TOWN OF DEWEY BEACH

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-6164 (Fax No.)

[redacted]
Town Manager

ORDINANCE NO. 502

AN ORDINANCE TO AMEND THE ZONING MAP OF THE TOWN OF DEWEY BEACH, DELAWARE TO PERMIT A CONDITIONAL USE FOR A CONFORMING RESTAURANT IN A RB RESORT BUSINESS DISTRICT LOCATED AT 136 DAGSWORTHY STREET, DEWEY BEACH, DELAWARE, BEING TAX PARCEL 3-34-20.18-58.00, BEING THE APPLICATION OF HIGHWAY I LIMITED PARTNERSHIP AND COCONUTS WATERFRONT, INC., PURSUANT TO SECTION 14-503.4, SUBSECTION 11(a)(1) OF CHAPTER 14 OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE AND IN ACCORDANCE WITH THE DEFINITION AND REQUIREMENTS OF A RESTAURANT IN CHAPTER 2

WHEREAS, a conditional use application was duly filed on or about September 15, 2003 for permission to operate an outside service area licensed for the sale of alcoholic beverages at a new restaurant, Venus on the Half Shell, in a RB Resort Business district located at 136 Dagsworthy Street, Dewey Beach, DE, being Tax Parcel 3-34-20.18-58.00, pursuant to Section 14-503.4, Subsection 11(a) (1) of Chapter 14 and in accordance with the definition and requirements of a restaurant in Chapter 2 of the Dewey Beach Code;

AND, WHEREAS, on October 29, 2003, the Planning Commission of the Town of Dewey Beach conducted a Public Hearing on the application and unanimously voted to recommend approval of the application, with conditions, to the Town Commissions;

AND, WHEREAS, on the 13th day of December, 2003, a public hearing was held on the application, after proper notice, simultaneously with an application by the same applicant for a Conditional Use for an outside service area for a conforming Restaurant before the Town

1. Except as provided in paragraph 4 below, the requirements of Chapter 2, Section 202, Restaurants, shall be complied with by the restaurant at all times. There shall be trash receptacles placed at the premises by the proprietor in compliance with Chapter 6, Section 4.1.2. of the Dewey Beach Code.

2. The applicant has applied for and must acquire a Certificate of Compliance as provided in Section 1050, Chapter 10 and attach thereto a final seating plan depicting the dining and bar service areas.

3. Conditions of Approval: There shall be no standup consumption of alcoholic beverages. No exterior amplifiers or speakers shall be permitted in the outside service area and no internal speakers from the premises shall be directed to the outside service area. There shall be compliance with the specific requirements of the definition of Restaurant in Chapter 2, Section 202. There shall be no exterior bar or service set-up areas in the 40 x 30 foot exterior expansion. The exterior sliding glass doors shall be closed at 11:00 p.m. except for emergency access and egress and there shall be no use of the exterior area whatsoever after 11:00 p.m., including prohibition against customer and employee smoking and use of the 40 x 30 foot exterior area. Forty parking spaces shall be allocated to the facility. There shall be compliance with all regulatory agency codes and requirements. The exterior area shall be enclosed by an awning, the material and sides of which shall not be made of rigid, permanent material and which awning shall be the subject of a Special Exception by the Board of Adjustment.

Commissioners who determined, based upon the record established at the hearing that the proposed use promotes the health, safety, and welfare of the present and future inhabitants of Dewey Beach, and that it is appropriate to grant the application for the Conditional Use in addition to any existing Conditional Use and other permitted uses;

AND, WHEREAS, Chapter 14 - Section 503.4, Conditional Uses in a Resort Business District, provides for the Conditional Use of a Restaurant with an ABCC when, in the determination of the Commissioners, the application is in accordance with the provisions of Chapter 14, Subchapter 800;

AND, WHEREAS, the requirements of Chapter 2, Section 202, definition of "Restaurant", have been proven by credible evidence presented by the applicant to have been met.

NOW, THEREFORE;

BE IT ENACTED AND ORDAINED, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware that:

The recommendations of the Planning Commission are hereby incorporated into the record.

The Zoning Map Of The Town Of Dewey Beach, Delaware is hereby amended to permit a Conditional Use for a conforming restaurant located in a RB - Resort Business District at 136 Dagsworthy Street, Dewey Beach, Delaware, being Tax Parcel 3-34 20.18-58.00. The proposed Restaurant Conditional Use, as depicted upon the plans submitted to the Town Commissioners, is hereby approved , which area may be licensed for the sale of alcoholic beverages as designated upon the floor plans submitted by the applicant and approved herewith with the following conditions:

The Commissioners declare that the adoption of this Ordinance is appropriate legislative action based upon the following findings of fact and upon the record established during the public hearing process. The applicants, through their representatives have provided plans and assurances that protect the nearby residents from noise disturbances that are associated with the conduct of the applicant's business. The application meets the requirements of Chapter 2, Restaurants. The applicant and several witnesses spoke in favor of the application and none spoke in opposition. The definitions in Chapter 2 of Restaurants and Outside Service Area, which have been carefully drafted as a result of input from the applicant, interested members of the community, neighbors of the site, legal counsel, and Commissioners herein shall assure that the health, safety, and welfare of the present and future inhabitants and visitors of Dewey Beach shall be protected and that purpose and goals of the Resort-Business zoning district are preserved and enhanced.

ORDAINED AND ENACTED into law this 13th day of December, 2004.

PATRICIA F. WRIGHT
Mayor

GORDON ELLIOTT,
Town Manager

TOWN OF DEWEY BEACH
www.townofdeweybeach.com
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MINUTES AND DECISION OF THE PLANNING COMMISSION OF THE TOWN OF DEWEY BEACH

IN RE:

HIGHWAY I LIMITED PARTNERSHIP/COCONUTS WATERFRONT, INC. APPLICATION FOR CONDITIONAL USES FOR A CONFORMING RESTAURANT AND OUTSIDE SERVICE AREA IN COMPLIANCE WITH CHAPTER 2 SECTION 202, DEFINITION OF RESTAURANT ON A PARCEL OF LAND LOCATED AT 136 DAGSWORTHY AVENUE, DEWEY BEACH, DELAWARE 19971, BEING SUSSEX COUNTY TAX PARCEL NUMBER 3-34-20.18-58.00

A hearing was held after due notice on Wednesday, October 29, 2003 at 7:00 p.m. at the Dewey Beach Lifesaving Station. Commission Members present at the hearing were: Chairperson Harry Wilson, George Metz, Carolann Dryer, Suzanne Ziegler, Helene Bruhl, and Mike Harmer. Building Official Bill Mears was present. Robert Witsil represented the Planning Commission. Stephen Spence, Esquire, represented the Applicant.

Nature of the Proceedings

This is an application for conditional uses for a conforming restaurant and outside service area upon a parcel of land consisting of approximately 30,515 square feet more or less located at 136 Dagsworthy Avenue, being in a Resort Business (RB) District, pursuant to Chapter 14 Section 14503.4 11(a)(1) and (3) and Chapter 2, Section 202 (definition of Restaurant). The purpose of the application is to permit the proposed conforming restaurant use and to permit an outdoor food and alcoholic beverage service area on the west side of the existing facility, being approximately 30 feet by 40 feet, as depicted on the Coast Survey and attachment thereto admitted by the Applicant.

Pursuant to Dewey Beach Zoning Ordinance Section 14-503.4, a Conditional Use, if approved, permits a restaurant with or without an ABCC License. Subsection 3 of 14-503.4 permits open-air operation or outside service areas. Additionally, the application proposes compliance with the specific requirements of the definition of a "Restaurant" as provided in Chapter 2, Section 202, a copy of which is attached hereto.

Summary of the Facts and Evidence Presented at the Public Hearing

The Commission finds that the following facts are relevant and credible in reaching its determination. The Applicant was represented by Stephen Spence, Esquire, who briefly discussed the nature of the application as follows. Highway I Limited Partnership is the owner of the real estate. Coconuts Waterfront, Inc. is the licensee of the liquor license and tenant of Highway I Limited Partnership. Presently the facility is a non-conforming use because the food and alcohol beverage service use pre-dated the code amendments to Chapter 2, Section 202 defining conforming restaurants. The existing facility does not currently have an alcoholic beverage service license for outdoor service from the Delaware Alcoholic Beverage Control Commission. The existing facility will not be physically altered except for a new fixed interior floor plan, the addition of a 40 foot by 30 foot outdoor service area, the alteration of the west side of the existing building to provide sliding glass doors and a three-step stairway to the ground level addition, all in accordance with the plans submitted at the hearing. The addition will be located directly on the sand/ground level. Building permits will be required for the sliding glass doors, the additional three-step transition area and posts for a proposed awning. The Applicant will need to submit an application to the Board of Adjustment for the proposed awning and structural posts. No other decking or structural alteration is required. Mr. Spence indicated the proposal would be beneficial to the Town in that the existing non-conforming facility and use is permitted to alter its floor plan and the proposed use would require a fixed floor plan for both the interior facility and the outside service area. No service of alcoholic beverages or food would be permitted nor shall occur outside of the existing facility or the 40 x 30 foot exterior service area. Pursuant to Code requirements, no standup alcoholic beverage service would be permitted within the exterior service area.

Justine Carpenter, the proposed manager of the restaurant facility to be entitled "Venus on the Half Shell" stated that she would be manager and operator of the proposed facility. The outside dining area is very important to the proposed business plan. She described the operations which she presently conducts at "Planet X" and the recent success of that Rehoboth restaurant. Ms. Carpenter stated that she plans a seafood and fine dining with raw bar facility with a French Moroccan interior. She stated that the present non-conforming facility has an identity crisis in that the restaurant use has changed frequently over the past several years and that the proposed use would be a significant improvement over prior operations. There would be minimal physical changes on the exterior--a canvas awning with wooden tables and chairs. Exterior service area operations shall conclude at 11:00 p.m. Interior service may continue after 11:00 p.m. until 1:00 a.m.

James Baeurle, partner of Highway I Limited Partnership, confirmed Mr. Spence's statement that the difference between the prior facility and the proposed facility is that the proposed facility shall have an established fixed floor plan for both the interior and exterior service areas.

Thereafter, several people spoke in favor of the application. Gilbert Bernoski, a resident of Arnell Creek, Sussex County, Delaware stated that he was a customer of Planet X and

a supplier of food goods. He complimented the operations at Planet X and stated that they pay their bills promptly. Robert Barry, Chesapeake Street, Dewey Beach, stated that there is a need for good quality restaurants in Dewey Beach. He expressed concern about noise emanating from the adjacent North Beach facility which is also managed by Highway I Limited Partnership. He suggested that noise control by North Beach would provide a better atmosphere at the proposed facility. Susan McCroy of Bethany Beach commended Planet X service and food and stated that Ms. Carpenter is a good manager. Brian Commero, Rehoboth Beach, expressed commendations for Ms. Carpenter and her Planet X restaurant. Lisa Shores, Rehoboth Beach, stated that there was not a noise problem at Planet X. Thereafter, approximately 19 individuals including the persons mentioned above expressed support of the application by a show of hands.

One person, Robert Spengler, of McKinley Avenue and Dover Road, Dewey Beach, expressed opposition to the application. Mr. Spengler first stated that anytime that a non-conforming use changes to a conforming facility it is a good thing. However, he stated that late night partygoers who previously attended the Coconuts Restaurant would now have to pass his residence in order to gain access to Northbeach. He stated that he would have to "put up with those other late night people who will go to Northbeach instead of Coconuts."

Ms. Carpenter and Mr. Spence proposed the following conditions: Compliance with the specific requirements of the definition of Restaurant in Chapter 2, Section 202; no exterior bar or service set-up areas in the 40 x 30 foot exterior expansion; closure of the exterior sliding glass doors at 11:00 p.m. except for emergency access and egress; no use of the exterior area whatsoever after 11:00 p.m. including prohibition against customer and employee smoking and use of the 40 x 30 foot exterior area; 40 parking spaces to be allocated to the facility; compliance with all regulatory agency codes and requirements.

Prior to closing the public hearing, the following exhibits were admitted into evidence: Coast Survey, Inc.'s survey; two sets of proposed ordinances; the proposed floor plan; a dimensional drawing of the floor plan as proposed; the existing floor plan; a construction drawing; a proposed Certificate of Compliance; and a proposed menu of Venus on the Half Shell. The public hearing portion of the meeting was closed by the Chairperson.

Decision and Vote of the Commission

At the conclusion of the public hearing, a motion was presented and duly seconded that the application for conditional uses be recommended for approval with the following conditions: Compliance with the specific requirements of the definition of Restaurant in Chapter 2, Section 202; no exterior bar or service set-up areas in the 40 x 30 foot exterior expansion; closure of the exterior sliding glass doors at 11:00 p.m. except for emergency access and egress; no use of the exterior area whatsoever after 11:00 p.m. including prohibition against customer and employee smoking and use of the 40 x 30 foot exterior area; 40 parking spaces to be allocated to the facility; compliance with all regulatory agency codes and requirements. Mr. Metz stated that he could not think of any disadvantages to change a non-conforming use to a conforming restaurant. He stated that

for reasons that Coconuts presently has a Sunday liquor license, it is only an advantage for the Town, from an enforcement position; to approve the conditional use application so that operations may be reviewed and that the facility comply with the specific conditions of approval.

Thereafter, a vote was conducted as follows: The application for the conditional uses with the above-stated conditions was recommended for approval by a vote of six in favor and none against. Each Commissioner re-expressed, in part, the rationale stated by Mr. Metz and the additional rationale that the approval of the conditional use would be an outstanding opportunity to change a non-conforming use to a conforming use with enforcement opportunities and that it was "a great plan." Thereafter, the meeting was adjourned.

DEWEY BEACH PLANNING COMMISSION

R. Harry Wilson

Harry Wilson, Chairperson

Dated: 11-7, 2003

Filed with the Town of Dewey Office this 7th day of Nov, 2003.

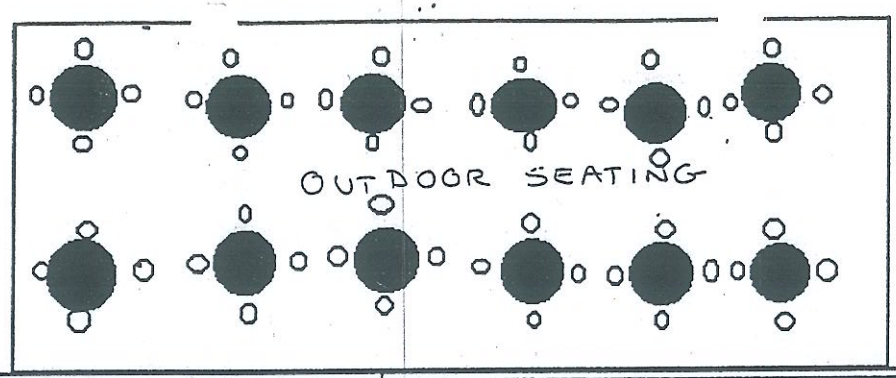
John E Elliott

Gordon Elliott, Acting Town Manager

REHOBOTH BAY

= BAR AREA

= TABLES



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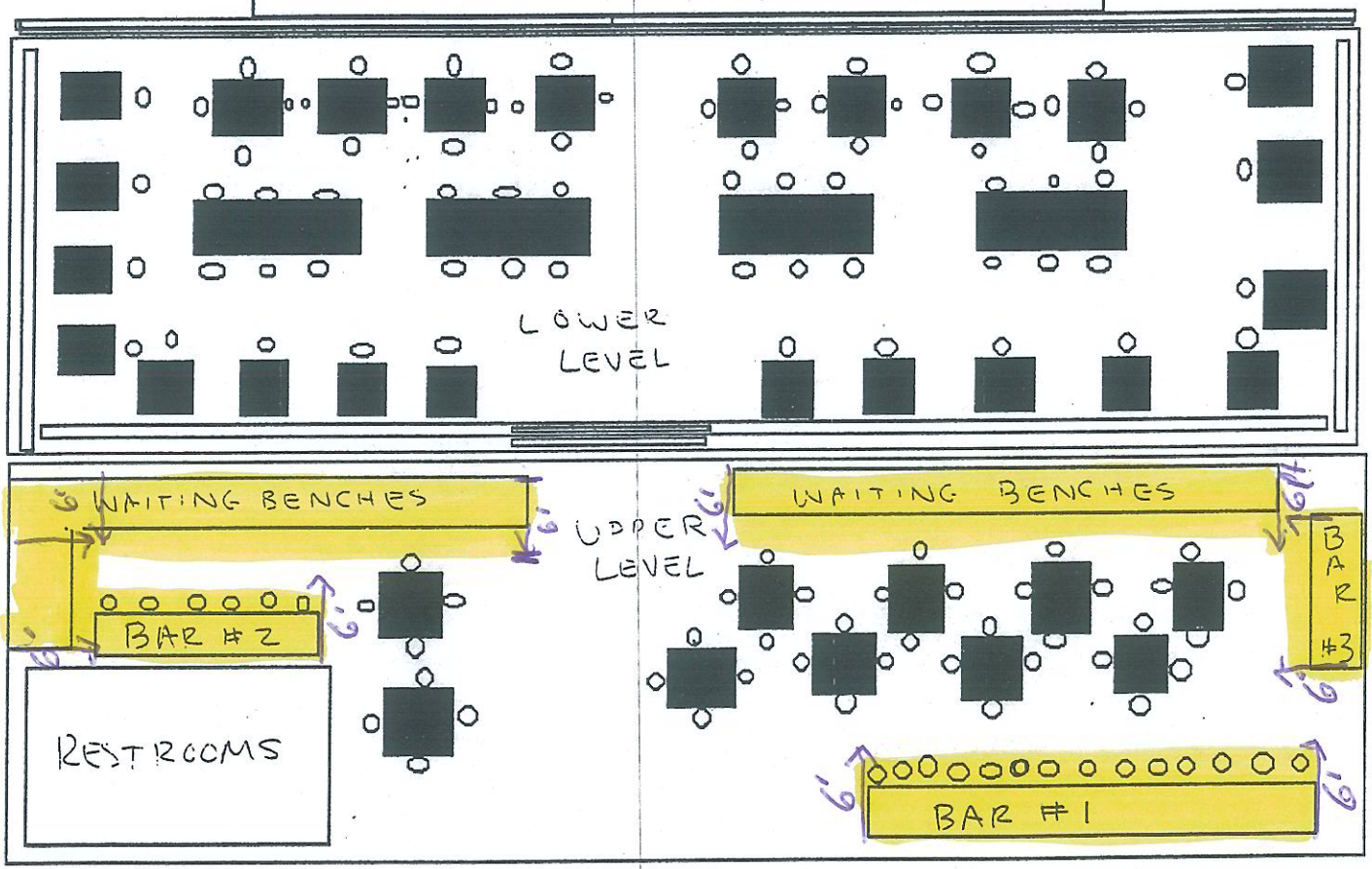


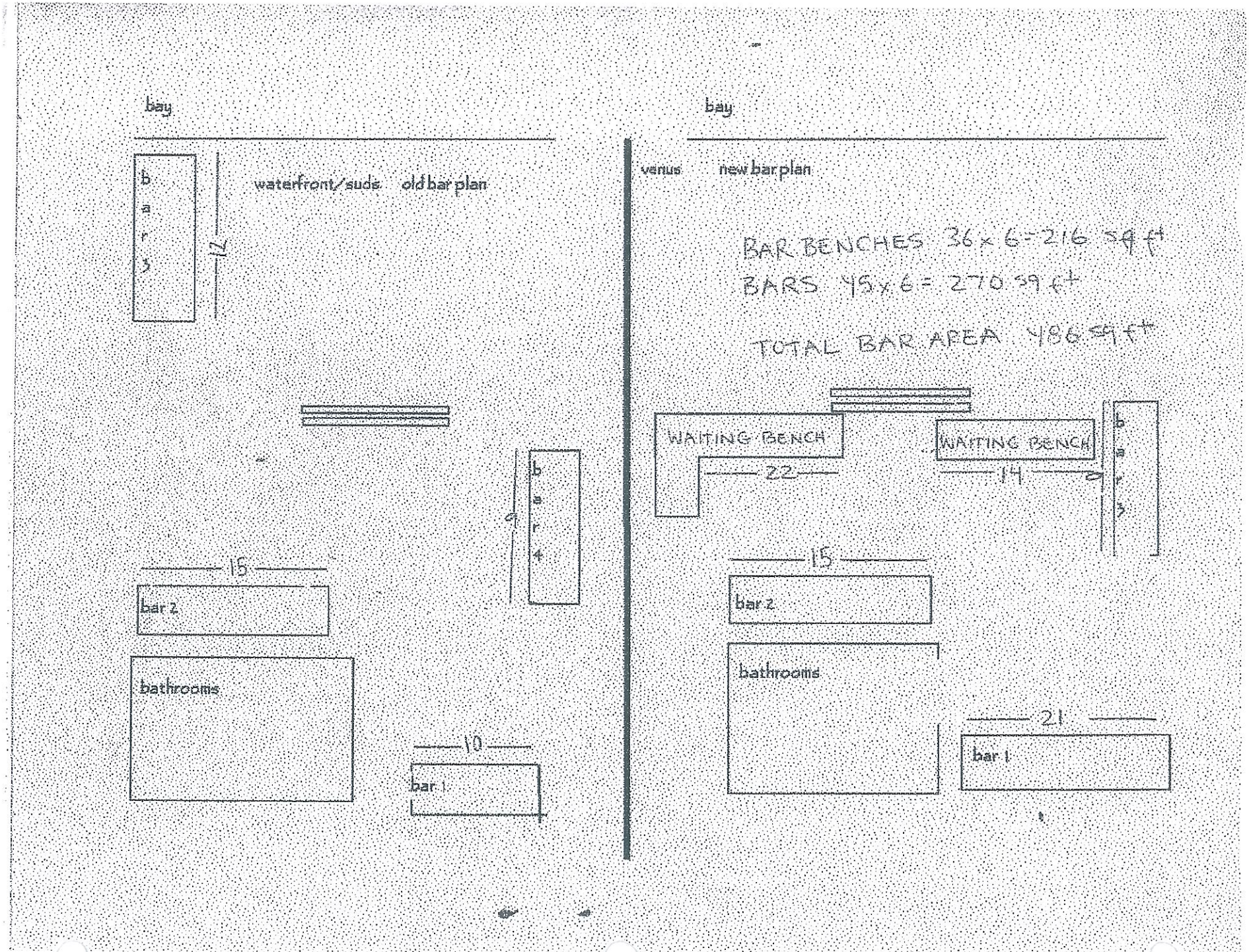
TOTAL SEATS
196

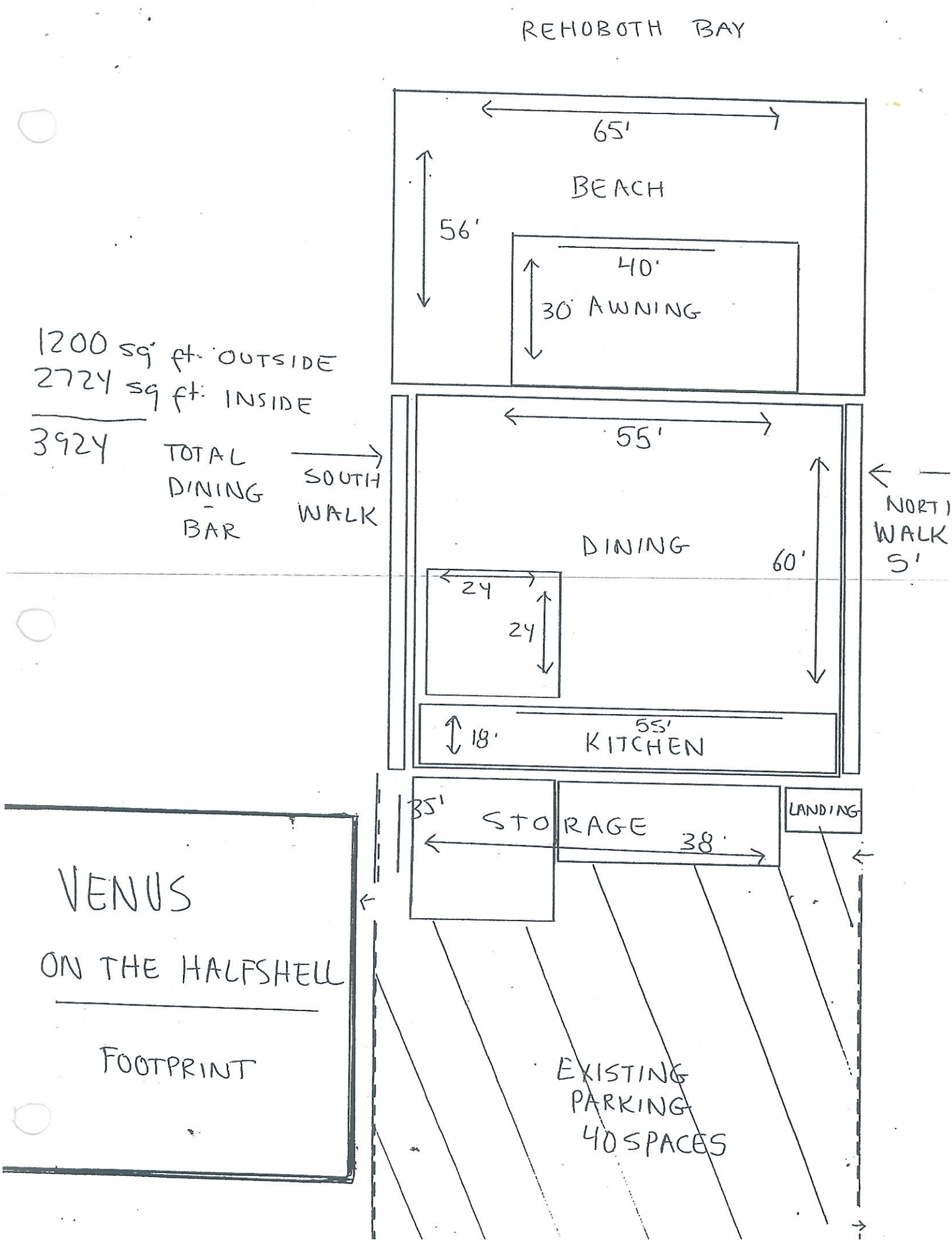
BAR SEATS
20

CHAIR · BENC
176

OUTDOOR
48

VENUS / NEW SEATING


bay
b a r s
17
waterfront/suds old bar plan
b a r 3
15
bar 2
bathrooms
10
bar 1
bay
venus new bar plan
BAR BENCHES 36 x 6 = 216 sq ft
BARS 45 x 6 = 270 sq ft
TOTAL BAR AREA 486 sq ft
WAITING BENCH
22
WAITING BENCH
14
b a r s
15
bar 2
bathrooms
21
bar 1


REHOBOTH BAY
65'
BEACH
56'
40'
30' AWNING
1200 sq ft. OUTSIDE
2724 sq ft. INSIDE
3924
TOTAL
DINING
BAR
SOUTH
WALK
55'
DINING
60'
NORTH
WALK
5'
24
24
18'
55'
KITCHEN
35'
STORAGE
38'
LANDING
VENUS
ON THE HALFSHELL
FOOTPRINT
EXISTING
PARKING
40 SPACES

FINAL
RESTAURANT CERTIFICATE OF COMPLIANCE
for
HIGHWAY I LIMITED PARTNERSHIP
and
COCONUTS WATERFRONT, INC.
in connection with approved
CONDITIONAL USE APPLICATIONS

502

Parcel # 3-34-20.18-58.00
Dated: January 10, 2004

1. Property Zoning Code Classification is Resort Business

2. Number and Sizes of Bar Areas: A maximum of 20% of the patron area exclusive of kitchens, storage areas, outside service areas and restrooms may be designated as bar areas, where seated and standup consumption of alcoholic beverages by patrons is permitted.

   The final floor plan shows 3 bar areas and two waiting bench areas which are designated bar areas. Each area has been measured for linear feet and a designated width of six feet to include the bar top or bench which are 30" to 36" in width and a 42" to 36" area adjacent to the respective bar top or bench for seated or standup consumption. Total linear feet is 81 feet times 6 feet in width equals a total of 486 square feet all as shown with yellow highlighter on the attached floor plan.

3. Seating Capacity: 196 Inside - 48 Outside

4. The distance to the nearest property Line of the nearest lot zoned residential is 6 feet or less. The Dewey Beach Lions Club property to the south is zoned residential.

5. 80% of patron area exclusive of kitchens, storage areas, offices, outside service area and restrooms must be for seated dining:

   - 2724 sq. foot seated interior dining and bar area (3,300 sq. ft. - 576 sq. ft. for bathrooms)
   - 486 sq. foot bar area, 17.84% bar area
   - 2,238 sq. foot seated dining area, 82.16%
   - 1,200 sq. foot outside service area

6. Parking spaces must be lined, have curb stones or other means to locate spaces must be used. 40 parking spaces are available.

7. Setback from mean high water line is as shown on survey submitted at conditional use hearing for outside service area.

8. Approximately 18% of the projected revenue is to be derived from sale of alcohol (this projection is based upon what is currently achieved at Planet X).

9. The Town of Dewey Beach is authorized to seek information and conduct an investigation as to the accuracy of the above statements.

10. Coconuts-Waterfront, Inc., t/a Venus on the Half Shell Restaurant shall have as its primary purpose the conduct of a restaurant business authorized to serve alcoholic beverages (including on Sunday) as defined in the Dewey Beach Municipal Code.

The undersigned is an authorized representative of the applicants, and he verifies that the foregoing information is true and correct.

COCONUTS-WATERFRONT, INC

By: _____
Stephen W. Spence, counsel to
Coconuts-Waterfront, Inc.

HIGHWAY I LIMITED PARTNERSHIP

By: _____
Stephen W. Spence, counsel to
Highway I Limited Partnership

Sworn to and subscribed before me this 9th day of January, 2004.

_____
NOTARY PUBLIC

TAMMY A. PATTERSON
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Oct. 17, 2007

SO APPROVED this 9 day of January, 2004.

_____
MAYOR

_____
TOWN MANAGER