



Glenn C. Mandalas
glenn@bmbde.com
(302)645-2262

VIA EMAIL AND REGULAR MAIL

November 12, 2021

Dewey Beach Board of Adjustment
c/o Bill Zolper, Town Manager
Town of Dewey Beach
105 Rodney Ave.
Dewey Beach, DE 19971

**RE: Starboard Claw, Request for Code Amendment
Off-street parking requirements
TMP 334-20.18-149.00 & 150.00**

Dear Town Manager Zolper:

On September 10, 2021 Town Council approved Starboard Claw Land Company, LLC's ("Starboard Claw") request for a Comprehensive Plan amendment and change in zoning designation. On October 21, 2021 Town Council referred my client's Conditional Use application to the Planning Commission for its review and recommendation. During the October 21, 2021 meeting some members expressed concern over Town Council's ability to waive the off-street parking requirement of Section 185-35(A)(6)(a). Consequently, pursuant to Section 185-73, we hereby request a Code amendment that would provide relief from the off-street parking requirement because it is appropriate not only for the Starboard Claw property, but also for similar restaurant applications in the RB-2 Coastal Highway corridor.

Starboard Claw is seeking approvals to establish a restaurant to be known as Starboard Claw at 1818 Coastal Highway, in the RB-2 zoning district. Section 185-35(A)(6)(a) provides the off-street parking requirement for restaurants in the RB-2 Zoning District as follows:

All zoning districts except for the PRB-1 and PRB-3 Zoning Districts:
Restaurants with 2,000 square feet or less assigned for patron use shall have no off-street parking requirements. Restaurants with more than 2,000 square feet assigned for patron use shall have one space for each 200 square feet assigned for patron use, including open decking.

Section 185-35(6)(a), therefore, provides that while restaurants with a patron area of 2,000 sf or less have no off-street parking requirement, "[r]estaurants with more than 2,000 square feet assigned for patron use shall have one space for each 200 square feet assigned for patron use, including open decking." This Section has previously been interpreted to mean that in addition to the parking required for patron area in excess of 2,000 sf, off-street parking is also required for the initial 2,000 sf.

Starboard Claw is proposed to be 6,438 sf. The first floor of Starboard Claw will have 1,891 sf of patron use area and the second floor will have 1,803 sf of patron use area. Consequently, 3,694 sf will be dedicated to patron use. Therefore, under the current Code interpretation, Starboard Claw will be required to have 19 (18.47 rounded up) off-street parking spaces, which is clearly excessive and unreasonable.

Perhaps the best illustration of how the off-street parking requirement is clearly excessive and unreasonable is made by comparing Dewey Beach’s off-street parking requirement to those of its neighbors to the north and south. Shown in the table below, *if Starboard Claw were proposed in Lewes, Rehoboth Beach, or Bethany Beach, it would have no off-street parking requirement.*

Municipality	Off-Street Parking Requirement	Spaces Required for Claw Proposal
<p>Lewes Section 197-61(E): Eating places, taverns or bars and nightclubs</p>	<p>1 per 200 square feet assigned for patron use, plus 1 for each 2 employees on the largest shift</p> <p>Section 197-61(D). Exceptions. No off-street parking shall be required for uses located within the Town Center, Town Center (Historic), and Cultural/Historic Zoning Districts.</p>	<p>0 spaces</p>
<p>Rehoboth Beach Section 270-35(D) Each food establishment, restaurant or catering, with or without entertainment</p>	<p>Less than 10,000 square feet of gross floor area, exclusive of underground parking areas: No spaces required</p> <p>10,000 or more square feet of gross floor area, exclusive of underground parking areas: 1 for each 400 square feet of gross floor area, exclusive of underground parking areas</p>	<p>0 spaces</p>
<p>Dewey Beach Section 185-35 A(6)(a) Restaurants</p>	<p>All zoning districts except for the PRB-1 and PRB-3 Zoning Districts: Restaurants with 2,000 square feet or less assigned for patron use shall have no off-street parking requirements. Restaurants with more than 2,000 square feet assigned for patron use shall have one space for each 200 square feet assigned for patron use, including open decking.</p>	<p>19 spaces</p>
<p>Bethany Beach Section 425-82</p>	<p>There shall be no off-street parking requirement.</p>	<p>0 spaces</p>

Dewey Beach's off-street parking requirement likely explains why municipalities to the north and south have far outpaced Dewey Beach in the expansion of fine dining opportunities.

While the current site plan for Starboard Claw includes 8 off-street parking spaces and one van-accessible off-street parking space, our view (supported by public testimony at the September 10 zoning hearing) is that the surrounding area, and indeed the RB-2 corridor is better served with bicycle and scooter parking.

Consequently, we request a Code amendment to the off-street parking requirements for the following reasons:

First, during the rezoning hearing members of the public testified about the potentially dangerous intersection of Coastal Highway and Bellevue Street created by several parking spaces near the intersection at the Hammerheads property and lingering pedestrians enjoying Vanderwendes ice cream. This is a problem that is repeated at other locations along the RB-2 corridor. Opening up these areas with benches or other accommodations to give pedestrians an off-street area to assemble would enhance the safety of the entire RB-2 corridor.

Second, the current parking requirement is arduous, particularly for restaurants not exceeding the 2,000 sf patron use area threshold by an excessive amount. That is, having no off-street parking requirement for a restaurant with 2,000 sf of patron area, but requiring 11 off-street spots for a restaurant with 2,001 sf of patron area seems overly demanding and makes many projects cost prohibitive.

Third, the Town, especially along the RB-2 corridor, is a walkable Town and parking is not needed. The comparatively large Grottos parking area, for example, is rarely full.

Fourth, House Bill 1, which was signed by Governor Carney in March 2021, extends outdoor dining privileges until March 31, 2022. This allows for greater flexibility to convert parking areas into outdoor dining areas. This approach has worked in the Town over the past year, without the Town experiencing any serious parking issues caused by outdoor dining expanding into the off-street parking areas.

Fifth, Given the increase in Dewey Beach real estate values and skyrocketing construction costs, it is currently impossible to create a viable first-class restaurant over 2000 square feet in a fiscally responsible manner in Dewey Beach. First-class, full-service restaurants require extensive kitchen and storage space in addition to patron areas. The cost of renovating a building, outfitting a large kitchen and creating a very attractive patron area has more than doubled in the last several years. Simply stated, the cost of the additional real estate that would be needed to accommodate the existing parking requirements keeps ventures, such as Starboard Claw, from being financially viable.

For all of the above reasons, a Code amendment makes good sense if done responsibly.

One option for Town Council is to adopt legislation for the RB-2 corridor that aligns with Rehoboth Beach's off-street parking requirements for restaurants along the Rehoboth Avenue

corridor. Rehoboth Beach has a historical record of how that approach has worked. The Rehoboth Avenue corridor has developed along its entirety with award-winning first-rate restaurants.

If amending Dewey Beach's Code to align with Rehoboth Beach is an option that appeals to the Town, the following Code amendment would be appropriate, with deletions shown by strikethrough and insertions shown by underlining:

§ 185-35. Off-street parking requirements.

- A. General requirements. When any building or structure is hereafter erected or structurally altered, or any building or structure is converted for any use listed below, accessory off-street parking spaces shall be provided as follows:
- (1) Residential parking requirements...
 - (2) Bed-and-breakfast inn...
 - (3) Convention center...
 - (4) Office, public, or institutional use...
 - (5) Dedicated patron use...
 - (6) Restaurants.
 - (a) All zoning districts except for the PRB-1 and PRB-3 Zoning Districts: ~~Restaurants with 2,000 square feet or less assigned for patron use shall have no off-street parking requirements. Restaurants with more than 2,000 square feet assigned for patron use shall have one space for each 200 square feet assigned for patron use, including open decking.~~ Restaurants with less than 10,000 square feet of gross floor area, exclusive of underground parking areas, shall have no off-street parking requirements. Restaurants with 10,000 or more square feet of gross floor area, exclusive of underground parking areas, shall have 1 off-street parking space for each 400 square feet of gross floor area.
 - (b) PRB-1 and PRB-3 Zoning Districts: All restaurants shall require one space for each 200 square feet of patron area, including open decking, regardless of the building size.
- B. Other commercial establishments...

We are enthusiastic about the prospect of bringing another Starboard property to Dewey Beach and look forward to presenting this request at the earliest opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn", written in a cursive style.

Glenn C. Mandalas, Esq.

cc: Mayor Bill Stevens
Mr. Fred Townsend, Esq
Mr. Steve Montgomery
Mr. Chris Schell
Mr. Tim Tice