




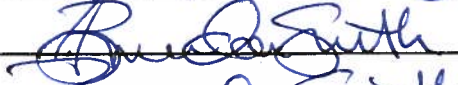

**TOWN OF DEWEY
BEACH**

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-8319 (Fax)

CONDITIONAL USE APPLICATION

Property Address: 2100 Coastal Highway, Dewey Beach, DE 19971
Map Number: 334-20.14 Parcel Number: 237.00 Zoning of Property: RB2
Use Requested: To utilize southern exterior of property for outdoor patio/dining.
Applicant Name: Dewey Beer & Food Company, LLC d/b/a Dewey Beer Company
Applicant Address: 2100 Coastal Highway, Dewey Beach, DE 19971

Property Owner Signature: 
Business Owner Signature: 
Applicant Signature: 

Please return this application along with a Site Plan, and check, made payable to the *Town of Dewey Beach* in the amount of \$750.00, and return to:

Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE. 19971

Please make arrangements to attend the scheduled meeting.

For Town Hall Use Only:

Date Received: 7/27/22
Date Payment Received: 7/27/22
Date of Hearing: 8/19/2022
Date of Public Notice: 8/2/2022
Date of Mailing: 8/3/2022

THE SMITH FIRM, LLC

ATTORNEYS AT LAW

MICHAEL R. SMITH
smith@vslegal.net

CHAD R. LINGENFELDER*
lingenfelder@vslegal.net

*ADMITTED IN DE & MD

323 Rehoboth Avenue
Suite D
REHOBOTH BEACH, DELAWARE 19971
PHONE: (302) 875-5595
FAX: (302) 231-2718

BLAKE W. CAREY
carey@vslegal.net

DEREK G. GAY
dgay@vslegal.net

July 27, 2022

VIA Hand Delivery

Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

**Re: Dewey Beer & Food Company, LLC d/b/a Dewey Beer Company
Conditional Use Application and Application for Permit of Compliance**

To whom it may concern:

This firm represents Dewey Beer & Food Company, LLC d/b/a Dewey Beer Company (interchangeably “Dewey Beer Company” and/or “Applicant”). Enclosed please find the Conditional Use Application and Application for Permit of Compliance, both dated July 27, 2022 (collectively, the “Applications”), filed on behalf of Dewey Beer Company.

As you know, Dewey Beer Company was granted an extension of premises due to COVID-19 on or about May 26, 2020 (enclosed). The aforesaid extension allowed Dewey Beer Company to utilize its private parking area to place additional outdoor seating pursuant to a sketch it previously provided to the Town of Dewey Beach. The aforesaid extension is set to expire on October 31, 2022. Accordingly, my client is filing the enclosed Applications to expand its dining area beyond October 31, 2022.

Dewey Beer Company has been operating at 2100 Coastal Highway in Dewey Beach, Delaware for several years as a restaurant pursuant to Dewey Beach Ordinance #712 as amended by Dewey Beach Ordinance No. 732 (both ordinances enclosed). Dewey Beer Company has remained open and in business smoothly and consistently with the requirements of the aforesaid Ordinances. Additionally, Dewey Beer Company has been utilizing its private parking area for outdoor dining in the same manner since it was approved by the Town of Dewey Beach on or about May 26, 2020.

The proposed location of outdoor dining outlined in the Applications is the same location that has been utilized by Dewey Beer Company for outdoor dining since May 26, 2020. The open patio, as outlined in the proposed floor plan, will now include 56 dining seats and a server station with roof coverage. The location is appropriate and is perfectly positioned adjacent to the restaurant with interior seating, allowing for safe ingress/egress to/from the interior of the restaurant as needed, is handicapped accessible, and will be enclosed with a combination of a gated fence and landscaping beds to beautify the area. As has been the case since May 26, 2020, the public health, safety, morals and general welfare will not be adversely affected by the expansion of dining to the currently utilized patio area. There is adequate off-street parking

July 27, 2022

Page 2

surrounding the location and the use will not contribute to a traffic problem on congested roads. Due to the proposed gated enclosure, necessary safeguards are provided for the protection of surrounding property, persons and neighborhood values. Notably, Applicant is not requesting outdoor music or speakers at this time. As a result of the foregoing, it is the position of Dewey Beer Company that is Application for Conditional Use is consistent with the requirements of §185-74 of the Code of the Town of Dewey Beach.

Thank you for your consideration of the Applications. If you require anything further, please do not hesitate to contact me. Otherwise, I look forward to presenting the Applications on behalf of Dewey Beer Company at public hearing.

Very truly yours,

THE SMITH FIRM, LLC


Blake W. Carey

Enc.

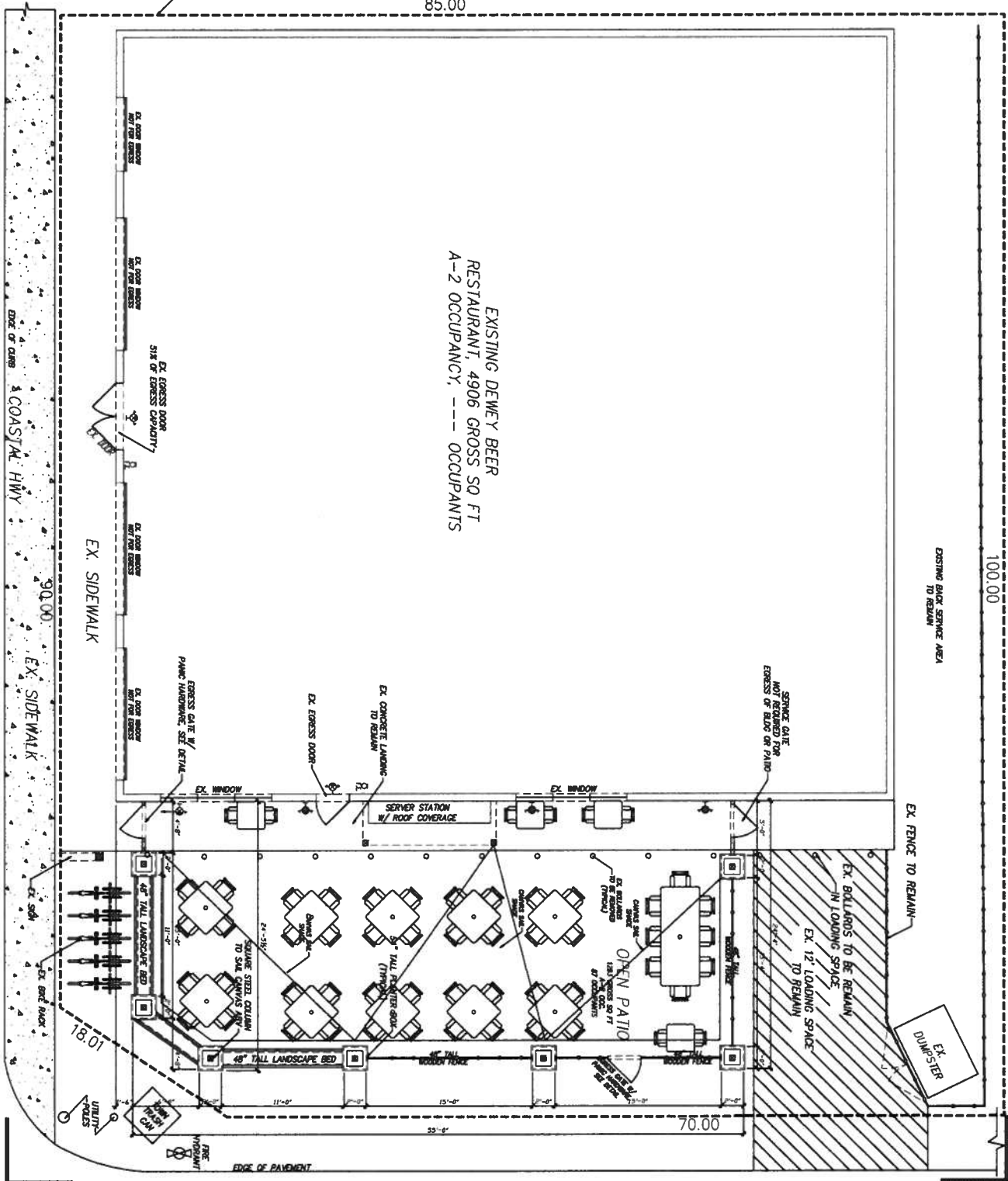
CODE DATA

DATE: 7-20-22
PROJECT: DEWEY BEER PATIO ADDITION
CLIENT: SAULSBURY ST
SCALE: 1/8" = 1'-0"
DATE: 7-20-22
PROJECT: DEWEY BEER PATIO ADDITION
CLIENT: SAULSBURY ST
SCALE: 1/8" = 1'-0"

SYMBOLS

EXISTING: R
PROPOSED: P
REMOVE: R with diagonal line
PROPERTY LINES: Dashed line
EXISTING SIDEWALK: Dashed line
EXISTING DRIVEWAY: Dashed line
EXISTING DRIVEWAY: Dashed line
EXISTING DRIVEWAY: Dashed line

SITE PLAN



SAULSBURY ST

DATE	7-20-22
SHEET NO.	A1

DEWEY BEER PATIO ADDITION
2100 COASTAL HWY
 DEWEY BEACH DELAWARE
PROPOSED FLOOR PLAN

Design Delmarva
 S E Wagner Architect
 PO BOX 564 PO BOX 250
 HASSLET DE 19069 THE PLAINS VA 20198
 p.302.644.6884 p.540.253.8770
 info@designdelmarva.com www.designdel.com

ISSUED FOR PERMIT
 7-25-22

DATE	REVISIONS

SEAL



**TOWN OF DEWEY
BEACH**

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-8319 (Fax)

**Application for Permit of Compliance
Pursuant to Chapter 144 Restaurants: Certificate of Compliance**

Application for:

- (New) Restaurant Permit of Compliance Hearing
- (Amended) Restaurant Permit of Compliance – (i.e. substantial modification/expansion of an approved floor plan)
- (Existing) Restaurant: New Outside Dining Permit of Compliance Hearing

1. Applicant Name: Dewey Beer & Food Company, LLC d/b/a Dewey Beer Company
Mailing Address: 2100 Coastal Highway, Dewey Beach, DE 19971
Telephone: (302) 227-1182
Email: brandon@deweybeerco.com

2. Contact Person for this Application: Blake W. Carey, Esquire; The Smith Firm, LLC
Telephone: (302) 875-5595
Email: carey@vslegal.net

3. Name of Restaurant (DBA): Dewey Beer Company
Address: 2100 Coastal Highway, Dewey Beach, DE 19971
Telephone: (302) 227-1182
Website: www.deweybeerco.com

4. Names of Owners of Restaurant:

1. Scot Kaufman
2. Michael Reilly
3. Brandon Smith

5. Name of Legal entity owning this business:
Dewey Beer & Food Company, LLC

Type of Entity (check appropriate entity):

Sole Proprietorship Partnership Corporation LLC
 Other

5. Property Owner (if different from applicant):
Mailing Address: Kaufman Foundation
Telephone: (302) 227-1182
Email: spkaufman2000@yahoo.com

6. Parcel ID #: Tax District: 334 Map 20.14 Parcel 237.00

7. Zoning Classification: RB2

8. The distance (in feet) to the nearest property line of the nearest lot zoned residential from the proposed restaurant or existing restaurant property: Info on file.

9. The number and sizes of bar areas in the restaurant: These will remain unchanged inside.
The outdoor dining area will have capacity for 87 persons with 56 dining seats.

10. Has the restaurant's floor plan been included? On file. Patio floor plan included.

11. The restaurant's seating capacity: The restaurant's interior seating capacity remains unchanged.
The outdoor dining area will have capacity for 87 persons with 56 dining seats.

12. Does the floor plan for the proposed restaurant / expansion include the square footage and location of each designated storage area and food service preparation area? Yes.

13. Provide: A statement that the establishment's primary purpose shall be that of a restaurant as defined in the Dewey Beach Municipal Code: The primary purpose shall be that of a restaurant as defined in the Dewey Beach Municipal Code.

14. Provide: A statement containing an approximate percentage of projected revenue to be derived from the sale of alcoholic beverage as compared to the percentage of projected revenue to be derived from the sale of food. The projected revenue to be derived from the sale of alcoholic beverage shall be 40% and projected revenue for food shall be 60%.

15. Provide: An authorization for the Town, its agent and employees to seek information and conduct an investigation as to the accuracy of the statements set forth in the application to the best of their ability. The Town, its agent and employees are authorized to seek information and conduct an investigation as to the accuracy of the statements set forth in the application to the best of their ability.

16. Provide: Written and dated declaration by the applicant, under verification, oath or affidavit, that the forgoing information contained in the application is true and correct with said declaration being duly dated and signed: The Applicant declares under penalty of perjury that the foregoing information contained in the application is true and correct to the best of his knowledge and belief.

Date: 7/27/2022 Applicant: [Signature]

STATE OF DELAWARE

SS.

COUNTY OF SUSSEX

BE IT REMEMBERED that on this 27th day of July, A.D. 2022, personally appeared before me, the Subscriber, a Notary Public of the State and County aforesaid, Brandon Smith in the foregoing application, known to me personally to be such, and he did depose and say the foregoing application is true and correct to the best of his knowledge and belief.

[Signature]
SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

BLAKE W. CAREY
Attorney - Bar #5145
Admitted to Delaware Bar: 12/11/2008
Notary
Uniform Law on Notarial Acts
Pursuant to 29 Del. C., Sec 4323(3)

[Signature]
Notary Public

DECLARATION

STATE OF DELAWARE)
) ss.
COUNTY OF SUSSEX)

After having been first duly sworn, I, Brandon Smith, member of Dewey Beer & Food Company, LLC, doth depose and say:

1. I am a member of Dewey Beer & Food Company, LLC, operating as Dewey Beer Company at 2100 Coastal Highway, Dewey Beach, DE 19971 (“Dewey Beer Company”).
2. I have read the Application for Permit of Compliance Pursuant to Chapter 144 Restaurants: Certificate of Compliance accompanying this Declaration dated July 27, 2022 (the “Application”) and do hereby declare under penalty of perjury that the information contained therein is true and correct to my knowledge and belief.
3. That the primary purpose of Dewey Beer Company shall be that of a restaurant as defined in the Dewey Beach Municipal Code, as the same may be amended through those Conditional Uses of Ordinances 712 and 732.
4. That the projected revenue to be derived from the sale of Alcoholic Beverages shall be 40% and the projected revenue to be derived from the sale of food shall be 60%.

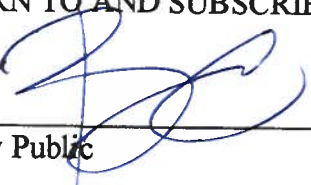
5. The Town of Dewey Beach, its agents and employees are authorized to seek information and conduct an investigation as to the accuracy of the statements set forth in the Application to the best of their ability.
6. That the foregoing information is true and correct to the best of my knowledge and belief.



Brandon Smith

BE IT REMEMBERED that on this 27th day of July, A.D. 2022, personally appeared before me, the Subscriber, a Notary Public of the State and County aforesaid, Brandon Smith, in the foregoing application, known to me personally to be such, and he did depose and say the foregoing application is true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.



Notary Public

BLAKE W. CAREY
Attorney - Bar #5145
Admitted to Delaware Bar: 12/11/2008
Notary
Uniform Law on Notarial Acts
Pursuant to 29 Del. C., Sec 4323(3)

MAY 26, 2020

**APPROVAL OF REQUEST
FOR EXTENSION OF
PREMISES**



TOWN OF DEWEY

BEACH

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-8319 (Fax)

May 26, 2020

Alcoholic Beverage Control Commission
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

Office of State Fire Marshal
Sussex County Division
22705 Park Avenue
Georgetown, DE 19947


RE: Dewey Beer Company – 2100 Coastal Highway – Dewey Beach, Delaware
Request for Extension of Premises
June 1 – July 30, 2020

This letter is to advise that the Town of Dewey Beach, Delaware has approved Dewey Beer Company's use of its private parking area to place additional outdoor seating to be used to spread out tables during this phased in opening due to the Coronavirus as approved by the Governor's order. (See Attached Sketch)

This outside seated area, to be used for table service with tables spread out at a distance of 6' or more between each for social distancing, will be used with all restrictions and ordinances approved in the order. Its use will end when the Governor's order or the ABCC Commissioner's order directs the Dewey Beer Company or restaurants across the state to do so.

In addition, all Town ordinances regarding safety, noise, etc. must be followed. The business owner has coordinated this use with their landlord and adjacent tenants, if applicable. If you have any questions regarding this correspondence, please contact the office at 302-227-6363.

Best Regards,


Scott D. Koenig, P.E., ICMA-CM
Town Manager
townmanager@townofdeweybeach.com
(302) 227-6363

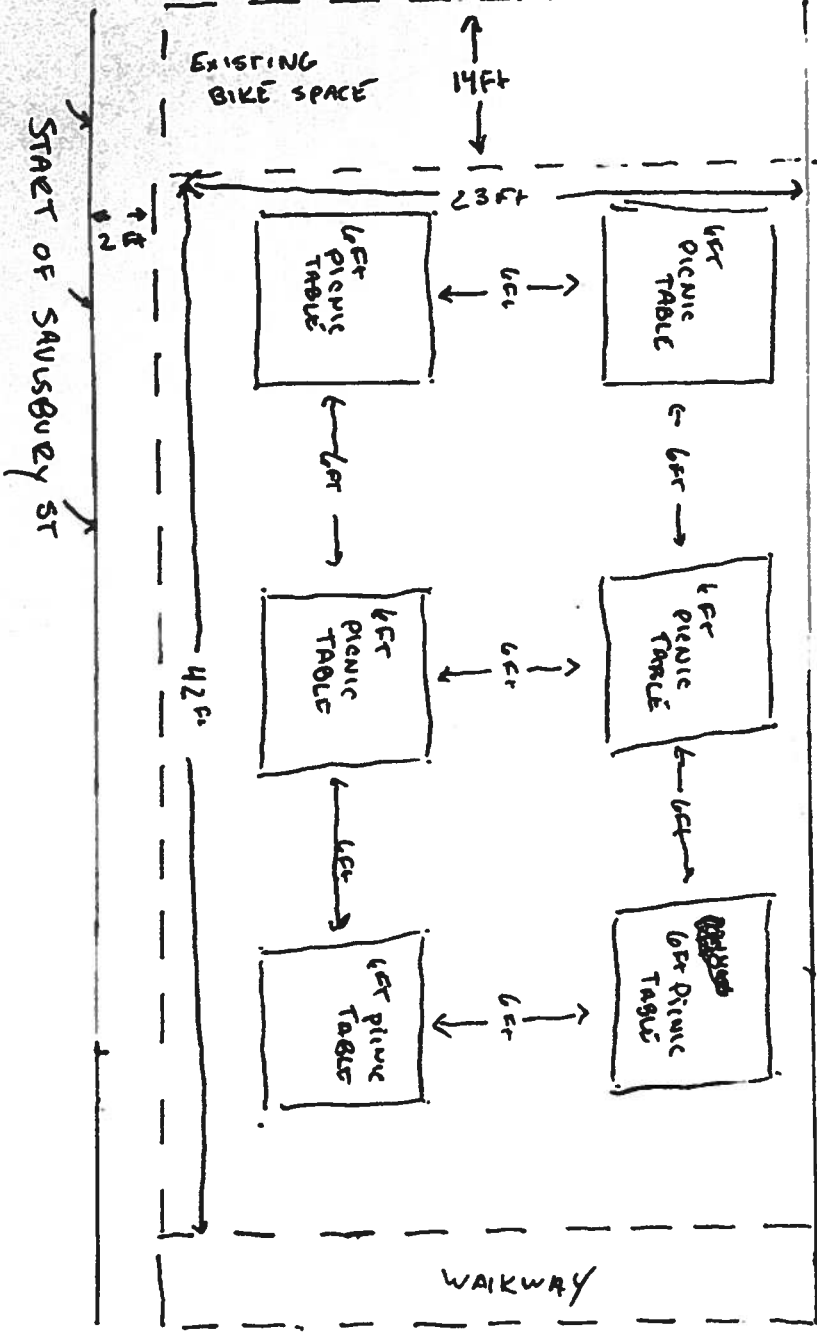
CC: Brandon Smith, Dewey Beer Company, 2100 Coastal Highway, Dewey Beach, DE 19971
Chief Sam Mackert, Dewey Beach Police Department
Dale H. Cooke, Mayor

← Highway One →

SIDEWALK

Dewey Beer Company

↓ EXISTING
6 FT WALKWAY



WALKWAY

SIX TABLES
IN 966 SQ FT

EXISTING
DUMPSTER

START OF SAUSBUERY ST

Sausbury St

ORDINANCE NO. 732

Ordinance No.732

AN ORDINANCE TO AMEND THE CONDITIONAL USE HOURS OF OPERATION OF AN EXISTING RESTAURANT BUSINESS KNOWN AS DEWEY BEER & FOOD COMPANY, IN A RB2 ZONING DISTRICT LOCATED AT 2100 COASTAL HIGHWAY, DEWEY BEACH, DE, BEING TAX PARCEL 20.14-237.00

WHEREAS, a Conditional Use application has been filed for hours of operation alteration of an existing conforming restaurant, Dewey Beer and Food Company, in a RB2 zoning district located at 2100 Coastal Highway, Dewey Beach, DE, being tax parcel 20.14-237.00 pursuant to §185-73 of the Dewey Beach Code of Ordinances;

AND WHEREAS, on the 20TH day of May, 2016, a Public Hearing was held, after proper notice, before the Town 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 provide for the requested hours of operation alteration of an existing Conditional Use (Ordinance 712 (B)(18) ;

AND WHEREAS, § 185-25D(1) provides for the use of a restaurant, with or without an ABCC license, in a RB2 zoning district when, in the determination of the Commissioners, the application is in accordance with the provisions of §144-4(1) through (5); and

AND WHEREAS, the above referenced requirements of Dewey Beer & Food Company 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, Delaware that:

The above-referenced expansion of applicant's hours of operation of an existing Conditional Use is hereby approved as follows and with the following attached conditions:

1. An expansion of the operating hours from 7:00am to 1:00am. The patrons must leave the premises by 1:30am.
2. Further, the requirements of applicant's conditional use approval, Ordinance #712, with the exception of B(18) shall be complied with by the restaurant at all times.

The Commissioners declare that the adoption of this Ordinance is an appropriate legislative action based upon the following findings of fact and 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 that 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 RB2 zoning district are preserved and enhanced.

ORDAINED AND ENACTED IN LAW THIS 20TH DAY OF MAY, 2016

Diane Hanson

DIANE HANSON, MAYOR

M

MARC APPELBAUM, TOWN MANAGER

ORDINANCE NO. 712

ORDINANCE # 712

**AN ORDINANCE OF THE COMMISSIONERS OF THE TOWN OF DEWEY BEACH
APPROVING A CONDITIONAL USE APPLICATION
SUBMITTED BY DEWEY BEER & FOOD COMPANY, LLC
FOR A RESTAURANT BUSINESS WITH DELAWARE ABCC RESTAURANT
ALCOHOL AND BREWPUB LICENSES TO BE LOCATED AT
2100 COASTAL HIGHWAY, DEWEY BEACH, DELAWARE 19971**

WHEREAS, Dewey Beer & Food Company, LLC (the “Applicant”) has submitted an application for approval of a conditional use regarding operation of a business that will be a restaurant with Delaware ABCC (Alcohol Beverage Control Commission) restaurant alcohol and brew pub licenses as an expansion and change in use of the non-conforming restaurant Bubba’s which does not have a current ABCC liquor license;

WHEREAS, the proposed primary use, i.e., “restaurant”, is a conditional use in the Town of Dewey Beach requiring conditional-use approval under Table 3, Uses in Resort Business Districts, of Chapter 185, Zoning, of the Town of Dewey Beach Municipal Code;

WHEREAS, the Town Commissioners of the Town of Dewey Beach find that the inclusion of a small, brewery-pub as part of the operation of a restaurant licensed in the Town of Dewey Beach and holding valid Delaware ABCC restaurant alcohol and brew pub licenses is an ancillary function of such a restaurant and may be permitted under a conditional-use approval process provided the brewery-pub function is secondary to and supportive of the normal restaurant operations which shall always be the sales of complete meals to dining patrons;

WHEREAS, Section 185-25. D.(1)(c) of the Dewey Beach Municipal Code, 2005, as amended, incorporated by reference in Section 185-25.1(D), provides that, “All restaurants, bars and eateries in existence as of the date of the adoption of Ordinance No. 228 (April 11, 1992) may continue to operate the facility as before the adoption of said ordinance as a nonconforming (“grandfathered”) facility. The status of the nonconforming, grandfathered facility shall terminate and the facility shall be required to operate in conformity with this Code, § 185-25D, § 185-35A, and § 185-35 B, if there is a[n]: [1] Expansion of or addition to the existing building or existing outside service area except as required by applicable codes or insurance requirements. [2] Reduction of the percentage of patron area committed to seated dining. [3] Reduction of service areas by internal rearrangement for the purpose of creating an increase in the bar areas of more than 100 square feet of floor space as of the date of the adoption of Ordinance No. 234 (July 10, 1992)”; and

WHEREAS, Section 185-40 of the Dewey Beach Municipal Code, 2005, as amended, provides that, “[s]pecial requirements may be imposed as conditions to any site plan approval, conditional use approval, special exception approval, or any other approval to protect the health, safety, and welfare of the general public.”

NOW, THEREFORE, BE IT RESOVED BY THE TOWN COMMISSONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION MET THIS ____th DAY OF _____, 2014, THAT:

Section 1. After reviewing the Applicant's proposal and site plan and the report and recommendation from the Town Planning Commission, the Town Commissioners of the Town of Dewey Beach find that the location is appropriate, the public health, safety, morals and general welfare will not be adversely affected, adequate off-street parking facilities will be provided, the use will not contribute to a traffic problem on congested roads, and that the necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

Section 2. The Town Commissioners of the Town of Dewey Beach hereby grant conditional-use approval to Dewey Beer & Food Company, LLC for a restaurant with ABCC restaurant alcohol and brew pub licenses to be located at 2100 Coastal Highway, Dewey Beach, Delaware 19971 under the conditions enumerated herein in Section 3.

Section 3. This conditional-use approval shall be subject to all applicable provisions of U.S. Federal, State of Delaware, Sussex County and Town of Dewey Beach Code, and the following enumerated conditions which are applicable to the Applicant's entire property at 2100 Coastal Highway, Dewey Beach, Delaware 19971:

A. Conditions for the operation of a restaurant in Dewey Beach, including standard conditions contained in Town code under 185-25. D.(1)(a)[1] "Restaurant, with or without an ABCC license", elsewhere in Town Code and related restaurant conditional-use approvals, and in related portions of Delaware State Code, including:

- 1) The primary use of the facility shall be that of a restaurant. As per Delaware State Code, Title 4 Section 543, "The word 'Restaurant' means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration." And, "[t]he service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of 'meals'.";
- 2) The proposed restaurant shall be operated in a manner that is consistent with all written and agreed upon representations made by the Applicant during the application process, including in their preliminary application package, revised site plans, and informational presentations. These materials are attached to this conditional-use approval and their specific voluntary conditions incorporated herein.
- 3) Seated dining for 35 or more patrons must be provided;
- 4) A minimum of 80% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, must be permanently committed to seated dining, and said seating areas may not be altered, moved, or removed;

- 5) A maximum of 20% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, may be designated as bar area, where stand-up consumption of alcoholic beverages by patrons is permitted;
- 6) In the area designated for seated food service, alcoholic beverages shall only be served to dining patrons;
- 7) No stand-up consumption of alcoholic beverages in the area designated for seated food service is permitted;
- 8) All tables and chairs shall be maintained in the configuration shown in the approved conditional-use application;
- 9) Occupancy shall not exceed the Occupancy Limit(s) determined by the Fire Marshall's Office. If the bar area is separated from the dining area by walls or partitions, the number of patrons in the bar area cannot exceed the Fire Marshall's occupancy limit for that specified area;
- 10) Kitchen facilities shall be under the direction of a chef or cook;
- 11) There shall be no change to the approved floor plan, including no erection of any temporary or permanent staging without Town approval as a special event;
- 12) No service or consumption of alcoholic beverages shall be permitted in the entrance or waiting areas;
- 13) No outdoor public address system, amplifiers, or speakers are permitted on the Applicant's property;
- 14) All exterior windows and doors to the restaurant shall be closed at 11:00 p.m.;
- 15) All interior speakers in the restaurant portion of the building shall be directed towards the interior space and away from any exterior door, window, or wall;
- 16) The Applicant, during periods of normal operations, shall remove any and all litter accumulating in the public space, including street storm sewer intakes, bordering the property along Coastal Highway and Saulsbury Street each day before 8:00 a.m.;
- 17) The Applicant shall not "engage in any trade practice which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at an unduly rapid rate and shall include, but not be limited to, the following: d. Promoting, sponsoring, conducting, or participating in any event that is in any way conditional upon or involves consumption of alcoholic beverages, and e. Offering or selling two (2) or more drinks for the regular price of one." (State of Delaware, Department of Public Safety, Division of Alcoholic Beverage Control under Rule #2).

B. Conditions for a restaurant in a mixed-use structure in a Residential Business 2 (RB-2) Zoning District to protect neighboring RR (Resort Residential) residences from undue noise, odor, congestion or other nuisance:

- 18) Brewery Restaurant/Brewpub hours of operation from 7:00 am to 11:30 pm. Last seating at 10:45 pm and patrons must leave the premises by 11:30 pm;
- 19) No amplified live entertainment, including DJs/disk jockeys and MCs/master of ceremonies, shall be permitted on the Applicant's property except when approved by the Town Commissioners under a Special Event Permit;
- 20) There shall be no outside service area(s) except by approval under a Special Event Permit or subsequent conditional-use approval;
- 21) The Applicant shall provide a minimum of one (1), appropriately lined and signed, off-street parking space dedicated for patron handicap parking for the restaurant;
- 22) The Applicant shall erect, unless there is an existing fence in this location, and maintain a fence along the East edge of the property to buffer impacts on abutting RR (Resort Residential)-zoned residential properties. This fencing shall begin twenty-two feet (22') from the property line on Saulsbury Street and be a minimum of six-feet six-inches high. This fencing shall be constructed in accordance with Section 185-92 of Town Code;
- 23) Tiered plantings shall be installed and maintained along the East boundary of the property for the first twenty-two feet from the Saulsbury Street property line, in order to protect the neighboring properties' privacy and protect said properties from light and noise resulting from the Applicant's operations. This planted buffer area shall be a minimum of two-feet six-inches wide. Such tiered plantings shall include ground-level plants and/or ground cover, mid-height shrubberies, and a tree canopy. The planting plan shall be approved by the Town Code Enforcement Official or designee;
- 24) All kitchen and brewery-pub exhaust outlets shall be located a minimum of 30 feet from any residential property unless such positioning conflicts with fire and health department requirements;
- 25) The Applicant shall provide and maintain lighting in the parking area during normal hours of operations. Such lighting shall be designed and maintained so as not to unreasonably impact the residential neighbors as per Section 185-38 C of the Town Code;
- 26) Entrances to any and all commercial-use space(s) on the North side of the building shall be kept closed at all times except for emergencies with such use approved by consent of the adjoining property owner if necessary, and entrances to any and all commercial-use space(s) on the East side of the building shall be kept closed at all times except when being used for deliveries and/or removal of waste and trash. Any windows adjoining

toilet, kitchen or storage areas of any and all commercial-use spaces(s) shall be kept closed at all times;

- 27) All exterior mechanical equipment visible from public streets and adjacent residential-use properties or any residential zoning district shall be appropriately screened so as not to create a nuisance. Any such screening plan shall be approved by the Town prior to installation;

C. Conditions for the operation of a “brewpub” beyond those of a simple restaurant:

- 28) To ensure the brewery function is of secondary importance, brewery/brewhouse capacity shall be limited to a seven (7) beer barrel system; beer creation shall be limited to five (5) days a week Monday through Friday during the “in season” defined as May 15 through September 15; Beer creation shall be limited to restaurant days of operation during the “Off-Season” defined as September 16 through May 14; and beer creation shall be limited to a maximum of two (2) brew batches per day;
- 29) Operation of any and all brewery-pub functions within a restaurant in Dewey Beach shall only be permitted upon approval by a majority of Town Commissioners of a conditional-use application detailing such proposed functions, possession of valid Delaware ABCC restaurant alcohol and brewpub licenses, and in compliance with all Town, County, State and Federal agencies with oversight- or regulatory authority over such operations;
- 30) ‘Meals’ shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, desserts and beverages other than alcohol, as defined in Delaware State Code (insert citation);
- 31) The brewery function of the restaurant shall be designed and operated so as to have no offensive brewery-related air-borne or water-borne emissions including odors from storage of solid or semi-solid waste or by-product and create no public or private nuisance. To this end, all brewery-related equipment shall conform to industry standards. . The Applicants will work with the Town to ensure the resulting emissions into the local environment will have minimal odors and will be contaminant free, and to install condensers or similar equipment to capture steam emissions and eliminate problem odors if complaints regarding the emission of odors become a recurring problem;
- 32) Brewery operations and routine service and maintenance of the related equipment shall be limited to the hours of 9:00 am to 5:00 pm on weekdays;
- 33) Wholesale sales of beer produced on site for off-site consumption shall be limited to 800 barrels per year;
- 34) Spent grain shall be stored inside the facility, in rigid air tight containers until picked up for disposal;

- 35) The entire facility shall comply with all applicable State, County and Town fire, health and building codes ;
- 36) No outdoor storage of raw materials or supplies for the restaurant or brewery-pub or of barrels, kegs or other specialty beer containers either full or empty shall be allowed. Restaurant waste, trash and recycling shall, at a minimum, be placed in heavy gauge plastic trash bags and stored for pick-up in a properly maintained dumpster with a tightly fitting lid, which shall be located a minimum of 5' back from the Saulsbury St. property line and enclosed by suitable plantings or stockade-style fencing. Location of any and all exterior waste storage containers and fencing shall be approved by the Town;
- 37) All vehicles involved in deliveries to and trash and wholesale beer pick up from the restaurant/brewery-pub shall park on the South side of the property within the designated parking area/loading zone in a manner so as not to interfere with or prevent the safe flow of local traffic and pedestrian use of the street. Also, delivery trucks are not to turn around at the East end of Saulsbury Street;
- 38) No outgoing delivery service shall be permitted from any portion of the Applicant's property before 9:00 am or after 6:00 pm;
- 39) The "Staff Bathroom" shall be available for patron use.

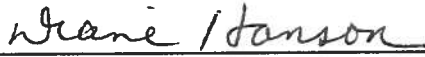
Section 4. This Conditional-Use Approval shall terminate under conditions in which the ownership and/or control of Dewey Beer & Food Company, LLC are substantially changed, or its Delaware ABCC restaurant alcohol and/or brew pub license(s) lapse or are terminated. Under such circumstances continued operations shall require a new conditional-use approval.

Section 5. Applicant agrees to abide by all Federal, State, County and Town laws and codes or risk forfeiture of its conditional-use approval. Violation of any condition enumerated in Section 3 herein may be cause for penalties and/or revocation or modification of this conditional-use approval.

Section 6. Prior ordinances, resolutions and/or issues related to "grandfathered" operations for previous restaurant businesses at this location, e.g., permitting operating hours 24 hours per day, are hereby repealed in their entirety and the restaurant facility at 2100 Coastal Highway shall be operated as a conforming restaurant under the conditions enumerated herein. This repeal does not affect the status of the existing three dwelling units which may remain as a non-conforming use on this property, the footprint of the existing building which may remain as a non-conforming structure, or future usage of the commercial area as a conforming restaurant;

Section 7. Minor changes of formatting, grammar, and typography may be made to assist incorporating these changes into the Town Code.

Section 8. This Ordinance shall become effective immediately upon adoption by a majority of the Commissioners of the Town of Dewey Beach and receipt of a written record statement by the Applicant agreeing to operate under all terms and conditions herein.



DIANE HANSON
Mayor

Attest: 

MARC APPELBAUM
Town Manager

Synopsis: This Ordinance approves the Applicant's request for a conditional use regarding a restaurant business, Dewey Beer & Food Company, that will operate with Delaware ABCC restaurant alcohol and brew pub licenses as an expansion and change in use from the current non-conforming restaurant, Bubba's, which occupies this location and which does not have a Delaware ABBC liquor license