



ORDINANCE NO _____

An Ordinance regarding a Conditional Use permit and an application for Restaurant Permit of Compliance to expand the Conditional Use for Starboard Claw located at 1818 Coastal Highway, Dewey Beach, DE, 19971, pursuant to Section 25D(1)(A)(1) of Chapter 185 and in accordance with the definition and requirements of a restaurant in Chapter 144, Section 6. The subject parcel of land is north of Dagsworthy Avenue and south of Bellevue Street, bears Tax Parcel Number 334-20.18- 149.00 and lies in the RB-2 Zoning District.

WHEREAS, in May of 2020 the establishment was granted a temporary expansion of premises in accordance with the Governor's then existing State of Emergency related to the Coronavirus pandemic;

WHEREAS, the Applicant seeks an amendment of its Conditional Use Permit to permanently expand its patron area to continue providing patron service as granted by the town in June 2020;

WHEREAS, 185-25D(1) provides for the use of a restaurant, with or without an ABCC license, in a RB-2 zoning district when, in the determination of the Commissioners, the application is in accordance with the provisions of 144-48 (1) through (5);

WHEREAS, the above-referenced requirements of Starboard Claw have been proven by credible evidence presented by the Applicant to have been met.

WHEREAS, the State of Delaware General Assembly recently passed, and the Governor signed, House Bill 290, which permits the expansion of outdoor seating for serving food and drinks without the need for advertising and public hearing before the ABCC, provided the Town has considered and approved the request after considering the factors in Title 4 Section 524(i)(2)(a)1-7, and;

WHEREAS, Starboard Claw has submitted sufficient evidence to establish that:

- a. No extension of the premises for the outside service area beyond the property boundaries is requested.
- b. The total patron area for the premises, outside and inside, will not exceed a total of 4,000 square feet.
- c. The extension does not intrude on any state or local streets or rights of way.

- d. The extension does not restrict access to the restaurant for deliveries, trash removal, or any emergency services.
- e. The restaurant will comply with the Americans with Disabilities Act.
- f. The restaurant will continue to adhere to all local noise ordinances.
- g. Access to the outside service area will be restricted by entrance and exit controls, fencing, and sufficient staff to control the distribution of alcoholic beverages.
- h. The right of continue the approved amended conditional use shall be without any expiration date.

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

Section 1. The Applicant's request for an amendment of its conditional use permit allowing the expansion of its patron area to include the outside service area depicted in its application submission is approved as follows:

1. The Applicant will ensure the improvement is entirely on the property of map 334-20.18 parcel 149.00.
2. The Applicant will continue to comply with all existing Conditions associated with their establishment as set forth in Ordinances 376, 618 and 784.
3. The Applicant's existing certificate of compliance issued pursuant to Chapter 144 of the Code of Ordinances of the Town of Dewey Beach is hereby amended accordingly.
4. All authorizations contained herein are subject to and conditioned upon compliance with applicable state law and relevant state agency approvals, including but not limited to provision of sufficient bathroom facilities to accommodate increased patron capacity.
5. Applicant shall maintain compliance with applicable town code requirements as set forth in 185-25D(1)(a)[1] and [3], as amended.
6. No live entertainment is permitted in the outside service area.
7. No smoking is permitted in the outside service area.
8. The applicant shall clean up the expanded outside service area in accordance with existing zoning code requirements.
9. Any prior conditions that were put on the business will continue.

Section 2. The Commissioners declare that the adoption of this Ordinance is an appropriate legislative action based upon the record established during the public hearing process. The application meets the requirements applicable to a Restaurant; adequate safeguards have been utilized by the applicant to provide safe access to the facility for customers. The conditions which have been carefully drafted as a result of input from the Applicant, interested members of the community, legal counsel and the Commissioners shall assure the health, safety and welfare of the present and future inhabitants and visitors of Dewey Beach shall be protected and the purpose and goals of the RB-2 zoning district are preserved and enhanced.

Section 3. Severability. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable. Adoption. This Ordinance shall take effect immediately upon its adoption by a majority vote of the Commissioners of the Town of Dewey Beach.

Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach on June 16, 2023.

Mayor, William Stevens

Town Manager, Bill Zolper