

ORDINANCE NO. _____

An Ordinance to Amend a Conditional Use Permit and amend its Restaurant Permit of Compliance to expand the patron area for The Dewey Post located at 1205 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 Collins Avenue and south of Van Dyke Avenue, bears Tax Parcel Number 334-23.06-4.00-300 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 May 2020;

WHEREAS, on the 19th day of August 2022, 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 expansion of an existing Conditional Use;

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 144-4B (1) through (5);

WHEREAS, the above-referenced requirements of The Dewey Post 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, the Planning and Zoning Commission conducted a Public Hearing on the 7th day of October, 2022, after proper notice, and, based on the record established at the hearing, recommended to the Town Commissioners that the application for Conditional Use be approved as amended, and;

WHEREAS, (*insert business name here*) 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:

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 334-23.06 parcel 4.00-300.
2. The Applicant will continue to comply with all existing Conditions associated with their establishment.
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.
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.
10. The outside service area shall be cleared of patrons by 11pm each business day.

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.

ORDAINED AND ENACTED IN LAW THIS _____ DAY OF _____, 2022.

WILLIAM STEVENS, MAYOR

BILL ZOLPER, TOWN MANAGER