

MEMORANDUM

To: Town of Dewey Beach Town Council
From: Richard A. Forsten
Date: August 9, 2013
Subject: Hotel liquor license application by DBE and Town Code

On or about April 25, 2013, Lighthouse Cove Hotel, LLC (an entity related to Dewey Beach Enterprises) applied for a “hotel” liquor license from the Delaware Alcohol Beverage Control Commission. It will use this license to provide alcohol to guests of the hotel and for other activities at the hotel. Included as part of the hotel is an area labeled “lounge” to serve hotel guests only. The lounge is not going to be open to the public, but only open to patrons of the hotel. It is not going to advertise outside the building. Meals and drinks will be “paid for” by charging to the guest’s room number. It is, for all intents and purposes, not a commercial restaurant, and therefore DBE did not apply for a “restaurant” license from the DABCC, but for a “hotel” license.

Because the lounge is not going to be open to the general public, DBE has also not applied for a certificate of compliance from the Town as a “restaurant” as would otherwise be required under chapter 144 of the Town Code. Under chapter 144, a restaurant must receive a certificate of compliance from the Town, the process for which includes an application and a public hearing before Town Council. However, the Town Code defines a restaurant as “a commercial establishment whose *primary* activity is the service of complete meals from a representative menu” (emphasis added). As the lounge in the hotel is not a commercial establishment, but part of the overall hotel business, the primary activity of the facility is as a hotel, and the proposed “lounge” does not fit the definition of “restaurant” in the Town’s Code.

However, as part of the draft deed restrictions which have been sent to DBE in connection with the MAR, we have included any attempt to open the lounge area to the general public (i.e., convert the use to a commercial restaurant) would *first* require the hotel operator to apply to the Town for a certificate of compliance, and if the hotel operator violated the deed restrictions in this regard, the lounge could be shut down. Specifically, the draft restrictions provide as follows:

Declarant intends to construct a hotel as part of the Project, and, in connection therewith has sought a "Hotel" license from the ABCC so as to operate a food and beverage service for patrons of the hotel, including wedding receptions, conferences and other events not open to the general public. The food and beverage operation operated as part of any hotel will be limited to hotel patrons, will not serve members of the general public, will not have any signage which can be seen outside the hotel, and will not advertise or operate as a restaurant, bar or nightclub open to the general public or anyone other than hotel patrons without first obtaining a special use permit from the Town, which application for such permit shall be subject to all the same rules, regulations and discretion as the Town has with all other applications. To the extent that Declarant violates this restriction, the Town, in addition to all other remedies which it may have, may seek immediate judicial relief prohibiting any further food and beverage operations until such time as adequate safeguards are put in place to ensure compliance with this provision.

Thus, although the proposed lounge does not currently meet the definition of restaurant under the Town Code, the deed restriction means that any attempt to operate the lounge as a restaurant will require the Town's approval under Chapter 144.

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