

Proposed Amendments to Section 185-46 and Table 2 Bulk Standards

Section 101 flood damage provisions of the town code require properties in a flood plain that are substantially damaged to be elevated. However, these provisions also require that the elevated property not exceed the height standard for flood zone properties. Section 185-46 provides an exception to the height standard for properties built before the adoption of the flood insurance rate maps (pre-FIRM) when the property is substantially damaged and the property is to be restored to essentially the same configuration as before it was damaged.

These two sections of the code may be interpreted by some as in conflict. The proposed amendments recommended by the Charter and Code Review Committee are intended to clarify the exception.

Article V Requirements in Special Flood Hazard Areas Other Than Coastal High-Hazard Areas

§ 101-26 General requirements.

In addition to the general requirements of Article IV, the requirements of this article apply to all development proposed in special flood hazard areas other than coastal high-hazard areas. These areas include Zones A, AE, and AO.

§ 101-27 Residential structures and residential portions of mixed-use structures.

A. Elevation requirements.

- (1) The lowest floor (including basement) shall be elevated to or above the base flood elevation plus 12 inches. (SB 64 Recommended Standard 7A; Require 12 inches of freeboard (height above minimum elevation))
- (2) In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map plus 12 inches, or at least two feet plus 12 inches if a depth number is not specified; adequate drainage paths shall be provided to guide floodwaters around and away from the structure. [SB 64 Recommended Standard 7A; Require 12 inches of freeboard (height above minimum elevation)]
- (3) No existing structure which encroaches in any required setback area(s) shall be raised to an elevation higher than the base flood elevation plus town-mandated freeboard plus a vertical tolerance of 0.10 foot unless otherwise provided for in Chapter 185, Zoning, or repositioned so as to no longer encroach.
- (4) Existing structures required to be elevated to conform with the requirements of this chapter shall comply with the building height standard as identified in Town Code Chapter 185, Zoning, Table 2, Bulk Zoning Standards in All Districts.^[1] To resolve the situation of an existing structure that is substantially damaged but which would exceed the Town's building height restriction if elevated as per the requirements of this chapter:
 - (a) The structure may be modified so as not to exceed the Town's building height standard after complying with the lowest floor elevation requirements of this chapter; or
 - (b) The applicant may apply to the Town Board of Adjustment for a variance. If applying for a variance the applicant:
 - [1] Shall first seek a variance to the Town's building height standard through the administrative process described in Article X (Board of Adjustment) of Chapter 185, Zoning; then
 - [2] If a variance to the building height restriction is not granted, the applicant may seek a variance from the additional building elevation above base flood elevation required by this chapter as per Article VII. Failure to obtain a variance to the building height restriction is not, by itself, sufficient justification to warrant a variance per Article VII.
 - [3] If neither type of variance is granted, the structure shall either be modified so as to conform to all requirements of Chapter 185, Zoning, and this chapter or razed.

[1] *Editor's Note: Table 2, Bulk Zoning Standards in All Districts, is included as an attachment to Ch. 185, Zoning.*

§ 185-46. Modification of height regulations. [Amended 7-10-2010 by Ord. No. 6821; 5-9-2015 by Ord. No. 718]

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, 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, provided that said building or structure is rebuilt to a substantially similar configuration as existed prior to the damage 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.)

B. In order to qualify for the exclusion, owner must supply proof via a site survey, original building plans, or other appropriate support documenting the height of the undamaged structure. Supporting documentation must be sealed by a registered professional land surveyor or registered professional engineer.

C. All other exclusions to the height standard are included in Table 2, Bulk Zoning Standards in All Districts.3

B. 

ZONING

185 Attachment 1

Town of Dewey Beach

TABLE 2
BULK ZONING STANDARDS IN ALL DISTRICTS
[Amended 5-9-2015 by Ord. No. 718; 2-12-2021 by Ord. No. 759; 1-21-2022 by Ord. No. 780; 5-19-2023 by Ord. No. 811]

Zoning District	NR	RR	PR	RB-3	RB-2	RB-1	PRB-1	PRB-3	
Height	<p>For buildings not in any special flood hazard area: Maximum building height: 35 feet measured from grade. Maximum number of stories: 2 ½. Roof decks are permitted. The floor area of any roof deck shall not exceed 20% of the covered and/or enclosed floor area of the top story; the finished floor elevation of any top floor deck shall be not less than six feet below the elevation of the roof peak. A minimum roof pitch of 4/12 is required for all roofs.</p> <p>For buildings in any special flood hazard area (SFHA): Maximum building height: 32 feet measured from the elevation of the 1% annual flood level on the appropriate effective FEMA Flood Insurance Rate Map plus appropriate Town mandatory freeboard except in any VE SFHA where one additional foot of height shall be permitted due to the difference in base building elevation reference points for AO and AE SFHAs versus VE SFHAs. Maximum number of stories: 2 ½. Roof decks are permitted. A minimum roof pitch of 4/12 is required for all roofs above the first story unless such roof area is covered by a roof deck. The floor area of any roof deck shall not exceed 20% of the covered and/or enclosed floor area of the top story; the finished floor elevation of any top floor deck shall be not less than six feet below the elevation of the roof peak.</p>	<p>For buildings not in any special flood hazard area: Maximum building height 35 feet measured from grade. Maximum number of stories: 3. Roof decks are permitted with all decks and railings subject to this height standard. All above ground deck railing must be the higher of: 42 inches above the deck surface or in compliance with the most current Town Building Code.</p> <p>For buildings in any special flood hazard area (SFHA): Maximum building height 32 feet measured from the elevation of the 1% annual flood level on the appropriate effective FEMA Flood Insurance Rate Map plus appropriate Town mandatory freeboard except in any VE SFHA where one additional foot of height shall be permitted due to the difference in base building elevation reference points for AO and AE SFHAs versus VE SFHAs. Maximum number of stories: 3. Roof decks are permitted with all decks and railings subject to this height standard. All aboveground deck railing must be the higher of: 42 inches above the deck surface or in compliance with the most current Town Building Code.</p>							
Exclusions to height restriction	<p>Chimney required to comply with fire code (not to exceed 24 inches above peak of roof); alternative energy systems, where appropriately set back from roof edges so as not to be visible from the street, permitted as special exception but not to exceed 42 inches above roof peak.</p>		<p>Chimney and stand pipe required to comply with fire code (not to exceed 24 inches above peak of roof). Elevator bulkhead where required for safety, and air handling system (appropriately screened) and alternative energy system when appropriately set back from roof edges so as not to be visible from the street, permitted as special exception but not to exceed 42 inches above peak of roof.</p>						
Minimum lot size (square feet)	5,000		100,000		5,000			80,000	
Minimum setback requirements (feet)	<p>Front yard: 18 Rear yard: 12 Aggregate of front and rear yards: 30</p>	<p>Front yard: 22 Rear yard: 10 Aggregate of front and rear yards: 32</p>	<p>Street setback: 20 Side yard and rear yard: 12</p>	<p>Residential use: See RR District Requirements Commercial and mixed use: Front yard: 18</p>	<p>Front yard abutting a street: 6; front yard abutting S.R.1: 8.</p>		<p>Front yard: 8</p>	<p>Front yard: 18</p>	
					<p>Rear yard: 10</p>			<p>Side yard: 6</p>	
					<p>Side yard: 0' unless abutting a street. Side yard abutting any street other than S.R. 1: 6; side yard abutting S.R.1: 8.</p>		<p>Side yard: 10 unless abutting a street. Side yard abutting a street: 15.</p>		

See §185-46 Modification of height regulations for a substantially damaged pre-FIRM property in any special flood hazard area (SFHA).

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