McShea's expansion indicated he had gotten "approval" for an expansion in a different configuration several years ago. Mr. King believes the town code is very clear that approvals are only for specific situations and configurations as included in the application package, and that any such approval expires as per Section 185-42 of town code.

Discussion and Action on the Application for Expansion of McShea's Beach Pub and Grill

The Chairman then closed the public hearing regarding the expansion of McShea's Pub and Grill. The Chairman opened the discussion among commissioners regarding the application for expansion of McShea's.

Mr. Townsend advised that the draft ordinance is the application submitted for expansion of a facility. Conceptually, the town commissioners could approve the application as an ordinance, following a public hearing. In practice, the town commissioners asks the planning commissioners to hold a public hearing, then recommend changes to the application and to provide other recommendations to the town commissioners. Also, the town commissioners ask the town solicitor to advise on additional wording, including "whereas" and "severability" clauses that he recommends

for the ordinance. So, the ordinance is something that evolves through the public hearings and the meetings of the commissioners and is not something that is presented, in final form, to the public 15 days prior to the first public hearing.

The planning commissioners discussed issues regarding the application including the existing conditions of the pub, the use of the large opening (garage door) on Coastal Highway, size of the bar area, accuracy of the architectural drawing, and use and placement of audio devices in the facility.

Following discussion, Commissioner Seitz moved that the Planning Commission recommend to the town commissioners to accept the application for an expansion of McShea's Beach Pub and Grill with the following conditions:

1. All nine conditions specified in Ordinance # 422 (Feb 12, 2000) remain with the expanded facility,
2. The use of the garage door opening along Coastal Highway 1 in the expanded space is prohibited for entry or egress from the facility (by construction of a brass bannister or other appropriate obstacle),
3. The garage door is to be closed at 10:00 pm, with the pub facility closing at 1:00 pm, daily,
4. The bar area is to be defined as the area encompassed by the bar counter plus a two-foot wide perimeter around the bar counter. The two-foot perimeter accommodates the entirety of the patrons seated at the bar.
5. The length of the proposed east and west extensions of the bar are to be reduced by two feet (from that specified in the architectural drawing provided by Fisher Architecture (and available to the planning commissioners at this May 8 meeting),
6. That the applicant correct the architectural drawing to exclude rest room and storage areas from the patron area (and, by doing so, become consistent with Dewey Beach zoning code),
7. Use atrium features or other innovative display to keep the patron and bar areas below 2,000 square feet to avoid the need to seek a variation from the Board of Adjustment (for parking that would be needed with the public areas greater than 2,000 square feet),
8. Revised plan to be submitted to the town and acceptable to the chairman of the Planning Commission prior to issuance of a conditional occupancy permit,
9. Speakers and amplifiers interior to the facility to be pointed inward. (This condition is in addition to condition #2 specified in ordinance # 422.)

The motion was seconded by Commissioner Don Gritti and modified by amendments suggested during discussion of the motion that were accepted by Commissioner Seitz and agreed to by Commissioner Gritti. These amendments are included in the wording specified above.

After discussion of the motion, the commissioners voted six in favor of the motion, one opposed. The motion passed and was to be conveyed to the town commissioners by the Chairman of the Planning Commission.

Continuation of the Public Hearing on the Application for Expansion of the Salad Factory

The Chairman then continued the public hearing to discuss the application for the expansion of the Salad Factory.

The public hearing, open initially by the Planning Commission on April 11, 2015, is to hear comments regarding an ordinance to approve a conditional use application submitted by Ms. Juli Mills for expansion of the existing restaurant business, The Salad Factory, under the town zoning code and licensing requirements of a restaurant at 1904 Coastal Highway, Dewey Beach, DE, 19971.

The Chairman asked for comments in favor of the expansion of the restaurant. Several members of the public spoke in favor of the expansion. Mr. Harry Wilson advocated for the expansion but suggested retaining the closing time at 11:00 pm daily. Mr. Justin Ritter spoke in favor of the expansion. Other commenters expressed their position in favor of the expansion.

The Chairman then asked for any comments in opposition to the expansion. No members of the public expressed any positions in opposition.

With no additional comments ensuing from the public, the Chairman closed the public hearing.

Discussion and Action on the Application for Expansion of the Salad Factory

The planning commissioners discussed issues regarding the application including closing time for the eatery, the application for a service bar rather than a bar without direct service to the customers, and possible modifications of the floor plan submitted in support of the expansion.

Regarding the application to expand the Salad Factory, Commissioner McKinney moved that the Planning Commission recommend to the town commissioners to accept the application for the expansion of the Salad Factory with the following conditions:

1. Maintain the closing time at 11:00 pm, nightly,
2. Have a service bar, only, with no patron service directly from the bar,
3. The expanded restaurant limited to 60 seats (or fewer, contingent upon fire marshal's approval),
4. Acceptance of the floor plan with modifications specifically to the bar area and elimination of seats at the bar.

The motion was seconded by Commissioner Gritti and discussed by the commissioners. After discussing the motion, the commissioners voted 6 in favor of the motion, one opposed. The motion passed and was to be conveyed to the town commissioners by the Chairman of the Planning Commission.

Continuation of the Public Hearing

The Chairman then continued the public hearing to address changes to Chapter 185-Article V of the town code relating to the Sign and Display Ordinance, and to review an application, submitted by Jason Fruchtman, for a LED sign at Jeremiah's, 1707 Coastal Highway, Dewey Beach, DE, 19971.

The Chairman received no comments either for or against the changes to Chapter 185-Article V, or concerning the application for an LED sign at Jeremiah's.

The Chairman reminded the public that the application to approve a conditional use application submitted by Gary Cannon had been postponed and would not be addressed in this public hearing. The application was for expansion of an existing restaurant business for the addition of a small batch brewery manufacturing operation, Gary's Dewey Beach Grill, under the town zoning code and licensing requirements of a restaurant at 2000 Coastal Highway, Dewey Beach, DE, 19971.

The Chairman then closed the public hearing.

Deliberation on Remaining Items Considered in the Public Hearing

The planning commissioner deliberated on the remaining items considered in the public hearing with the possible vote to recommend approval or denial of the actions considered to the town commissioners.

Commissioner Chuck McKinney suggested that the Planning Commission continue discussion of the changes to Chapter 185 at a later date. Commissioner Dale Cooke concurred on this position, and the commissioners agreed to postpone discussion to a later date.

No action was taken on the application for an LED sign.

Public Comments, Planning for the Next Meeting of the Planning Commission and Closing

The Chairman asked for public comments, even of a general nature, and not necessarily related to the business of this meeting. No comments were offered by the public.

The Chairman asked for suggestions for a date for the next meeting of the Planning Commission. Commissioners suggested Friday, June 5, at 6:00 pm as possible meeting date, given that a quorum of commissioners likely could participate in a meeting on this date.

At 10:39 pm, Commissioner Mike Harmer moved that the commissioners adjourn the meeting. Commissioner Gary Persinger seconded the motion. The motion was approved by all commissioners.

Respectfully submitted,

Martin G. Seitz
Secretary, Planning Commission