



# TOWN OF DEWEY

## BEACH

www.townofdeweybeach.com

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

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO EXPAND AN EXISTING CONDITIONAL USE FOR THE PROPERTY LOCATED AT 1818 COASTAL HIGHWAY, DEWEY BEACH, DE, FORMALLY KNOWN AS MAP 20.18 PARCEL 149.00, LOCATED IN ZONING DISTRICT RB-2, SOUTH OF BELLEVUE ST. AND NORTH OF DAGSWORTHY AVE. PURSUANT TO SECTION 25D(I) OF CHAPTER 185 AND IN ACCORDANCE WITH THE DEFINITION AND REQUIREMENTS OF A RESTAURANT IN CHAPTER 144, SECTION 6, AND WITHOUT LIMITATION AS TO THE TYPE OF ALCOHOLIC BEVERAGES TO BE SERVED**

**WHEREAS**, on the 21st day of October 2021, a Special Town Commissioners Meeting was held, after proper notification, resulting in a referral to the Planning Commission for a recommendation concerning an application of an expansion of a conditional use in the RB-2 Resort Business District for a restaurant, filed Steve Montgomery, an authorized member of Starboard Claw Land Company, LLC, located at 1818 Coastal Highway in Dewey Beach, Delaware being part of Sussex County Tax District Map 20.18 Parcel 149.00.

**WHEREAS**, on the 13<sup>th</sup> day of November 2021, a Planning and Zoning Commission Meeting and Public Hearing was held, after proper notification, resulting in an amendment to the proposed ordinance with a list of recommendations made by the commission.

**NOW THEREFORE;**

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

### Section 1.

The above captioned application for an expansion of a Conditional Use from Starboard Claw Land Co, LLC. of 1818 Coastal Highway in Dewey Beach, Delaware to establish a restaurant as shown on a preliminary site plan, is hereby approved, and the adoption of this Ordinance subject to the following terms and conditions:

- (1) Hours of operations shall not be earlier than 7:00 a.m. and no later than 1:00 a.m.
- (2) There shall be no loud speakers or amplifiers on the exterior of the building.
- (3) The requirements of Chapter 144, Restaurants, shall be complied with by the Restaurant at all times.
- (4) A final floor and final Site plan shall be submitted and complied with at all times.
- (5) Applicant shall apply for and comply with a Certificate of Compliance as provided in Chapter 144, Restaurants, prior to commencement of operations.
- (6) Applicant shall acquire all necessary licenses from the Town of Dewey Beach and the State of Delaware. All State health and regulatory agency requirements and regulations, including the State Fire Marshal, shall be complied with by the licensee, and licensee shall operate at its own risk of violation and State regulation that is not incorporated into the approval.

- (7) There shall be trash receptacles placed at the premises by the proprietor in compliance with the Dewey Beach Code, and trash pick-up will be performed a minimum of 5 times per week while operating.
- (8) This Conditional Use will be extended to cover the entirety of the parcels that are currently known separately as TMP 334-20.18 149.00, and 334-20.18-150.00 once the two parcels are combined.
- (9) 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;
- (10) 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;
- (11) All tables and chairs shall be maintained in the configuration shown in the approved conditional-use application;
- (12) Kitchen facilities shall be under the direction of a chef or cook;
- (13) All exterior windows and doors to the restaurant shall be closed at 11 :00p.m;
- (14) 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;
- (15) 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 Bellevue Street each day before 10:00 a.m;
- (16) 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).
- (17) 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 residential properties. This fencing shall be a minimum of six-feet high. This fencing shall be constructed in accordance with Section 185-92 of Town Code;
- (18) Tiered plantings shall be installed and maintained along the East boundary of the property for the first twenty-two feet from the Bellevue 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;

- (19) All kitchen exhaust outlets shall be located a minimum of 30 feet from any dwelling unless such positioning conflicts with fire and health department requirements;
- (20) 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;
- (21) 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;
- (22) The outside area will close at 11:00pm;
- (23) No smoking shall be permitted in the deck area. A separate outside smoking area will be designated;

**Section 2.** If any provisions 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.

**Section 3.** This Ordinance shall take effect immediately upon its passage by a majority vote of the Commissioners of the Town of Dewey Beach.

**ORDAINED AND ENACTED** into law this 20th day of April 2022.

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William Stevens, Mayor

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Bill Zolper, Town Manager