

Minutes of the
TOWN OF DEWEY BEACH
PLANNING and ZONING COMMISSION
PUBLIC HEARING AND MEETING
Saturday, November 7, 2015, 10:00 am
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 10:00 am. The Chairman took roll call. Commissioners Don Gritti, Mike Harmer, Chuck McKinney, Mike Paraskewich, Gary Persinger and Marty Seitz, were present. Also, present and representing the Town was attorney Noel E. Primos. Members of the public were present including Mayor Diane Hanson, Commissioner Dale Cooke, Mr. Jim Bauerle, Mr. Steve Spence, Mr. John Snow, and others.

The commissioners reviewed the requirement of a response from the Planning Commission to the Town commissioners within 120 days after the first meeting of the Planning Commission after the issue was referred to the Planning Commission by the Town commissioners. If the Planning Commission did not respond to the Town commissioners within 120 days, according to Town Code, the issue would be considered by the Town commissioners as an affirmative recommendation from the Planning Commission.

Attorney Noel Primos clarified that the 120-day clock started at the meeting of the Planning Commission on August 28, 2015.

The chairman convened the public hearing regarding a proposed amendment to the Zoning Code to permit the enclosure of certain outside service areas (such as decks and patios) of restaurants or eatery establishments as a noise-control measure.

Chairman Paraskewich asked for testimony in favor of the ordinance. Mr. Jim Bauerle of Dewey Beach Enterprises testified in favor of the ordinance. Mr. Bauerle stated that the ordinance was an ability to solve the noise problem in Dewey. Mr. Bauerle has worked with the town regarding the management of noise for over 35 years. This ordinance provided the best option to greatly reduce the level of noise during late evening hours.

Mr. John Snow, a partner in the Highway One Corporation, testified in favor of the ordinance. Mr. Snow stated that Bottle & Cork, North Beach, Rusty Rudder, and the Lighthouse establishments would likely build enclosures to mitigate noise.

With no additional testimony forthcoming in favor of the ordinance, Chairman Paraskewich then asked for testimony opposed to the ordinance. The chairman identified two written statements from citizens opposing the ordinance. David King opposed the ordinance on three points. First, the town is revising its Comprehensive

Development Plan (CDP). The Town should consider this revision to judge how the ordinance supports the plan. Secondly, the Town should specify that the area of any enclosure allowed by this ordinance would not contribute to the area used to calculate the size of the one-time expansion allowed for non-conforming establishments. Thirdly, a request for an enclosure should go through the conditional-use process. And fourthly, the enclosed area should become conforming to the Town Code which is not provided for in the current ordinance.

Mr. Ken Lodge provided written testimony in opposition to the ordinance. Mr. Lodge predicted that the ordinance would expand the Town's parking problems from 3 months to 12 months per year. The Town would see a tidal wave of applications to enclose decks and outdoor areas. The ordinance should at least specify that the added structure would be closed after 10:00 pm, each evening.

With no additional testimony forthcoming, the chairman closed the public hearing. The chairman convened the meeting of the planning commissioners to address old business. The commissioners approved the minutes of the October 3, 2015, meeting of the Planning Commission to be the draft version that they had examined.

The chairman then introduced the consideration of new business. The new business consisted of the discussion of, and possible vote on, the proposed amendment to Section 185-25 of the Zoning Code to permit the enclosure of certain outside service areas of non-conforming restaurant/eatery establishments (such as decks and patios) as a noise-control measure without the loss of non-conforming status by said establishments.

The commissioners discussed the proposed amendment. The commissioners considered the various forms of the draft ordinance and decided to work from the version that was issued and distributed on Friday, November 6. The chairman outlined the timeline for the revision of the Comprehensive Development Plan. The committee that will develop the CPD will begin meeting in January 2016 to produce a draft in the spring of 2016. The timeline will allow the Town commissioners to consider the draft for approval and submittal to the state by March 2017.

Public safety is an issue with the current practice of using temporary structures. Permanent structures allowed by the amendment would be safer.

The commissioners considered that five houses, with zoning recently converted from business use to residential use, seemed to conflict with the maturation of the businesses in Dewey as allowed by the amendment under consideration.

Motion Regarding the Proposed Amendment to Section 185-25

Commissioner Mike Harmer moved that the Planning Commissioners recommend to the Town Commissioners that they approve the proposed draft ordinance (known as the Friday, Nov 6, 6:00 pm version) with the following changes.

Regarding Section 2 of the draft ordinance, add a new subsection 185-25D(1)(d) as follows:

Any restaurant or bar described in subsection (c) above may apply to the Town Commissioners for a waiver of any requirement that it become a conforming facility in connection with an application for a building permit or permits to enclose an existing deck or patio to better control the noise generated on such deck or patio during operations provided that the applicant show, to the satisfaction of the Town Commissioners, that there would be a significant decrease in the noise level. The application may be for a permanent, temporary, or retractable roof, and permanent, temporary, or retractable walls. The Town Commissioners may approve the waiver if the Town Commissioners find that the proposed written plans for said improvements do not create any expansion of the prior existing patron area(s) and there is evidence that said improvements will reduce noise levels generated by said establishment. Code sections §185-56.A and §185-60.B shall not apply to any such waiver application and the related improvements, and any waiver approval under this subsection shall not be deemed to be the applicant's exercise of its one-time expansion right, if any, under subsection (b) above, provided also however that the existing patron areas on said deck or patio may not be included in the calculation for any future proposed one-time 50% expansion.

The text added to Section 2 is underlined in the above paragraph. Sections 1, 3 and 4 remain as written in the proposed draft ordinance (known as the Friday, Nov 6, 6:00 pm version).

Commissioner Persinger seconded the motion and the commissioners discussed the motion. The first addition to Section 2 was made to insure that the requested enclosure would reduce noise, as this was presented as the major benefit of the new ordinance. The second addition to Section 2 recognized that non-conforming establishments in Dewey Beach, with the exception of bars, may not have the right to a one-time expansion.

The commissioners discussed that consideration of this ordinance might wait for the development of the revision to the Town's Comprehensive Development Plan. The committee for the CDP revision will begin meetings in January 2016. The Town can then

decide if this ordinance supports the revised CDP. The commissioners discussed the likelihood that the permanent enclosure would be safer than the temporary canvas and plastic enclosures that are now often used and present a falling hazard from wind damage.

The motion failed to be enacted upon a vote of commissioners Mike Harmer and Gary Persinger in favor of the motion and the other four commissioners in opposition to the motion.

Motion to Table Consideration of the Amendment to Section 185-25

Commissioner Marty Seitz moved that the planning commissioners table this issue of the enclosure of outdoor service areas, leave the public hearing open for additional input and consider the issue at a subsequent meeting. Commissioner Don Gritti seconded the motion.

In discussion of the motion, the commissioners questioned the usefulness of continuing discussion. Commissioner Seitz suggested that the commissioners would use the time to explore how the ordinance could be improved by: incentivizing facility managers to move in the direction of becoming conforming establishments; confirming that only bars are allowed the one time fifty-percent expansion; and better defining the difference between permanent and temporary structures.

Commissioners Marty Seitz, Don Gritti and Mike Harmer voted in favor of the motion; the three other commissioners voted against the motion. So, the motion failed to be enacted by the Planning Commission.

Motion to Deny Adoption of the Proposed Amendment to Section 185-25

Commissioner McKinney moved that the Planning Commission recommend that the Town commissioners deny adoption of this ordinance (in all of the forms that were prepared, to date). Commissioner Seitz seconded the motion. After a brief discussion, commissioners Don Gritti, Chuck McKinney, Michael Paraskewich, Gary Persinger and Marty Seitz voted in favor of the motion; two commissioners voted against the motion. So, the motion passed.

Business of the Planning Commission Regarding a Report to the Town Commissioners

The commissioners discussed the need and mechanism to report the actions of the Planning Commission to the Town commissioners. The commissioners concluded that historically the chairman of the Planning Commission would report the actions either through a verbal report at a public meeting or through a written report that could be read at a public meeting of the Town commissioners. Chairman Paraskewich agreed to report to the Town commissioners at their next public meeting. Attorney Noel Primos concurred that the chairman's report would suffice to be the report of the actions taken by the

Planning Commission that needed to be communicated to the Town commissioners within 120 days, per Town code.

The commissioners decided to schedule additional meetings of the Planning Commission for Saturdays, January 16, February 20, and March 19. The meetings will be rescheduled, if necessary, or cancelled if there is no business to conduct.

Motion to Adjourn

At 12:32 pm, Commissioner Seitz moved to adjourn the meeting. Commissioner Don Gritti seconded the motion. The motion passed by unanimous vote of the six commissioners.

Respectfully submitted,

Martin G. Seitz
Secretary, Planning Commission