



3 **ORDINANCE NO.**

4
5 **AN ORDINANCE TO AMEND CHAPTERS 185-59 AND 185-60 OF THE DEWEY BEACH TOWN CODE**
6 **REGARDING NON-CONFORMING STRUCTURES**

7
8 **WHEREAS**, the Dewey Beach Planning Commission met on May 14, 2025 and recommended to the
9 Town Council amendments to §185-59 and §185-60.

10
11 **NOW THEREFORE, BE IT ENACTED AND ORDAINED**, by the Commissioners of the Town of Dewey Beach,
12 Sussex County, Delaware, in session met, as follows:

13
14 **Section 1.** Amend Chapter 185-59 of the Code of Ordinances as depicted by strikeouts and substitutions
15 depicted below:

16
17 § 185-59 Damage or destruction of nonconforming ~~use or~~ building.

18 If a nonconforming building is damaged by fire, storm, infestation, or other peril not caused
19 intentionally by the property owner, it may be repaired or reconstructed to essentially the same
20 configuration as existed prior to the damage, provided that application for all required building
21 permits be made within one year and six months of the date of the damage. If a different
22 configuration or an expansion of the original building is proposed, it must conform to all
23 applicable regulations, including all applicable setbacks, height and elevation requirements.

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25 **A.** Except that in the process of repairing or reconstructing a residential-use structure located
26 in a flood-prone area (e.g., a FEMA-designated VE, AE, or AO flood zone) that does not
27 conform to the **one or more** required setbacks ~~in any respect~~ and does not meet Town
28 building-elevation standards and has suffered substantial damage, said structure shall be
29 elevated to the relevant minimum building-elevation requirement as per ~~§ 185-60B of this~~
30 ~~chapter~~ **§101-27A for special flood hazard areas other than coastal high-hazard areas, or**
31 **§101-33B for coastal high-hazard areas.**

32
33 1) For the purposes of this section, the meaning of "substantial damage" shall be that used
34 by the National Flood Insurance Program (NFIP): "damage of any origin sustained by a
35 structure whereby the cost of restoring the structure to its before-damaged condition
36 would equal or exceed 50% of the market value of the structure before the damage
37 occurred."

38 2) ~~For the purposes of this chapter, the "Town's building elevation requirement" shall be~~
39 ~~the sum of the FEMA designated one percent annual probability base flood elevation~~
40 ~~(BFE) for the flood zone in which the structure is located as shown on the effective Flood~~
41 ~~Insurance Rate Map (FIRM) plus the additional height required by the Town as part of its~~

42 participation in the National Flood Insurance Program (NFIP), i.e., freeboard. (The
43 required freeboard is specified in the Town Code in § 101-11, Elevation, floodproofing
44 and constructions standards applicable within general floodplain areas. At the time of
45 enactment of this section the Town's freeboard height requirement is one foot.)

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

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

53 **Section 2.** Amend Chapter 185-60 of the Code of Ordinances as depicted by strikeouts and substitutions
54 depicted below:
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56 § 185-60 ~~Extension~~ **Expansion** of nonconforming use or building.

57 A. This section describes conditions under which the expansion of a nonconforming use of a
58 building is permitted. A nonconforming use of a building may be ~~extended~~ **expanded** either
59 within the building or outside the building or into a new addition or building on the same lot
60 if the nonconforming use was in existence at the time of original enactment of this chapter
61 in 1983. A nonconforming use of a building may be ~~extended~~ **expanded** into a building on a
62 contiguous lot if the nonconforming use and common ownership of such contiguous lots
63 predate the time of original enactment of this chapter in 1983 and the contiguous lots have
64 been continuously under common ownership since 1983. Any such expansion of a
65 nonconforming use requires approval as a special exception by the Board of Adjustment as
66 provided in Article X of this chapter, and is subject to the following special requirements:

- 67 1) The ~~extension~~ **expansion** is for a use which is necessarily incident to the existing use;
- 68 69 2) Such ~~extension~~ **expansion** shall not encroach on any of the setback or yard requirements
70 for the district in which the use is located;
- 71 72 3) Such ~~extension~~ **expansion** shall have a floor area not to exceed 50% of the floor area of
73 the existing building or portion thereof;
- 74 75 4) It will not impair the value of the adjoining property or adversely affect the character of
76 the neighborhood;
- 77 78 5) Such ~~extension~~ **expansion** shall be permitted only within the maximums for square
79 footage, number of bedrooms, and floor area ratio (FAR) applicable to the property; and
80 81 6) Only one ~~extension~~ **expansion** shall be permitted by the Board of Adjustment during the
82 life of the nonconforming use.

83 B. ~~A building nonconforming only as to height, area, or bulk requirements may be altered or~~
84 ~~extended, provided such alteration or extension does not increase the degree of~~
85 ~~nonconformity in any respect. A building which does not conform to the required setbacks~~
86 ~~in any respect shall not be expanded either vertically or horizontally in the setback area. A~~
87 ~~nonconforming building may be expanded, provided such expansion does not increase the~~
88 ~~number of nonconformities or the degree of any nonconformity, and any expansion~~
89 ~~conforms to all required setbacks.~~

90 **Section 4.** If any provisions of this Ordinance shall be deemed or held to be invalid or unenforceable for
91 any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of
92 this Ordinance which may be given effect without such invalid or unenforceable provision, and to this
93 end, the provisions of this Ordinance are hereby declared to be severable.

94 **Section 5.** This Ordinance shall take effect immediately upon its passage by a majority vote of the
95 Commissioners of the Town of Dewey Beach.

96 Adopted by at least a majority of the Commissioners of the Town of Dewey Beach on this -- day of --,
97 2025.

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SYNOPSIS

102 This Ordinance remedies inconsistencies between chapters 185 and 101 of the code regarding
103 properties in flood zones, as well as clarifying the existing verbiage in 185-60 regarding the terms
104 "expansion" and "extension."

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Mayor, William Stevens

Town Manager, Bill Zolper