

DRAFT

NONCONFORMITIES
TOWN OF DEWEY BEACH, DELAWARE
ORDINANCE NO.

AN ORDINANCE BY THE TOWN COMMISSIONERS AMENDING THE TOWN OF DEWEY BEACH CODE ARTICLE IX. NONCONFORMITIES, SECTION §185-59 BY ADDING LANGUAGE TO PREVENT DAMAGE BY FLOODING AND ADDING SECTION (B) PERMITTING A NON-CONFORMING STRUCTURE TO BE ELEVATED IN A FLOOD ZONE AND AMENDING ARTICLE VIII. SUPPLEMENTARY HEIGHT, AREA AND BULK REGULATIONS, §185-46. MODIFICATION OF HEIGHT REGULATIONS, Subsection A, TO INCLUDE ELEVATION OF NONCONFORMING RESIDENTIAL STRUCTURE TO PREVENT FLOODING

WHEREAS, the Town Commissioners have the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Town of Dewey Beach and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the Town of Dewey Beach desires to assist property owners in designated flood hazard areas, as determined by the National Flood Insurance Program and FEMA, to meet elevation requirements for structures to prevent and reduce damage to structures from flooding, and

WHEREAS, many structures within designated flood hazard areas are non-conforming structures, which cannot be elevated due to not meeting current requirements of damages due to fire, storm, infestation, or other peril not caused intentionally by the property owner.

NOW, THEREFORE, BE IT ORDAINED by the Town Commissioners of the Town of Dewey Beach that the following amendments to section 185-59 be adopted.

Article IX. Nonconformities

185-59. Damage or destruction of nonconforming use or building *and prevention of flood damage to structure*

[Amended 1-11-2014 by Ord. No. 710],

If a nonconforming building is damaged by fire, storm, infestation, or other peril not caused intentionally by the property owner, ~~and in order to prevent damage by flooding,~~ it may be repaired or reconstructed

to essentially the same configuration as existed prior to the damage, provided that application for all required building permits be made within one year and six months of the date of the damage. If a different configuration or an expansion of the original building is proposed, it must conform to all applicable regulations, including all applicable setbacks, height and elevation requirements. In addition, and notwithstanding the foregoing, a nonconforming building located in a designated flood zone, in order to prevent potential future damage by flooding, may be elevated to meet current federal and Town flood elevation requirements, as set forth in subpart B below.

A. Except that in the process of repairing or reconstructing a residential-use structure located in a flood-prone area (e.g., a FEMA-designated VE, AE, or AO flood zone) that does not conform to the required setbacks in any respect and does not meet Town building-elevation standards and has suffered substantial damage, said structure shall be elevated to, but not to exceed, the relevant minimum building-elevation requirement ~~as per~~ notwithstanding the restrictions set forth in § 185-60B of this chapter.

(1) For the purposes of this section, the meaning of "substantial damage" shall be that used by the National Flood Insurance Program (NFIP): "damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred."

(2) For the purposes of this chapter, the "Town's building-elevation requirement" shall be the sum of the FEMA-designated one-percent-annual-probability base flood elevation (BFE) for the flood zone in which the structure is located as shown on the effective Flood Insurance Rate Map (FIRM) plus the additional height required by the Town as part of its participation in the National Flood Insurance Program (NFIP), i.e., freeboard. (The required freeboard is specified in the Town Code in § 101-11, Elevation, floodproofing and constructions standards applicable within general floodplain areas. At the time of enactment of this section the Town's freeboard height requirement is one foot.)

(a) The structure's "building elevation" shall be defined as per NFIP regulations as "the elevation of the lowest habitable floor (including basement)" for buildings in AO and AE flood zones and as "the elevation of the bottom of the lowest horizontal structural member of the lowest floor" for buildings in a VE flood zone. Building elevation may at times be referred to as base elevation in Town code.

(3) Under no circumstance shall any structure elevated under this section exceed the Town-wide thirty five-foot building height limit

B. *If a non-conforming structure is located in a designated flood zone, and the property owner desires to elevate the structure to prevent flooding based on the Town's elevation requirements in the designated floodzone, the nonconforming structure may be elevated ~~to~~ in essentially the same configuration as it currently exists, and the structure shall be elevated to, but not to exceed, the relevant minimum building-elevation requirement ~~as per~~ notwithstanding the restrictions set forth in §185-60B.*

ARTICLE VIII. Supplementary Height, Area and Bulk Regulations

MODIFICATION of height regulations,

§185-46

- A. The height standard in this chapter (See Table 2, Bulk Zoning Standards in All Districts, at the end of Chapter 185.[2]) shall be waived for a pre-FIRM building or structure situated in a special flood hazard area that is substantially damaged, ~~or if the residential property owner wishes to elevate the structure for prevention of flooding~~, and therefore must be raised to a specified minimum base elevation determined by FEMA's effective Flood Insurance Rate Map base flood level plus Town mandatory freeboard, or if the residential property owner wishes to elevate the structure to the aforesaid elevation standards for prevention of flooding, provided that said building or structure is rebuilt *or elevated* to a substantially similar configuration as existed prior to the damage *or elevation* except for any increased ceiling height in previous living space(s) as required by effective building code and not elevated more than 0.1 foot above such elevation as required to meet Town Flood Damage Reduction Ordinance standards. (See Chapter 101, Flood Damage Reduction, of the Town Code.)

[2]

Editor's Note: Table 2 is included as an attachment to this chapter.