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Received By
Town of Dewey
DATE: 4/20/26
[Signature]

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EXHIBIT 1



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-8319 (Fax No.)

Gordon E. Elliott
Town Manager

ORDINANCE NO. 634

AN ORDINANCE TO AMEND CHAPTER 185, ZONING, OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE, 2005, AS AMENDED, RELATING TO THE DEWEY BEACH ZONING REGULATIONS AND ZONING DISTRICTS

WHEREAS, the Commissioners of The Town of Dewey Beach have deemed it desirable to consider the question of whether to amend Chapter 185, Zoning, of the Municipal Code of the Town of Dewey Beach, Delaware, 2005, as amended, and to amend the Dewey Beach Official Zoning Map, relating to the Dewey Beach zoning regulations and zoning districts.

WHEREAS, Title 22, Chapter 3, Section 301 of the Delaware Code provides that "[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes."

WHEREAS, Article X, Chapter 185, Section 185-64 the Municipal Code of the Town of Dewey Beach provides that "before acting on any proposed amendment, supplement or change, the Town Commissioners shall hold a public hearing thereon in accordance with 22 Del. C. § 304."

WHEREAS, a public hearing was conducted on January 10, 2009.

WHEREAS, at least 15 days' notice of such hearing was provided by publishing notice of the time and place of such hearing in an official paper or paper of general circulation in the Town.

WHEREAS, the proposed amendments strike a reasonable balance between the various goals of the Town's Comprehensive Development Plan, and are therefore consistent with the Town's Comprehensive Development Plan.

WHEREAS, the proposed amendments will promote the health, safety, and general welfare of the Dewey Beach community.

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

Section 1. Chapter 185, Zoning, of the Municipal Code of Dewey Beach, Delaware, 2005, as amended, is hereby further amended by deleting Chapter 185 in its entirety, and inserting in lieu thereof new Chapter 185 attached as Exhibit A.

Section 2. The Commissioners of Dewey Beach adopt the findings of fact dated January 10, 2009 attached as Exhibit B.

Section 3. If any provision 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 4. This Ordinance shall take effect immediately upon its adoption by a majority vote of all Commissioners of the Town of Dewey Beach.

Adopted by at least a majority of all Commissioners of the Town of Dewey Beach on
Jan 10, 2009



DELL TUSH
Mayor

Attest: 

GORDON E. ELLIOTT
Town Manager



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363 (Voice or TDD)
302-227-8319 (Fax No.)

THE TOWN OF DEWEY BEACH

Gordon E. Elliott
Town Manager

PUBLIC NOTICE

Notice is hereby given that on Saturday, January 10, 2009, during a regular meeting of the Commissioners of the Town of Dewey Beach, Ordinance 634 was adopted titled:

**AN ORDINANCE TO AMEND CHAPTER 185, ZONING, OF THE MUNICIPAL CODE
OF THE TOWN OF DEWEY BEACH, DELAWARE, 2005, AS AMENDED,
RELATING TO THE DEWEY BEACH ZONING REGULATIONS
AND ZONING DISTRICTS**

SYNOPSIS: This Ordinance amends Chapter 185, Zoning, of the Municipal Code of the Town of Dewey Beach relating to zoning regulations and zoning districts by deleting the prior Chapter 185 in its entirety, and inserting in lieu thereof, a new Chapter 185, Zoning.

The Ordinance is available for public review at the Town Hall, Town of Dewey Beach, 105 Rodney Avenue, Dewey Beach, DE 19971.

FINDINGS OF FACT

Adoption of Ordinance Amending Chapter 185, Zoning, of the Municipal Code of the Town of Dewey Beach

January 10, 2009

The Commissioners of the Town of Dewey Beach make the following findings of fact, and rely, in part, upon these facts in support of the Commissioners' decision to adopt the Ordinance titled **"AN ORDINANCE TO AMEND CHAPTER 185, ZONING, OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE, 2005, AS AMENDED, RELATING TO THE DEWEY BEACH ZONING REGULATIONS AND ZONING DISTRICTS."**

1. The Town's Comprehensive Development Plan contemplates that the Town will "update its zoning . . . ordinances, emphasizing an expanded commercial-land-use area divided into three resort-business zoning districts."
2. The proposed Ordinance amending the Dewey Beach Zoning regulations and zoning districts strikes a reasonable balance between the various goals of the Town's Comprehensive Development Plan, and is therefore consistent with the Town's Comprehensive Development Plan.
3. The zoning regulations and zoning districts anticipated under the proposed Ordinance will promote the health, safety, and general welfare of the Dewey Beach community.
4. Adoption of the proposed Ordinance amending the Dewey Beach Zoning regulations and zoning districts will promote urban growth and development that protects the Town's resources and ensures its economic vitality while accurately defining the community.
5. The zoning regulations and zoning districts anticipated under the proposed Ordinance are generally consistent with the values of Dewey Beach residents, property owners, business owners, and visitors regarding density, scale, ambiance, and anticipated future needs.
6. Of the Resort Business zoning districts proposed under the Ordinance, the Resort Business-1 (RB-1) zoning district permits the most intense development, and the most dense development.
7. Of the Resort Business zoning districts proposed under the Ordinance, the Resort Business-2 (RB-2) zoning district permits development less intense than the Resort Business-1 (RB-1) zoning district, but more intense than the Resort Business-3 (RB-3) zoning district.
8. Of the Resort Business zoning districts proposed under the Ordinance, the Resort Business-3 (RB-3) zoning district permits the least intense development.

Chapter 185, ZONING

[HISTORY: This chapter was first adopted by the Commissioners of the Town of Dewey Beach on 2-28-1982 by Ord. No. 14 (Ch. 14 of the 1984 Code). A comprehensive revision of this chapter was adopted by the Commissioners of the Town of Dewey Beach on 1-10-2009. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission -- See Ch. 181.

Floodplain management -- See Ch. 101.

Occupancy -- See Ch. 126.

Subdivision of land -- See Ch. 183

ARTICLE I, Title and Purpose

§ 185-1. Title.

This chapter shall be known as the Zoning Code for the Town of Dewey Beach.

§ 185-2. Applicability.

This chapter shall apply to the Town of Dewey Beach.

§ 185-3. Purpose.

The zoning regulations and districts as herein established are designed to promote the health, safety, morals, convenience, order, prosperity and general welfare of the present and future inhabitants of the Town of Dewey Beach, Delaware. These interests may be promoted by restricting the height, number of stories and size of buildings and other structures; the percentage of lot area that may be occupied; the size of yards, courts, and open spaces; the density of development; and the location, use and extent of use of buildings, structures, and land for residential, trade, industry and other purposes by creating districts for said purposes and by establishing boundaries for such districts; by providing for a Board of Adjustment, and by imposing penalties for the violation of the zoning ordinance. This ordinance is adopted to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the adequate provision of transportation, water, sanitation, sewerage, schools, parks, recreation and other public requirements. Such regulations shall be made with reasonable consideration as to the character of each zoning district and its suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

§ 185-3.1 Enabling Legislation

The enabling legislation for this ordinance is an authorization by the Delaware General Assembly. Delaware Code Title 22, Section 301 permits the legislative bodies of incorporated towns to regulate such matters as the height, number of stories and size of buildings and other structures, percentage of lot that

may be occupied, the size of yards, courts and other spaces, the density of population, and the location and the use of land for trade, industry, residence or other purposes.

ARTICLE II, Districts and District Maps

§ 185-4. Establishment of districts.

In order to regulate and restrict the location and use of buildings and land for trade, industry, residence, and other purposes; to regulate and restrict the location, height, and size of buildings hereafter erected or structurally altered, the size of yards and other open spaces, and the density of population, the following zoning districts are hereby established:

NR - Neighborhood Residential

RR - Resort Residential

RB-1 - Resort Business -1

RB-2 - Resort Business -2

RB-3 - Resort Business -3

PR - Planned Residential (NR or RR Overlay)

PRB-1 – Planned Resort Business -1 (RB-1 Overlay)

PRB-3 - Planned Resort Business – 3 (RB-3 Overlay)

Flood Prone Districts [See Chapter 101, Floodplain Management]

FP - Coastal Flood Plain

HA - Coastal High Hazard Area

§ 185-5. Reference to district names.

The term "Flood Prone Districts" shall include "FP - Coastal Flood Plain" and "HA - Coastal High Hazard Area." Almost all of the properties in RR, RB-1, RB-2 and RB-3 lie in one of three FEMA-designated flood zones, AE-7, AO-2 and VE.

The term "residential" used in reference to zoning districts shall include "NR-Neighborhood Residential" and "RR-Resort Residential" districts unless otherwise indicated.

The terms "Commercial", "Business" or "Resort Business" used in reference to zoning districts shall include all resort business districts, RB-1, RB-2 and RB-3 districts unless otherwise indicated.

§ 185-6. Official Zoning Map.

A. The boundaries of the districts are hereby established as shown on the zoning map entitled the "Zoning Map, Town of Dewey Beach," which properly attested shall be on file in the office of the Town, which map, with all explanatory matter thereon, shall be deemed to accompany, be, and is hereby made a part of this chapter. A copy of the Official Zoning Map shall be recorded in the Office of the Recorder of Deeds, Sussex County, at Georgetown, and shall periodically be revised to show amendments.

- B. The Official Zoning Map, together with subsequent applicable amendments, shall be conclusive as to the current zoning status of land.
- C. The Flood Prone Districts shall be deemed an overlay on any existing, or hereafter established, zones or districts within the Town.

§ 185-7. Informational copies of the Official Zoning Map.

- A. Informational copies of the Official Zoning Map shall be available for inspection at the Town office and at such other locations as may be necessary or convenient, including the Town's official web site www.townofdeweybeach.com.
- B. Drafting errors or omissions may be corrected on the Official Zoning Map, but no changes in district zoning boundaries may be made except to show properly adopted amendments.
- C. Changes to the boundaries of the Flood Prone Districts may be made where warranted by natural or other causes and where a study of flood-prone conditions has been made utilizing field techniques of the U.S. Army Corps of Engineers or some comparable agency. All changes will be subject to review and approval of the Federal Insurance Administration (FIA) before becoming effective.

§ 185-8. Interpretation of district boundaries.

- A. A district name or letter combination shown on the Official Zoning Map indicates the regulations pertaining to the district designated by that name or letter combination and extends throughout the whole area in the Town bounded by the district boundary lines within which such name or letter combination is shown or indicated, except as otherwise provided by this section.
- B. Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of these regulations, the following rules apply:
 - (1) In cases where a boundary line is given a position within a street or alley, easement, canal, navigable or non-navigable stream, it shall be deemed to be in the center of the right-of-way of the street, alley, easement, canal, or stream, and if the actual location of such street, alley, easement, canal or stream varies slightly from the location as shown on the district map then the actual location shall control.
 - (2) In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
 - (3) Where the district boundaries as shown on the Official Zoning Map approximately coincide with lot lines, the lot lines shall be construed to be the district boundary line unless otherwise indicated.
 - (4) Whenever any street, alley, or other public way is vacated in the manner authorized by law, the zoning district adjoining each of such street, alley, or public way shall automatically be extended to the center of such vacation and all area included in the vacation shall then and henceforth be subject to all regulations of the extended districts.

§ 185-9. Regulation of areas under water.

Areas which are under water are considered to be within a zoning district and controlled by the applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, by relation to physical features, by coincidence with the Town line, or by a straight line projection of the district boundaries as indicated on the district maps. Straight-line district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other or with the Town limit line.

ARTICLE III, General Provisions

§ 185-10. Compliance with regulations.

No new building, structure, or land shall hereafter be used and no building, structure, or part thereof shall be erected, reconstructed, converted, enlarged, moved, or structurally altered unless in conformity with the regulations as set forth in this chapter.

§ 185-11. Location on a lot required.

Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot of record.

§ 185-12. Encroachment; reduction of lot area.

The minimum yards, height limits, parking space, open spaces, including lot area, required by this chapter for each and every building existing at the time of the passage of these regulations or for any building hereafter erected, shall not be encroached upon or considered as required yard or open space for any other building except as hereinafter provided, nor shall any lot area or lot dimensions be reduced below the requirements of these regulations nor any nonconformance be increased.

§ 185-13. Prior construction of accessory building.

No accessory building shall be constructed upon a lot for more than six months prior to beginning construction of the main building. No accessory building shall be used for more than six months unless the main building on the lot is also being used or unless the main building is under construction.

§ 185-14. Uses not permitted are prohibited.

For the purpose of this chapter, permitted uses are listed for the various districts. Unless the contrary is clear from the context of the lists or other regulation of this chapter, uses not specifically listed are prohibited.

§ 185-15. Certain regulations not reproduced herein.

Whenever reference is made in this chapter to any other chapter, chart, table, schedule or regulation which itself is not copied herein, a copy of such chapter, chart, table, schedule or regulation shall be kept on file in the Town Office, and made available for inspection at the Town Office, and shall be accessible through the Town's official web site.

§ 185-16. Governmental exemptions.

- A. Governmental functions of the United States, State of Delaware, Sussex County and any other federal, state or county agency are subject to the provisions of the Municipal Code of the Town of Dewey Beach. Governmental functions of the Town of Dewey Beach are exempt from the

provisions of the Municipal Code of the Town of Dewey Beach except where these functions may be located within the flood-prone districts as determined by the FEMA maps and designations. Government functions of the United States, State of Delaware, and Sussex County in which the Town of Dewey Beach participates financially and/or contractually are exempt from the provisions of this Code, including but not limited to the functions of water supply systems and sanitary sewer systems.

- B. The provisions of the chapter apply except where these functions are located within the flood-prone districts. In addition to such functions as are deemed governmental, the following shall also be deemed to be governmental: water systems, sewer systems, functions of water and sewer districts created pursuant to 9 Del. C. Ch. 65 and Ch. 67, and solid waste disposal or transfer facilities.

§ 185-17. DNREC building line.

Land area in a recorded lot that lies east of the DNREC building line shall be included in the determination of total areas for density purposes.

§ 185-18. Change of use.

No change of use of a property shall be permitted unless the new use conforms to the regulations of this Code.

§ 185-19. Temporary structures.

Temporary structures are not permitted in any district unless specifically authorized in this code.

§ 185-20. Sewage or wastewater holding tanks.

Holding tanks for sewage or wastewater are prohibited in all districts.

§ 185-21. Smoke detectors.

Every bedroom and sleeping area in a dwelling, including a single-family detached dwelling or dwelling unit within a multi-family dwelling or mixed-use multi-unit building, and every guest room in a motel, hotel, Bed and Breakfast, or other similar provider of temporary accommodations shall be provided with an approved smoke detector that is hard-wired into the building's electrical system and provided with battery back-up as per applicable fire and building codes, and installed in accordance with manufacturer's recommendations. When activated, the detector shall emit an audible alarm. The smoke detectors shall be tested in accordance with and meet the requirements of Underwriters Laboratories #217, Single and Multiple Smoke Detectors.

§ 185-22. Certain gambling prohibited.

- A. Definitions. As used in this section, the terms below shall have the following meanings.

GAMBLING — Any game in which chance is the dominant factor in determining the allocation or awarding of a prize.

NONPROFIT CHARITABLE GAMING — Any gambling conducted by a tax-exempt, non-profit organization in existence for more than 12 months and formed for charitable or religious

purposes, excluding any form of gambling generally referred to as slots, roulette, craps, or baccarat.

- B. Certain gambling prohibited. Except for lotteries as conducted by the State of Delaware and nonprofit charitable gaming as permitted by State Law, gambling shall be prohibited within the Town limits.
- C. Certain access to gambling prohibited. Any use of land to provide access or entry to or otherwise facilitate gambling conducted upon the waters of the Atlantic Ocean, the waters of the Rehoboth Bay, or any land adjacent to the Town limits is prohibited in each of the zoning districts identified in the Municipal Code of the Town of Dewey Beach.

§ 185-22.1 Conversion, dedication, or declaration of hotel, motel and/or condominium units to fractional interests or timeshares is prohibited.

The conversion, dedication, or declaration of any hotel, motel and/or condominium unit, as defined by the provisions of the Delaware Unit Property Act, within the Town of Dewey Beach to fractional time unit ownership or ownership commonly known as timeshare interests is prohibited. Any hotel, motel and/or condominium, Declaration of Hotel, Motel and/Condominium and hotel, motel and/or condominium Code of Regulations describing or providing for a fractional interest timeshare form of ownership which was filed on record in the Office of the Recorder of Deeds in and for Sussex County as of October 8, 2005 shall not be subject to the prohibitions of this section.

ARTICLE IV, District Regulations

§ 185-23. NR - Neighborhood Residential District.

- A. Purpose of the district. The purpose of this district is to provide for medium-density residential development, together with such churches, recreational facilities, and accessory uses as may be necessary or is normally compatible with residential surroundings.
- B. Permitted uses. See Table 1 Uses in Residential Districts
- C. Permitted accessory uses. See Table 1 Uses in Residential Districts

Table 1 Uses in Residential Districts

	NR- Neighborhood Residential	RR-Resort Residential	PR- Planned Residential
Permitted Use. A building or land shall be used only for the following purposes:			
Single-family detached dwelling but not mobile home	✓	✓	✓
Multi-family dwelling unit in a building or structure dedicated to residential use, including townhouse and apartment-style configurations, with no more than 3 dwelling units per building.		✓	✓

	NR- Neighborhood Residential	RR-Resort Residential	PR- Planned Residential
Multi-family dwelling unit in a building or structure dedicated to residential use, including townhouse and apartment-style configurations, with no more than 4 dwelling units per building.			✓
Public park	✓	✓	✓
Church, rectory, parish house, convent and monastery, temple, synagogue and like religious uses	✓	✓	
Transmission lines and their supporting elements	✓	✓	
Dewey Beach Municipal Building and uses		✓	
Permitted Accessory Uses (a use clearly incidental to or customarily found in connection with, and located on the same lot as the principal use of the premises).			
Home occupation in main building or accessory building	✓	✓	✓
Playhouse, without plumbing, limited in floor area to 150 square feet and head room limited to five feet.	✓	✓	✓
Swimming pool	✓	✓	✓
Domestic storage in main building or in an accessory building	✓	✓	✓
Garage, private	✓	✓	✓
Parking of permitted motor vehicle	✓	✓	✓
Storage of a boat trailer or recreational vehicle or a boat or travel trailer or motor home (but not mobile homes) but not in a front yard or side yard adjacent to a street, provided it is not used for living purposes while so stored.	✓	✓	✓
Keeping of domestic animals, but only for personal enjoyment or household use and not as a business, and providing such pets are properly licensed, housed and cared for so as not to be a public or private nuisance or to	✓	✓	✓

		NR- Neighborhood Residential	RR-Resort Residential	PR- Planned Residential
	endanger the welfare of the pet so kept.			
	Home barbecue grill used in compliance with Fire Marshal regulations; electric and piped-in-gas grills permitted, bottled-gas/propane and charcoal grills are prohibited on upper level decks	✓	✓	✓

	Neighborhood Residential	Residential	Planned Residential
Conditional uses, permitted as conditional uses when approved in accordance with the provisions of Chapter 185, Article VII.			
Bed and Breakfast Inn. See § 185-23 D.(1) for the minimum conditional use requirements for operating a Bed and Breakfast	✓	✓	✓
Access or egress to adjacent resort business district property owned by the same person, corporation or entity. The area for access, ingress and egress shall not exceed 50% of the total area of the resort residential property. The access, ingress and egress area may be used for unloading of materials to the property or adjacent property but shall not be used for storage of any materials. No parking in access, ingress or egress area.		✓	
Automobile parking and unloading area for materials delivered to resort business district property owned by the same person, corporation or entity, the area of which does not exceed 25% of the total area of the resort residential property. The storage of any materials in such parking area is prohibited.		✓	
Institutions, educational or philanthropic, including museums, art galleries and libraries.		✓	✓
Marinas or yacht clubs and swimming or tennis clubs whether public, private or non-profit		✓	✓
Public utilities or public services uses, public or governmental buildings and uses, including schools, playgrounds, and public boat landings.		✓	✓
Uses permitted by special exception. Use exceptions may be permitted by the Board of Adjustment, and in accordance with the provisions of Article X, Board of Adjustment.			
Private garage for more than four automobiles and floor area of more than 900 square feet.	✓	✓	✓
Temporary use of a building as a sales or rental office for an approved real estate development or subdivision to be used for a period of time greater than seven days.		✓	✓
Temporary parking for trailers for special events and/or construction activities, but not along the Coastal Highway right of way,	✓	✓	✓

D. **Conditional uses.** See Table 1 Uses in Residential Districts. If a conditional use is granted the planting requirements of § 185-55B shall apply, and where the conditional use property adjoins a residential property it shall have designated a planting area 2 1/2 feet wide along the common property line.

(1) **Bed-and-breakfasts.** The following specific conditions shall apply to all bed-and-breakfasts.

- (a) The bed-and-breakfast shall be an incidental use to the principal use of the building as a single-family dwelling. The bed-and-breakfast must be owner-occupied during the period of operation, unless a non-owner manager is approved as a part of the approval of the conditional-use application.
- (b) One Class ABC fire extinguisher shall be in each sleeping area or room.
- (c) Food will only be served to guests staying at the bed-and-breakfast.
- (d) Only breakfast shall be served on a regular basis.
- (e) Two means of egress from building or egress windows in each bedroom shall be provided.
- (f) Smoke detectors shall be provided in each sleeping area.
- (g) There shall be no cooking facilities of any nature in any room used as a bed-and-breakfast guest room.
- (h) The owner/operator must supervise any guest cooking in the facility.
- (i) One sign no larger than seven square feet identifying the Bed and Breakfast and availability of rooms to let. No internal illumination of sign shall be permitted, nor shall moving, blinking or neon signs be permitted.
- (j) The appropriate business license must be paid.
- (k) No more than four guest rooms per bed-and-breakfast. During the period of May 15 through September 15 a Bed and Breakfast shall be operated exclusively as a Bed and Breakfast, such that all designated guest rooms are available for use by transient paying guests.
- (l) No more than two adult guests per rental bedroom.

E. **Uses permitted by special exception:** See Table 1 Uses in Residential Districts.

F. **Permitted signs.** All signs permitted by § 185-29, but limited in area to seven square feet, and signs permitted within the NR district by § 185-31.

G. **Height, area and bulk requirements.** See Table 2 Bulk Zoning Standards in All Districts.

H. Reference to additional regulations. The regulations contained in this article are supplemented or modified by regulations contained in other articles of this and other chapters or the Town's municipal code, especially the following:

- (1) Article V, General Sign Regulations.
- (2) Article VI, Off-Street Parking.
- (3) Article VII, Conditional Uses.
- (4) Article VIII, Supplementary Height, Area, and Bulk Regulations.
- (5) Article X, Board of Adjustment.
- (6) Definitions contained in Chapter 1, Article III.
- (7) Restrictions specific to development in Flood Prone areas contained in Ch. 101 Article IV.

§ 185-24. RR - Resort Residential District.

- A. Purpose of the district. The purpose of this district is to provide for residential development of greater density than that provided for in a NR District, together with low-impact community and municipal functions and servicing of adjacent resort business properties owned by the same person, corporation or entity. See Table 1 Uses in Residential Districts.
- B. Permitted uses. Any use permitted in a Neighborhood Residential District, dedicated multifamily residential structures, and municipal buildings and uses. See Table 1 Uses in Residential Districts
- C. Permitted accessory uses. Any permitted use in a Neighborhood Residential District. See Table 1 Uses in Districts
- D. Conditional uses. See Table 1 Uses in Residential Districts.
- E. Uses permitted by special exception. See Table 1 Uses in Residential Districts
- F. Permitted signs. All signs permitted by § 185-29, but limited in area to seven square feet, and signs permitted within the RR district by § 185-31.
- G. Height, area and bulk requirements. See Table 2 Bulk Zoning Standards in all Districts.
- H. Reference to additional regulations. The regulations contained in this section are supplemented or modified by regulations contained in other articles of this and other chapters or the Town's municipal code, especially the following:
 - (1) Article V, General Sign Regulations.
 - (2) Article VI, Off-Street Parking.
 - (3) Article VII, Conditional Uses.
 - (4) Article VIII, Supplementary Height, Area and Bulk Regulations.
 - (5) Article X, Board of Adjustment.

- (6) Definitions contained in Chapter 1, Article III.
- (7) Restrictions specific to development in Flood Prone areas contained in Ch. 101 Article IV.

§ 185-25. RB-1 - Resort Business District - 1.

A. Purpose of the district.

The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities. This district permits the most intense development of such activities. Its features include structures that are both entirely dedicated to commercial use or mixed use structures with floor area square footage of not less than one-third commercial land use and not greater than two-thirds residential land use. Single-family detached dwellings and buildings or structures dedicated to residential uses are prohibited

Relaxed bulk standards (set backs, lot coverage, etc.) are available for contiguous tracts consisting of at least 80,000 square feet with a detailed commercial-, mixed use-, and multi-family dwelling land-use-development-plan review as an overlay district or alternate method of development, provided that there is public access to all common areas of the development and any waterfront area shall be for public use. Commercial land use is required on the first floor (or, if the first floor is substantially below grade, the street-level floor) in all structures within a mixed-use overlay district.

B. Permitted uses. See Table 3 Uses in Resort Business Districts

C. Permitted accessory uses. See Table 3 Uses in Resort Business Districts

Table 3 Uses in Resort Business Districts

	RB-1 Resort Business	RB-2 Resort Business	RB-3 Resort Business	PRB-1 Planned Resort Business	PRB-3 Planned Resort Business
Permitted Uses. A building or land shall be used only for the following purposes:					
Retail food business, including grocery and specialty-food stores (e.g., bakery, fresh fruit and vegetables, fresh fish and meats, delicatessen and gourmet foods), and the like.	✓	✓	✓	✓	✓
Bank and/or ATM, drive-in or otherwise, so long as driveway space shall be provided off the street for all vehicles waiting for drive-in service.	✓	✓	✓	✓	✓
Service businesses, including e.g., barber shop, beauty salon and day spa; house cleaning, landscaping and decorating; catering and florist service; shoe and clothing repair, consumer-electronics repair, computer equipment repair, small tool and appliance repair, and sporting equipment service and repair; printing, desktop publishing and engraving; handy-man, electrician, painter, plumber, carpenter and general contractor; and similar types of service businesses.	✓	✓	✓	✓	✓
Pet grooming but not day care or kenneling		✓	✓		✓
Store or shop for the conduct of retail business, including the sale of clothing and accessories; antiques, carpets and fabrics; medications; books, cards and sundries; hardware, paint and general merchandise; furniture, beach-, garden- and hobby supplies; flower shop and associated greenhouse(s); jewelry, arts and crafts; household goods, sporting goods, computer equipment and accessories, consumer-electronics and office/home office supplies; and similar types of retail establishments.	✓	✓	✓	✓	✓
Health or fitness club; recreation facility or athletic field, including tennis, swimming and boating, volley ball, bocce, and similar types of recreational activity; areas for fishing or boating and picnic grounds, and like uses; accessory facility for the sale of food, non-alcoholic beverages, bait, supplies and incidentals, and equipment appropriate to such recreational activity.	✓	✓	✓	✓	✓
Office for professional or general business activity.	✓	✓	✓	✓	✓

	RB-1 Resort Business	RB-2 Resort Business	RB-3 Resort Business	PRB-1 Planned Resort Business	PRB-3 Planned Resort Business
Studio for artist(s), photographer(s), sculptor(s), potter(s) or musician(s), whether open to the public for classes or exhibits, including sales, or not.	✓	✓	✓	✓	✓
Amusement place or theater, except open-air drive-in theaters. Amusement places include bowling alley, dance hall subject to applicable Town regulations, skating rink, swimming pool, miniature golf, billiard or pool parlor, indoor model racing track, and similar activity, but specifically exclude adult book/video store, adult motion picture theater, adult bath house, adult massage parlor, adult modeling studio, adult cabaret or strip club, and adult novelty shop.	✓	See Conditional Use	See Conditional Use	✓	See Conditional Use
Marine activities, including mooring, boat and trailer sales, storage, repairs and service. Boat and/or trailer displays of more than three-and-a-half feet in height shall conform to all setback and yard requirements.	✓	✓	✓	✓	✓
Automobile parking lot and multi-story garage.	✓	See Conditional Use	See Conditional Use	✓	See Conditional Use
Mixed commercial and residential use within a single structure, subject to the mixed-use provisions of Articles VI (Off-Street Parking), VII (Conditional Uses) and providing that any mixed use structures shall have exclusive commercial land use on the first floor and may have commercial and/or residential land use on upper levels.	✓	✓	✓	✓	✓
Private residential dwelling unit as a "residential" component in a mixed-use structure that is operated as a rooming home, tourist home, or bed and breakfast to provide accommodations for a maximum of two adults per rental room, not to exceed a total of twelve rental rooms; each rental room shall not have cooking facilities of any kind. The property owner or rental manager must be resident on the premises during periods of operation as a rental accommodation.		✓	✓		✓
Single-family detached dwelling but not mobile home.			✓		✓
Multi-family dwelling unit in a building or structure dedicated to residential use, including townhouse and apartment-style configurations.			✓		✓

Convention center; community center; meeting hall for use by religious groups (e.g., church or synagogue), private or professional club or lodge, and similar types of organizations.	✓		See Conditional Use	✓	See Conditional Use
Public park.	✓	✓	✓	✓	✓
Transmission line and required supporting elements.	✓	✓	✓	✓	✓
Permitted Accessory Uses (a use clearly incidental to or customarily found in connection with, and located on the same lot as the principal use of the premises).					
Domestic storage and storage of office supplies and other merchandise carried in connection with a permitted use.	✓	✓	✓	✓	✓
Home barbecue grill used in compliance with Fire Marshal regulations; electric and piped-in-gas grills permitted, bottled-gas/propane and charcoal grills are prohibited on upper level decks.	✓	✓	✓	✓	✓
Home occupations.	✓	✓	✓	✓	✓
Keeping of pets for personal use when properly licensed and vaccinated.	✓	✓	✓	✓	✓
Parking of permitted motor vehicles.	✓	✓	✓	✓	✓
Storage of a boat, including wave runner types of water vehicles, boat trailer, or recreational vehicle (not mobile home), but not in a front yard or side yard adjacent to a street. Any such vehicle shall not be used for living purposes while so stored.	✓	✓	✓	✓	✓
Swimming pool.	✓	✓	✓	✓	✓
Conditional Uses. The following uses may be permitted as conditional uses when approved in accordance with the provisions of Article VII of this Chapter					
Hospitals, clinics or first-aid stations for treatment of humans.	✓	✓	✓	✓	✓

	RB-1 Resort Business	RB-2 Resort Business	RB-3 Resort Business	PRB-1 Planned Resort Business	PRB-3 Planned Resort Business
Veterinarian practice for care of domestic animals, provided any such business does not create health or safety hazards for neighbors or the Town and do not result in excessive sound or odors. Boarding may be provided for animals under immediate veterinarian supervision, but kenneling shall not be permitted.	✓	✓	✓	✓	✓
Courtyard development / Cluster buildings with dedicated commercial or mixed-use.			✓		✓
Educational or philanthropic institutions, including museums, art galleries and libraries.	✓	✓	✓	✓	✓
Public or governmental building and use, including facility for Town Hall and Police operations, park, playground and public boat landing; school, summer school or summer camp, including educational curricula, computer study, sporting, music, arts and crafts schools or camps.	✓	✓	✓	✓	✓
Public pier for fishing.	✓		✓	✓	✓
Day care facility for care of children or the elderly, when appropriately licensed and in conformance with all State and County regulations.	✓	✓	✓	✓	✓
Package store (consistent with ABCC licensing and regulation).	✓	✓		✓	
Bus stop.	✓	✓	✓	✓	✓
Convention center; community center; meeting hall for use by religious groups (e.g., church or synagogue), private or professional club or lodge, and similar types of organizations providing the parcel is developed so as to provide for adequate parking for such activities.	Permitted Use	✓	✓	Permitted Use	✓
Automobile parking lot and multi-story garage	Permitted Use	✓	✓	Permitted Use	✓

	RB-1 Resort Business	RB-2 Resort Business	RB-3 Resort Business	PRB-1 Planned Resort Business	PRB-3 Planned Resort Business
Amusement place or theater, except open-air drive-in theaters. Amusement places include bowling alley, dance hall subject to applicable Town regulations, skating rink, swimming pool, miniature golf, billiard or pool parlor, indoor model racing track, and similar activity, but specifically exclude adult book/video store, adult motion picture theater, adult bath house, adult massage parlor, adult modeling studio, adult cabaret or strip club, and adult novelty shop.	Permitted Use	✓	✓	Permitted Use	✓
Garage, private		✓	✓		✓
Filling station		✓			
Tents of all types designated to be in operation for a period of time of seven days or less.	✓	✓	✓	✓	✓
"Restaurants and other uses" as per requirements in § 185-25. D.1 Conditional Use Requirements for Restaurants and other uses.	✓	✓	✓	✓	✓
Signs larger than 85 square feet on a single surface.	✓	✓	✓	✓	✓
Uses permitted by special exception. Special use exceptions may be permitted by the Board of Adjustment, and in accordance with the provisions of Article X, Board of Adjustment.					
Exceptions to parking requirements as per the requirements in § 185-67. B.2 Exceptions to Parking Requirements.	✓	✓	✓	✓	✓
Temporary structures for the sale of food or merchandise for a period greater than seven days.	✓	✓	✓	✓	✓

	RB-1 Resort Business	RB-2 Resort Business	RB-3 Resort Business	PRB-1 Planned Resort Business	PRB-3 Planned Resort Business
Awnings covering all or part of an established paved public sidewalk, provided that the awnings pose no obstacle to required or desired visibility and does not impede pedestrian traffic. Approved awnings shall not be lower than eight (8) feet nor higher than fifteen (15) feet from the sidewalk surface and must be cantilevered from the building with no support extending to the ground.	✓	✓	✓	✓	✓
Kiosks	✓	✓	✓	✓	✓
Private garage for more than four automobiles and floor area of more than 900 square feet		✓	✓		✓
Temporary use of a building as a sales or rental office for an approved real estate development or subdivision to be used for a period of time greater than seven days.	✓	✓	✓	✓	✓
Temporary outdoor display or promotional activities designated to be in operation for a period of time greater than seven days.	✓	✓	✓	✓	✓
Temporary parking for trailers for special events and/or construction activities, but not along the Coastal Highway right of way.	✓	✓	✓		✓
Tents of all types; provided that, if the tent is to be used over a parking lot, such a tent shall not encompass more than 2,000 square feet, such a tent shall not be used before 8:00 am and after 8:00 pm between May 15 and September 15. (Subject to the above described limitations, permits may be approved by the Town Commissioners following a public hearing for special events requiring tents for a period of three days or less.)	✓	✓	✓	✓	✓
Temporary expansion of patron area into the parking lot for special events; provided that such expanded patron area shall not encompass more than 2,000 square feet and such expanded patron area shall not be used before 8:00 am and after 8:00 pm between May 15 and September 15, and a special exception for such expanded patron area shall not be permitted more than twice per calendar year. (Subject to the above described limitations, permits may be	✓	✓	✓	✓	✓

approved by the Town Commissioners following a public hearing for special events requiring such expanded patron area for a period of three days or less.)					
Special Events permitted for a limited period of time. Special-event permits shall be approved by Town Commissioners following a Public Hearing.					
Sale of permitted types of goods, products and services from a vehicle, push cart, tent or open-air facility when authorized by majority vote of the Town Commissioners as part of a "fair" or "show" of duration not to exceed seven consecutive days, and with such terms and conditions as the Town Commissioners may impose.	✓	✓	✓	✓	✓
Temporary outdoor display or promotional activities designated to be in operation for a period of seven days or less.	✓	✓	✓	✓	✓
Temporary use of a building as a sales or rental office for an approved real estate development or subdivision limited in time to seven days or less.	✓	✓	✓	✓	✓
Temporary structures for the sale of food or merchandise for a period of seven days or less.	✓	✓	✓	✓	✓

D. Conditional uses. See Table 3 Uses in Resort Business Districts. The following additional conditions shall apply.

(1) Restaurants and other uses.

(a) Any new facility or expansion of an existing facility which is enclosed, outdoor or open air, and is defined by any one of the following general categories:

- I. Restaurant, with or without an ABCC license, provided that:
 - a. Seated dining for 35 or more patrons must be provided;
 - b. A minimum of 80% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, must be permanently committed to seated dining, and said seating areas may not be altered moved or removed;
 - c. A maximum of 20% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, may be designated as bar area, where seated and stand-up consumption of alcoholic beverages by patrons is permitted;
 - d. In the area designated for seated food service, alcoholic beverages shall only be served to dining patrons;
 - e. No stand-up consumption of alcoholic beverages in the area designated for seated food service is permitted;
 - f. All tables and chairs shall be maintained in the configuration shown in the approved Conditional Use application;

- g. If the bar area is separated from the dining area by walls or partitions, the number of patrons in the bar area cannot exceed the Fire Marshal's occupancy limit for that area;
 - h. Kitchen facilities shall be under the direction of a chef or cook;
 - i. Restaurants conforming to this subsection shall be permitted to apply for a conditional use permit for an outside service area;
 - j. Restaurants not conforming to this subsection are prohibited from expanding or adding an outside service area.
- 2. Entertainment or amusement facility, with or without an ABCC license;
 - 3. Any commercial, outdoor, open air operation or outside service area;
 - 4. Eateries or cabarets
- (b) Expansion of an existing nonconforming bar, tavern or nightclub, whether involved in the sale of food or not, not to exceed 50% of the existing facility, provided that only one such expansion shall be permitted for such facility during the lifetime of the establishment operating as a conditional use, and further provided that the provisions of § 185-60.A of this Code shall not be applicable to an application for expansion of a nonconforming use pursuant to this subsection.
- (c) All restaurants, bars and eateries in existence as of the date of the adoption of Ordinance No 228 (4-11-1992) may continue to operate the facility as before the adoption of said ordinance as a nonconforming ("grandfathered") facility. The status of the nonconforming, grandfathered facility shall terminate and the facility shall be required to operate in conformity with this Code, §185-25.D, §185-35.A, and §185-35. B, if there is a(n):
- 1. Expansion of or addition to the existing building or existing outside service area except as required by applicable codes or insurance requirements.
 - 2. Reduction of the percentage of patron area committed to seated dining.
 - 3. Reduction of service areas by internal rearrangement for the purpose of creating an increase in the bar areas of more that 100 square feet of floor space as of the date of the adoption of Ordinance No. 234 (7-10-1992).
- E. Uses permitted by special exception. See Table 3 Uses in Resort Business Districts.
- F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.
- G. Permitted signs. All signs permitted by § 185-29 and signs permitted within the RB Districts by § 185-32.
- H. Height, area and bulk requirements. See Table 2 Bulk Zoning Standards in All Districts.
- I. Reference to additional regulations. The regulations contained in this article are supplemented or modified by regulations contained in other articles of this chapter, especially the following:
- (1) Article V, General Sign Regulations.

- (2) Article VI, Off-Street Parking.
- (3) Article VII, Conditional Uses.
- (4) Article VIII, Supplementary Height, Area and Bulk Regulations.
- (5) Article X, Board of Adjustment.
- (6) Definitions contained in Chapter 1, Article III.

§ 185-25.1. RB-2 – Resort Business District – 2

A. Purpose of the District

This district represents the middle level of commercial development intensity in a main street-like district lining the Coastal Highway corridor (S.R. 1). The features of this zone include structures that are either entirely dedicated to commercial land use, or mixed-use structures of floor-area footage of not less than one third commercial land use and not greater than two thirds residential land use, providing use of the first floor or street level is restricted to commercial land use activities. Single-family detached dwellings and multi-family dwellings in a building or structure dedicated to residential use are prohibited.

B. Permitted uses. See Table 3 Uses in Resort Business Districts.

C. Permitted Accessory Uses. See Table 3 Uses in Resort Business Districts.

D. Conditional uses. See Table 3 Uses in Resort Business Districts.

E. Uses permitted by special exception. See Table 3 Uses in Resort Business Districts.

F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.

G. Permitted signs. All signs permitted by §185-29 and signs permitted within the RB districts by § 185-32.

H. Height, area and bulk requirements. See Table 2 Bulk Zoning Standards in All Districts.

I. Reference to additional regulations. The regulations contained in this article are supplemented or modified by regulations contained in other articles of this and other chapters of the Town's municipal code, especially the following:

- (1) Article V, General Sign Regulations.
- (2) Article VI, Off-Street Parking.
- (3) Article VII, Conditional Uses.
- (4) Article VIII, Supplementary Height, Area and Bulk Regulations
- (5) Article X, Board of Adjustment.
- (6) Definitions contained in Chapter 1, Article III.

- (7) Restrictions specific to development in Flood Prone areas contained in Ch. 101 Article IV.

§ 185-25.2 RB-3 – Resort Business District - 3

A. Purpose of the District

This district represents the lowest level of commercial development in co-existence with dedicated residential land use. The features of this zone include structures that are either entirely dedicated to commercial land use, are of mixed-use with floor-area footage of not less than one third commercial land use and not greater than two thirds residential land use and providing that usage of the first floor or street level is restricted to commercial land use activities, and dedicated residential land uses, including detached single-family residences and multi-family residential structures.

Relaxed bulk standards (set backs, lot coverage, etc.) are available for contiguous tracts consisting of at least 80,000 square feet with a detailed commercial-, mixed use-, and detached single-family and/or dedicated multi-family residential land-use-development-plan review as an overlay district or alternate method of development, provided that there is public access to all common areas of the development and any waterfront area shall be for public use. Commercial land use is required on the first floor (or, if the first floor is substantially below grade, the street-level floor) in all mixed-use structures within any RB-3 mixed-use overlay district and the aggregate residential-use floor area cannot exceed two-times the aggregate commercial-use floor area within any such overlay complex.

- B. Permitted Uses. See Table 3 Uses in Resort Business Districts.
- C. Permitted Accessory Uses. See Table 3 Uses in Resort Business Districts.
- D. Conditional Uses. See Table 3 Uses in Resort Business Districts.
- E. Uses permitted by special exception. See Table 3 Uses in Resort Business Districts.
- F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.
- G. Permitted signs. All signs that are permitted by §185-29., and signs permitted within the RB districts by § 185-32.
- H. Height, areas and bulk requirements. See Table 2 Bulk Zoning Standards in All Districts.
- I. Reference to additional regulations. The regulations contained in this article are supplemented or modified by regulations contained in other articles of this and other chapters of the Town municipal code, especially the following:
- (1) Article V, General Sign Regulations.
 - (2) Article VI, Off-Street Parking.
 - (3) Article VII, Conditional Uses.
 - (4) Article VIII, Supplementary Height, Area and Bulk Regulations

- (5) Article X, Board of Adjustment.
- (6) Definitions contained in Chapter 1, Article III.
- (7) Restrictions specific to development in Flood Prone areas contained in Ch. 101 Article IV.

§ 185-26. PR - Planned Residential District.

A. Purpose.

The purpose of this district is to allow overall residential development for a large block of land rather than requiring separate residential structures on individual lots without, however, increasing the density which would be permitted in the larger NR or RR District in which such a PR overlay is located, and to permit large-scale developments as a means of creating a superior living environment through unified developments and to provide for the application of design ingenuity while protecting existing and future developments when determined to be for the public welfare, safety and benefit.

B. Permitted uses. See Table 1 Uses in Residential Districts.

C. Permitted accessory uses. See Table 1 Uses in Residential Districts.

D. Conditional uses. See Table 1 Uses in Residential Districts.

E. Uses permitted by special use exception. See Table 1 Uses in Residential Districts.

F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.

G. Permitted signs. All signs permitted by Article V in a residential district, but limited in area to seven square feet.

H. Application of the district. To enable the district to operate in harmony with the purposes of the Zoning Chapter and population densities embodied in these regulations, the PR - Planned Residential District is created as a special district to be superimposed on other districts contained in these regulations, specifically the NR and RR districts, and is to be so designated by a special symbol for its boundaries on the Official Zoning Map. The minimum lot requirements, maximum height, minimum yard requirements and accessory uses shall be determined by the requirements and procedures set forth in this article, which shall prevail over conflicting requirements of these regulations or articles governing the subdivision of land.

I. Minimum district area. The minimum area for a PR - Planned Residential District under this article shall be a parcel of 100,000 square feet or more.

J. Ownership control. The land in a PR - Planned Residential District need not be under single ownership, provided proper assurances are given through the procedure contained in this article or elsewhere in these regulations that the project can be successfully completed and maintained as a whole.

K. Review standards - height, area and bulk requirements.

- (2) Use of permeable paving materials.
 - (3) Use of environmentally sustainable materials and construction techniques shall be considered by the developer.
 - (4) The applicant shall provide the Town Commissioners with proposed renderings showing the elevations and facades for the proposed building(s) and streetscape plan.
- R. Completion guarantee. Upon final approval of a site plan by the Town Commissioners, the developer shall guarantee completion of the development plan within a period to be specified by the Town Commissioners and shall post an appropriate bond or other form of contractual guarantee to be approved by the Town Commissioners. No building permit shall be issued until such guarantee is posted.
- S. Procedure for approving final development plan. The procedures for approval of a development plan for PR - Planned Residential Districts shall follow the procedure described in Article XI Administrative Procedures

§ 185-26.1. PRB-1 Planned Resort Business District -1

A. Purpose of the District

The purpose of this planned resort business overlay is to allow overall commercial and/or mixed-use development for a large block of land rather than requiring separate commercial and/or mixed-use structures on individual lots. This overlay will permit large-scale entirely commercial or mixed-use developments as a means of creating a superior business and living environment through unified developments of large contiguous tracts of land and to provide for the application of design ingenuity while protecting existing and future developments when determined to be for the public welfare, safety and benefit.

- B. Permitted Uses – See Table 3 Uses in Resort Business Districts.
- C. Permitted accessory uses. See Table 3 Uses in Resort Business Districts.
- D. Conditional Uses – See Table 3 Uses in Resort Business Districts.
- E. Uses permitted by special use exception – See Table 3 Uses in Resort Business Districts.
- F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.
- G. Permitted signs. All signs as permitted by Article V Signage for the RB-1 District.
- H. Application of the district. To enable the district to operate in harmony with the purposes of the Zoning Chapter of the Municipal Code of the Town of Dewey Beach and heights and densities embodied in these regulations, the PRB-1 – Planned Resort Business District- 1 is created as a special district for contiguous tracts of land to be superimposed on the Town's RB-1 Resort Business District contained in these regulations and is to be so designated by a special symbol for its boundaries on the Official Zoning Map. The minimum lot requirements, maximum height, maximum floor area ratio and dwelling unit density, minimum yard requirements and permitted, conditional and accessory uses shall be determined by the requirements and procedures set forth

Q. Off-street parking. See Table 2 Bulk Zoning Standards in All Districts.

- (1) In the case of mixed uses, uses with different parking requirements occupying the same building or premises, or use of a building or premises by more than one use having the same parking requirements the total number of off-street parking spaces required shall equal the sum of the requirements of the various uses computed separately. Design of parking lots, garages and other improvements shall be subject to site plan review and approval.

R. Other requirements

- (1) Planting and beautification areas.
- (2) Use of permeable paving materials.
- (3) Use of environmentally sustainable materials and construction techniques shall be considered by the developer.
- (4) The applicant shall provide the Town Commissioners with proposed renderings showing the elevations and facades for the proposed building(s) and streetscape plan.

S. Completion guarantee. Upon final approval of a site plan by the Town Commissioners, the developer shall guarantee completion of the development plan within a period to be specified by the Town Commissioners and shall post an appropriate bond or other form of contractual guarantee to be approved by the Town Commissioners. No building permit shall be issued until such guarantee is posted.

T. Procedure for approving final development plan. The procedures for approval of a development plan for the PRB-1 - Planned Resort Business-1 shall follow the procedure described in Article XI Administrative Procedures.

§ 185-26.2. PRB-3 Planned Resort Business District -3

A. Purpose of the District

The purpose of this planned resort business overlay is to allow overall mixed-use development for a large block of land rather than requiring separate commercial, mixed-use or residential structures on individual lots. This overlay will permit large-scale mixed-use developments as a means of creating a superior business and living environment through unified developments of large contiguous tracts of land and to provide for the application of design ingenuity while protecting existing and future developments when determined to be for the public welfare, safety and benefit.

B. Permitted Uses. See Table 3 Uses in Resort Business Districts.

C. Permitted Accessory Uses. See Table 3 Uses in Resort Business Districts.

D. Conditional Uses. See Table 3 Uses in Resort Business Districts.

E. Uses permitted by special use exception. See Table 3 Uses in Resort Business Districts.

F. Special events permitted for a limited period of time. See Table 3 Uses in Resort Business Districts.

- M. Area. See Table 2 Bulk Zoning Standards in All Districts
- N. Commercial versus residential use ratio. See Table 1 Uses in Residential Districts and Table 2 Bulk Zoning Standards in All Districts
- O. Minimum lot area and frontage, external and tiered setbacks, and number of dwelling units permitted. See Table 2 Bulk Zoning Standards in All Districts. The maximum number of dwelling units permitted shall be determined by dividing the gross lot area by the minimum lot area per dwelling unit shown in Table 2 Bulk Zoning Standards in All Districts. Any area of land in the parcel set aside for common open space, interior roads, parking other than in an underground parking garage or more than one level of a multi-level parking garage, or recreational use may be included in determining the number of dwelling units permitted.
- P. Bulk. See Table 2 Bulk Zoning Standards in All Districts.
- Q. Off-street parking. See Table 2 Bulk Zoning Standards in All Districts
- (1) In the case of mixed uses, uses with different parking requirements occupying the same building or premises, or use of a building or premises for more than one use having the same parking requirements the total number of off-street parking spaces required shall equal the sum of the requirements of the various uses computed separately. Design of parking lots, garages and other improvements shall be subject to site plan review and approval.
- R. Other requirements.
- (1) Planting and beautification areas.
- (2) Use of permeable paving materials.
- (3) Use of environmentally sustainable materials and construction techniques shall be considered by the developer.
- (4) The applicant shall provide the Town Commissioners with proposed renderings showing the elevations and facades for the proposed building(s) and streetscaping plan.
- S. Completion guarantee. Upon final approval of a site plan by the Town Commissioners, the developer shall guarantee completion of the development plan within a period to be specified by the Town Commissioners and shall post an appropriate bond or other form of contractual guarantee to be approved by the Town Commissioners. No building permit shall be issued until such guarantee is posted.
- T. Procedure for approving final development plan. The procedures for approval of any development plan for a Planned Resort Business-3 Overlay District are described in Article XI Administrative procedures.

ARTICLE V, General Sign Regulations

§ 185-27. Displays

§ 185-27.1 Purpose

The purpose of this Article is to provide reasonable limits on the outdoor displays of temporary Signs, Banners, flags, etc. in conjunction with legally operating businesses. These criteria are intended to insure that the outdoor display of merchandise may be permitted to assist in normal activities of a business.

§ 185-27.2 Standards

Outdoor display of merchandise shall only be permitted in conjunction with an existing permitted use that occupies the subject property. Display items shall be limited to merchandise sold by the business or decorative items which relate to or complement the business.

§ 185-27.3 Definitions

FLASHING SIGN - An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color. Any sign that revolves or moves shall also be considered a flashing sign.

SIGN - A structure, constant in intensity and color, that is arranged, intended, designed, or used as an advertisement, announcement, identification, description, or direction.

SIGN, ADVERTISING - A sign, including a billboard, directing attention to a business located in the Town of Dewey Beach. During the off-summer business season, businesses may advertise other businesses owned by the same ownership outside the Town.

SIGN, CHURCH - A sign erected on the property where the church is located for the purpose of displaying the time and date of services and/or meetings. A church shall be permitted to erect one freestanding sign for this purpose. Such sign shall not exceed 12 square feet in area and may not exceed six feet in height. In addition, the property shall have at least one sign that clearly names the church and the religious denomination of said church.

SURFACE AREA - For the purpose of determining the size of signs, the total area shall include the width of the sign times the height of the sign and is an integral part of the sign and includes the entire display. Fixed lettering on the window shall be included in the surface area computation, but displays inside the window are not included in the surface area computation. For structures not specifically designed as a sign, such as an awning or gasoline station island, the calculation shall only include the areas covered with lettering or other design material. Frames and structural members not bearing advertising matter shall not be included in the computation of the surface area.

FLAGS- One outdoor flag or other type of announcement no greater than 4' by 6' indicating that the business is open for the use of the word "Open", "Welcome", "Enter", "Sale", or any word or words conveying such meaning and removed at the end of the business day. Flags shall not be included in the calculation of permitted signage (exempt – American flag, Delaware flag, and Dewey Beach flag).

BANNER- Temporary signs that contain information or advertising related to a specific product, event or events are not to exceed a combined total of 30 square feet per business and are subject to approval by the Town Manager.

designed or developed as a single entity, such as a condominium or townhouse community, for the exclusive purpose of advertising the sale, rental, or lease of any unit within that parcel.

- (b) The master sign may be freestanding provided that it is placed parallel to the street on which the parcel is located. No freestanding master sign shall be placed further than seven linear feet from the foundation of one of the principal residential units, unless the building official renders a determination that, because of the irregular size or shape of the lot or location of the structure, the sign may be placed otherwise.
- (c) The master sign shall be placed parallel to the street on which the parcel is located. In the event that the parcel abuts two or more streets, only one sign shall be placed on the premises.
- (d) The master sign may be affixed to an exterior wall of the multi-unit structure, provided that it is placed parallel to the street on which the structure is located.
- (e) Each master sign shall be constructed of wood or a durable material approved by the building official and shall be designed to permit the insertion of signs commonly known as "slip signs," being six inches in height and 12 inches in length, to advertise each unit for sale, lease or rent. The master sign shall display signage on one side only, and shall be constructed with a solid backing to prevent displacement of signage. The approved design of master sign construction shall be kept on file by the building official and said approved design shall be considered by the building official when reviewing master sign placement permit applications.
- (f) A master sign placement permit must be acquired from the building official prior to installation. Unless amended by subsequent ordinance, no fee shall be imposed for a master sign placement permit.

(3) **Supplementary provisions.**

- (a) Residential real estate advertising signage shall not be considered in the calculation of total permitted commercial signage where residential and commercial uses exist upon the same premises.
- (b) Temporary "Open House" signage, including but not limited to flags, banners, inflatable objects and any other form of advertising material, not to exceed seven square feet in area may be placed upon a parcel proximate to the street frontage during an open house promotion which shall be supervised by a licensed real estate agent. In no event shall the open house signage remain continuously on the parcel in excess of the duration of the open house promotion.
- (c) Signage not permitted pursuant to this chapter and this Subsection B of § 185-31 is prohibited.
- (d) The provisions of this chapter shall apply to all real estate advertising signage located within the NR - Neighborhood Residential, RR - Resort Residential, and PR - Planned Residential Districts of the Town of Dewey Beach and no existing

temporary real estate advertising signage shall be exempt from the requirements set forth herein.

- (e) The building official is authorized to remove any signage which violates the provisions of this section without prior notice to the owner or owners of the parcel(s) or signage and may subsequently notify the owner(s) to claim the signage. In the event that no person or entity which owns the violating signage claims said signage within 30 days of written notification by the building official, the building official may dispose of the signage without liability to the building official or the Town of Dewey Beach. The provisions stated hereinabove shall not prevent the Town of Dewey Beach from commencing appropriate criminal and/or civil proceeding pursuant to § 185-84 of this Code.
- C. One temporary real estate development sign, no larger than 32 square feet in area, advertising property in the process of development. If the property abuts more than one street, one such sign may be erected on each street.
- D. One professional sign, no larger than one square foot in area displaying the name and the occupation of a professional person or group of persons for the identification of a permitted home occupation.
- E. One announcement board no larger than 12 square feet in area displaying the announcements of a religious, educational, philanthropic or fraternal organization.

§ 185-32. Permitted signs in the RB Commercial Districts.

- A. All signs permitted in the residential districts shall be permitted in the RB Districts.
- B. All signs shall be permitted to advertise solely a Dewey Beach business, commodity, service or entertainment.
- C. Each property in the RB Districts shall be entitled to one master sign per 75 feet of street frontage.
- D. Each property fronting on Coastal Highway (S.R. 1) may display one sign for a Dewey Beach business located in either an RB or RR District but not fronting onto S.R. 1, subject to an agreement negotiated with the property owner.
- E. The size of signs which are freestanding shall be limited to one square foot of sign for each linear foot of street frontage, but not to exceed 85 square feet on a single surface, and may consist of two surfaces back-to-back to be visible from opposite directions. Properties eligible for freestanding signs shall have a minimum of 10,000 square feet of land per sign. All such freestanding signs shall conform to the structural specifications of the Outdoor Advertising Division of the Delaware State Department of Transportation.
- F. The size of signs attached to a wall of a building, or painted on the wall or with raised letters mounted on an exterior wall shall not exceed one square foot of sign for each linear foot of frontage on a street or streets.
- G. Signs erected on the roof of a structure shall not exceed the height restriction on structures of 35 feet, and the structure must be approved by a Registered Delaware Engineer or Architect.

- H. Signs, including the supports, shall not encroach on any of the required setback areas nor on the corner visibility triangles specified in the Code.
- I. Signs advertising a product for sale on the premises shall be permitted if the advertising of the product forms a part of the sign advertising the Dewey Beach business.
- J. A group of stores, as in a mini-mall, shall be permitted one freestanding sign naming the center or mall and listing the businesses. This sign shall not exceed 25 feet in height nor more than 60 square feet in area. In addition, each business located in the center shall be permitted one sign attached or painted on the building.
- K. Included within the calculation of permitted sign area as described in Subsections C, D, E, F, G, H and J hereinabove are temporary signs, banners, flags, menu boards, and posters as more particularly defined in § 185-27. The calculating of total square footage of all such permanent and temporary signs shall not exceed the permitted square footage. Temporary signs, posters and banners may be placed directly over permanent signage so as not to increase total square footage of the sign area.

§ 185-33. Nonconforming signs maintained.

In any district any sign in existence as of the passage of this chapter, which does not comply with the provisions of this chapter, may be maintained subject to the provisions of Article IX, Nonconformities.

§ 185-34. Temporary political signs.

Temporary political signs shall be permitted in all districts two months prior to election and one week after election if:

- A. Placed on private property only, with the owner's permission.
- B. Not in excess of seven square feet in size, except in the business district signs shall not exceed 32 square feet in size.
- C. Not placed on the public right-of-way.

ARTICLE VI, Off-Street Parking

§ 185-35. Off-street parking requirements.

A. General Requirements:

When any building or structure is hereafter erected or structurally altered, or any building or structure is converted for any use listed below, accessory off-street parking spaces shall be provided as follows:

- (1) **Residential Parking Requirements.** Every dwelling unit in a residential structure, whether a detached single-family detached dwelling or one of several dwelling units in a multi-family residential or mixed use structure, in each zoning district shall require a minimum number of off-street parking spaces equal to the sum of 2 spaces allocated for the first three bedrooms plus one additional space per additional bedroom.
- (2) **Bed and Breakfast Inn.** Operation of a Bed and Breakfast Inn shall require one off-street space for every two dedicated Bed and Breakfast Inn bedrooms in addition to such spaces

- D. **Marking.** Except for parking on a single-family lot, all parking spaces in residential and/or commercial parking areas shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot.
- E. **Lighting.** Adequate lighting shall be provided if off-street parking spaces for commercial-type use are to be used at night. The average illumination levels in commercial parking areas, driveways, pedestrian and vehicular circulation levels should not fall below 1 foot candle. All exterior lighting for the commercial properties shall be oriented and shielded to protect adjacent residential areas.
- F. **Height.** The minimum vertical clearance for a parking space shall be six feet eight inches.
- G. **Handicapped Accessible Parking.** Handicapped accessible parking stall compliant with all State and Federal guidelines will be provided including all applicable signage and striping.

ARTICLE VII, Conditional Uses

§ 185-39. Purpose.

The purpose of this article is to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare, but because of the nature of the use, the importance of relationship to the Comprehensive Plan, and possible impact, not only on neighboring properties, but on a large section of the Town, require the exercise of planning judgment on location and site plan.

§ 185-40. Special requirements.

Special requirements may be imposed as conditions to any site plan approval, conditional use approval, special exception approval, or any other approval to protect the health, safety, and welfare of the general public.

§ 185-41. Preliminary site plan required; procedures.

A preliminary plan complying with the requirements of Article XI shall accompany an application for approval of a conditional use under this article, together with such information as may be required for a determination of the nature of the proposed use and its effect on the Comprehensive Plan, the neighborhood and surrounding properties. Procedures for approval of a conditional use and approval and amendment of site plans are contained in Article XI.

§ 185-42. Approval valid one year.

Approval of a conditional use under this article shall be valid for a period of one year after the date of approval and thereafter shall become null and void unless construction or use is substantially underway during said one-year period, or unless an extension of time, not exceeding one year, is approved by the Town Commissioners for good cause shown, before the expiration of said one-year period. A maximum of two one-year extensions may be granted.

§ 185-43. Existing conditional uses.

Any conditional use legally existing at the effective date of the regulations of this chapter shall be considered a nonconforming use unless it has qualified as provided above and has been approved as a conditional use.

§ 185-44. Revocation of permits.

Permits issued under a conditional use approval may be revoked by the Town Commissioners for failure to comply with conditions of approval or applicable requirements.

ARTICLE VIII, Supplementary Height, Area and Bulk Regulations

§ 185-45. Applicability.

The regulations set forth in this article qualify or supplement the district regulations appearing elsewhere in this chapter.

§ 185-46. Modification of height regulations.

Exclusions to the maximum height standard are included in Table 2 Bulk Standards in All Districts.

§ 185-47. Lot area.

- A. If the deed or instrument under which an owner acquired title to a lot was of record prior to the application of any zoning regulations and restrictions to the premises, and if such lot does not conform to the requirements of such regulations and restrictions as to width of lots and lot area per dwelling unit, the provisions of such lot area per dwelling unit and lot width regulations and restrictions shall not prevent the owner of such lot from erecting a single-family detached dwelling or making other improvements on the lot.
- B. One room of a detached single-family detached dwelling may be rented separately without any additional requirement of lot area per family providing any such room does not have cooking facilities of any manner and that the maximum occupancy of any such rental room is two adults. Any such rental room is subject to inspection and approval by the Town Building Code Official and proper Town business licensing.

§ 185-48. Yards and open space generally.

- A. Where these regulations refer to side streets, the Town Building Code Official shall be guided by the pattern of development in the vicinity of the lot in question in determining which of two streets is the side street, subject to the following guidelines:
 - (1) Lots abutting on a single street shall be deemed to front on the street.
 - (2) Unimproved corner lots may front on either street at the owner's discretion.
 - (3) Lots abutting on the water or beach and a street shall be deemed to front on the street or water or beach at the owner's discretion.
 - (4) Interior lots not abutting on any street shall be deemed to front at the owner's discretion.
- B. Every part of a required yard shall be open to the sky, except as authorized by this Code, and except ordinary projections of sills, belt courses, chimneys, cornices and ornamental features which may project a distance not to exceed 24 inches into a required yard. Window air-

conditioning units may project a distance not to exceed 36 inches into the yard. Air conditioners and heat pump compressors may be located in a required yard, but not closer than three feet from a property line.

§ 185-49. Yards, front, side and rear.

- A. On through lots, the required front yard shall be provided on each street.
- B. On a corner lot, a side yard abutting a street shall have a side street setback as specified in Table 2 Bulk Standards for All Districts.
- C. For the purpose of the side yard regulations, a group of business or commercial buildings separated by common or party walls shall be considered as one building occupying one lot.
- D. In residential districts, open, unenclosed porches, platforms, steps or paved terraces not covered by a roof or canopy and which do not extend above the level of the first floor of the building, may extend or project into the required front or rear yard not more than five feet. Such extension or projection shall not be greater than four feet above grade and in no event be closer than six feet to the front property line.
- E. In the RB-1 and RB-2 Districts along Coastal Highway (SR-1), when a public sidewalk of width equal to or greater than five (5) feet exists in the public right-of-way, open ramps, steps, platforms and terraces not covered by a roof or canopy may be constructed in the setback area to the right-of-way line, but shall not be more than four feet higher than the elevation of the abutting sidewalks

§ 185-50. Corner visibility.

No sign, fence or wall, or shrubbery or any obstruction to view (excepting parked motor vehicles with valid registration) extending to a height in excess of three feet above the established street grade, shall be erected, permitted or maintained within the area of a corner lot that is included between the lines of the intersecting streets and a straight line connecting them at points 15 feet distant from the intersection of the street lines.

§ 185-51. Accessory buildings and structures.

- A. A hedge, fence or wall not more than 3.5 feet in height may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Any fence, hedge, or wall for residential use may project into or enclose other required yards, provided such fences, hedges, and walls do not exceed a height of seven feet. This height limit does not apply to fences or walls used for commercial screening or tennis courts.
- B. Accessory swimming pools, open and unenclosed, may occupy a required yard or side yard, provided they are not located closer than ten feet from an interior side lot line or six feet from a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of concrete, stockade wood or material of equal quality.

- C. Accessory storage of a boat trailer or camp trailer shall not be allowed in a front yard. Accessory storage of mobile homes is prohibited.
- D. An accessory building which is not a part of the main building may be constructed in a rear yard three feet from the side lot line and three feet from the rear lot line, provided such accessory building contains not more than 200 square feet of area, is not more than 12 feet in height and is used exclusively for storage and not for residential purposes.
- E. A satellite antenna not exceeding 4 feet in diameter shall be permitted as a freestanding structure only in the rear yard and shall be subject to the same setbacks and height restrictions as an accessory building. A satellite antenna not more than 4 feet in diameter shall be permitted on the roof of a residential, commercial or mixed-use structure; however any satellite antenna greater than 4 feet in diameter to be installed on any building in all districts requires a conditional-use approval

§ 185-52. Boat houses, piers and bulkheads.

- A. The following regulations shall apply to accessory boat houses and boat slips in residential districts:
 - (1) A boat house may not be used as a dwelling or guest house.
 - (2) The height of a boat house shall not exceed 25 feet above mean high water.
 - (3) No boat house shall exceed 25 feet in width nor 50 feet in depth.
 - (4) No boat house shall be built beyond the established bulkhead line or closer than 10 feet to a side yard lot line.
 - (5) Boat houses and boat slips, together with other accessory building may occupy no more than 35% of a required rear yard.
- B. The following regulations shall apply to boat docks, piers and wharves, accessory or non-accessory, in any district:
 - (1) Projections of docks, wharves, and piers into waterways beyond the water line, lot line, or established bulkhead lines or the placing of mooring piles or buoys shall be limited by applicable county ordinances, state laws and applicable regulations of the United States Army Corps of Engineers and in no case shall a dock, wharf, pier, or pile project more than 10% of the width of the waterway.
 - (2) Groins, levees, bulkheads, piling, breakwaters, and other similar structures shall be erected and maintained in accordance with applicable location and construction standards of the county, state and the United States Corps of Engineers.

§ 185-53. Special regulations for townhouses and multi-unit structures.

- A. Every residential dwelling unit of a townhouse, or other type of multi-family or multi-unit building or structure dedicated to a residential or a mixed use, shall comply with the minimum lot area per dwelling unit specification of Table 2 Bulk Standards in All Districts.

- B. Each unit of a multi-unit structure whether in commercial or residential use may be held in separate ownership if separate utility systems and meters are provided.
- C. The residential dwelling units and individual lots of a townhouse complex may be held in separate ownership if separate utility systems and meters are provided and if separate lots for all units in such a townhouse building are created at the same time.
- D. The following regulations shall apply to townhouses and residential-use units in multi-unit structures:
 - (1) Townhouses and multi-unit structures dedicated to residential use are prohibited in the RB-1 and RB-2 Districts.
 - (2) In the RR and RB Districts, the minimum lot area per dwelling unit shall be 3,600 square feet, as per Table 2 Bulk Zoning Standards in All Districts.
 - (3) Unless otherwise restricted by district regulations, not more than three dwelling units shall be included in any one townhouse structure or residential-use or mixed-use multi-unit structure, and the maximum overall street frontage of such a building shall not exceed 100 feet.
 - (4) Separation between adjacent multi-unit buildings with partial or dedicated residential use on a single lot in any district such structures are permitted shall be 12 feet from side-to-side, and 20 feet rear-to-rear, rear-to-side or rear-to-front.
 - (5) Required off-street parking, as per Table 2 Bulk Zoning Standards in All Districts, shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area.
 - (6) Townhouse and residential- or mixed-use projects shall have no more than one twenty-foot wide driveway entrance or two ten-foot wide driveway entrances with a minimum of twenty feet of unencumbered space between such entrances to provide for public parking. Street entrances shall conform to the requirements of §185-12.
- E. Individual dwelling units in a dedicated residential-use or mixed-use building which come within the provision of the Unit Property Act may be held in separate ownership if separate utility systems and meters are provided.
- F. Separation between buildings. The separation between buildings in partial or dedicated residential use, as referred to in townhouse and multi-unit residential structure regulations § 185-53, shall be the horizontal clearance between the nearest projection of one building to the nearest projection of an adjacent building. Projections shall include bow windows, chimneys, fireplace enclosures, ornamental features, roof eaves and similar appurtenances.

§ 185-54. Parking and storage of certain vehicles.

- A. Effective May 1, 1990, no motor vehicles shall be parked in the front yard of any lot except within an established driveway or within a marked parking space accessed from the driveway entrance of the lot.
- B. No more than a total of two automotive vehicles and/or trailers of any kind or type without current license plates shall be parked or stored on any residentially zoned property other than in completely enclosed buildings.

- C. All paved surfaces in the front, side and rear yards are to be covered with permeable materials or otherwise paved in a manner designed to create a permeable surface.

§ 185-55. Natural or planting area.

- A. Refer to Table 2 Bulk Zoning Requirements for all Districts for open space and planting requirements
- B. Plots. Every application for a building permit must be accompanied by a plot or sketch, acceptable to the Town Building Code Official, showing the location and dimensions of the planting or beautification area.
- C. Definition. A planting or beautification area is an area of land which is not paved but left in its natural condition or improved by planting grass or vegetation.
- D. The applicant shall provide a list of all plantings to be installed on the lot. Acceptable plantings shall include trees, shrubs, ornamental plants and grasses, but not species recognized as invasive or weed or vegetable.
- E. Planting requirements may be met using potted trees, shrubs and plants provided the surfaces that such potted species rest on are of permeable materials and are designed so as to not be used for commercial use or pedestrian traffic.

ARTICLE IX, Nonconformities

§ 185-56. Nonconforming use of land and buildings.

- A. Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this chapter may be continued although such use does not conform to the provisions hereof. A nonconforming use may not be expanded, enlarged, or converted to another nonconforming use unless approved as a conditional use by the Town Commissioners in accordance with § 185-74, Procedures for approval of conditional uses. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not hereafter be changed to a less restricted use. The nonconforming use of a building may be hereafter extended throughout those parts of a building which were lawfully and manifestly arranged or designed for such use at the time of the enactment of this chapter.
- B. Mobile homes in lawful use as a single-family dwelling at the effective date of this chapter shall be subject to following:
 - (1) A mobile home granted a special use permit prior to the enactment of this chapter, subject to limitations of time, occupancy or location, shall remain subject to such limitations.
 - (2) The alteration, extension, or replacement of a mobile home shall not be permitted.

§ 185-57. Nonconforming signs.

- A. In any district any sign and any supporting structure, other than the building, in existence as of January 10, 2009 which does not comply with the provisions of this chapter shall be deemed a nonconforming sign. Such nonconforming sign may continue in operation and may be repaired,

modified, and replaced so long as the overall size of the structure is not increased and the nonconformity not increased.

- B. If a nonconforming sign is destroyed by any means to an extent of more than 50% of its size it shall not be reconstructed except in compliance with the provisions of this chapter.
- C. Signs advertising out-of-town business, existing prior to the adoption of this chapter, may remain for a period not to exceed two years following the effective date of this chapter, but then must be removed, except that out-of-town realtors may continue to advertise Dewey Beach property with portable signs specified above.

§ 185-58. Discontinuance of nonconforming uses or building.

No building, land, or portion thereof, which is used in whole or in part for a nonconforming use, that remains idle or unused for a continuous period of one year, whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located, provided that, if the building, land or any portion thereof becomes idle or unused due to a fire, storm, infestation or other peril not caused intentionally by the property owner, then such building, land or portion thereof may remain idle or unused for a continuous period of one year and six months, after which the use must conform to the regulations of the district in which such building or land is located if such building, land or portion thereof continues to remain idle or unused.

§ 185-59. Damage or destruction of a nonconforming use or building.

If a nonconforming building is damaged by fire, storm, infestation or other peril not caused intentionally by the property owner, it may be repaired or reconstructed to essentially the same configuration as existed prior to the damage, provided that any repair or reconstruction must be completed 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.

§ 185-60. Extension of nonconforming use or building.

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

- (1) The extension is for a use which is necessarily incident to the existing use;
- (2) Such extension shall not encroach on any of the setback or yard requirements for the district in which the use is located;
- (3) Such extension shall have a floor area not to exceed 50% of the floor area of the existing building or portion thereof;

- (4) It will not impair the value of the adjoining property or adversely affect the character of the neighborhood; and
- (5) Provided only one extension shall be permitted by the Board of Adjustment during the life of the nonconforming use.

B. A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect. A building which does not conform to the required setbacks in any respect shall not be expanded either vertically or horizontally in the setback area.

§ 185-61. Intermittent use.

The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

§ 185-62. Existence of a nonconforming use.

Whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Adjustment after public notice and hearing and in accordance with rules of the Board.

§ 185-63. Nonconforming uses not validated.

A nonconforming use or building in violation of a provision of a regulation which this chapter amends or replaces shall not be validated by adoption of this chapter unless such use complies with the terms of this chapter.

ARTICLE X, Board of Adjustment

§ 185-64. Creation, appointment and organization.

A Board of Adjustment is hereby created. The Board of Adjustment shall consist of five members whose selection, terms, and qualifications shall be as indicated in 22 Del. C. § 322 and any subsequent amendments thereto. The Board of Adjustment shall select a Chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of its affairs. The Chairman, or in his absence the Acting Chairman, shall have the power to issue subpoenas for the attendance of witnesses and the production of records and may administer oaths and take testimony. For the conduct of any hearing, a quorum shall not be less than three members and an affirmative vote of a majority of the members of the Board of Adjustment present, but not less than two shall be required to overrule any decision, ruling or determination of any official charged with enforcement of this chapter, or to approve any special exception or variance. All meetings of the Board of Adjustment shall be open to the public.

§ 185-65. Procedure.

A. Applications for special exceptions, interpretations, and variances may be made by any property owner, tenant, government official, department, board or bureau. Such applications shall be made to the Board of Adjustment in accordance with rules adopted by the Board of Adjustment. The application and accompanying maps, plans or other information shall be transmitted promptly to the Secretary of the Board of Adjustment who shall place the matter on the docket, advertise a public hearing thereon, and give written notice of such hearing to the parties in interest.

- B. An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau. Such appeal shall be taken within 30 days after the decision appealed from by filing with the Board of Adjustment a notice of appeal specifying the grounds therefore in accordance with rules made by the Board of Adjustment. An appeal does not stay proceedings in furtherance of the action appealed from, otherwise than by a restraining order granted by the Board of Adjustment or by a court of record, on application and on notice to the Board of Adjustment and on good cause shown. Any work done shall be at the owner's risk that the appeal will be granted in which case such work shall not be the basis for a variance.
- C. The Board of Adjustment shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 30 days following the hearing. Upon the hearing any person may appear in person or by agent or by attorney. Public notice of hearing shall consist of publication at least 15 days prior to the hearing. In addition, the Board of Adjustment may cause the date, time, place and nature of the hearing to be posted conspicuously on the property and the Town website in accordance with the rules of the Board of Adjustment. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination as ought to be made.
- D. The Board of Adjustment shall keep minutes of its proceedings and other official actions, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board of Adjustment and shall be a public record. The Chairman of the Board of Adjustment, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses.

§ 185-66. Powers.

The Board of Adjustment shall have the following powers:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter.
- B. To hear and decide applications for special exceptions upon which the Board of Adjustment is specifically authorized to pass under this chapter.
- C. Variances.
 - (1) To authorize in specific case such variances from any zoning ordinance, code or regulation, unless prohibited by the Town Charter, that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinance, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such release may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code regulation or map.

- (2) In exercising the powers provided in Subsection C (1) of this section, the Board of Adjustment may, in conformity with this article, revise or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- D. To hear and decide applications for interpretation of the Official Zoning Map where there is any uncertainty as to the location of a district boundary.
- E. To hear and decide applications for modification of off-street parking requirements pursuant to § 185-36.K.

§ 185-67. Special exceptions.

- A. In order to provide for adjustments in the relative location of uses and buildings, to promote the usefulness of these regulations and to supply the necessary elasticity to their efficient operation, special use exceptions and, limited as to locations described in this article, are permitted by the terms of these regulations. The following buildings and uses are permitted as special exceptions if the Board of Adjustment finds that, in its opinion, as a matter of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property.
- B. Special use exceptions.
 - (1) Refer to Table 1 Uses in Residential Districts and Table 3 Uses in Resort Business Districts for applicable uses permissible by Special Exception.
 - (2) Exceptions to parking requirements as follows:
 - (a) Off-street parking areas, adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of Article VI, where practical difficulties or undue hardships are encountered in locating such parking areas on the premises and where the purpose of these regulations to relieve congestion in the streets would best be served by permitting such parking off the premises.
 - (b) Waiver or reduction of the parking requirements in any district whenever the character or use of the buildings is such as to make unnecessary the full provision of parking facilities.
 - (c) Waiver or reduction in interior drive width.
 - (3) Other special use exceptions as follows which are specified in each district as follows:
 - (a) A determination, in cases of uncertainty, of the district classification of any use not specifically named in these regulations; provided, however, such use shall be in keeping with uses specifically permitted in the districts in which such use is to be classified.
- C. Special yard exceptions may be granted by the Board of Adjustment to allow, in special circumstances, the installation of pergolas, gazebos, swimming pool auxiliary buildings and

similar incidental structures in the yard setback area in any district, but not closer than three feet from a property line.

§ 185-68. Variances.

- A. Subject to the provisions of § 185-66, the Board of Adjustment shall have the power to grant the following variances:
- (1) A variation in the yard requirement in any district so as to relieve unnecessary hardships and exceptional practical difficulties in cases, when and where by reason of exceptional narrowness, shallowness, or other unusual characteristic of size or shape of a specific piece of property, at the time of the enactment of such regulation or restriction, or by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or by reason of the use or development of property, immediately adjacent thereto, the strict application of each regulation or restriction would result in unnecessary hardship and exceptional practical difficulties upon the owner of such property. Such granting of variance shall comply, as nearly as possible, in every respect with the spirit, intent, and purpose of this chapter; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and unnecessary hardship and exceptional practical difficulties as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.
- B. No use variance shall be authorized by the Board of Adjustment unless it finds:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not to circumstances or conditions generally created by the provisions of the Zoning Chapter or code in the neighborhood or district in which the property is located;
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Chapter or code and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property;
- (3) That such unnecessary hardship has not been created by the appellant or his predecessor in title;
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

§ 185-69. Conditions attached to approvals.

Where, in these regulations, special exceptions are permitted, provided they are approved by the Board of Adjustment, and where the Board of Adjustment is authorized to decide appeals or approve certain uses,

and where the Board of Adjustment is authorized to approve variances, such approval, decision, or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- A. No outside signs or advertising structure except professional or directional signs.
- B. Limitation of signs as to size, type, color, location or illuminations.
- C. Amount, direction, and location of outdoor lighting.
- D. Amount and location of off-street parking and loading space.
- E. Cleaning or painting.
- F. Gable roof or other type.
- G. Construction and materials.
- H. Connected or disconnected with other buildings.
- I. Exits or entrances, doors, and windows.
- J. Paving, shrubbery, landscaping, or ornamental or screening fences, walls or hedges.
- K. Time of day or night for operating.
- L. No store fronts.
- M. No structural changes.
- N. Control or elimination of smoke, dust, gas, noise, or vibration caused by operations, or such other conditions as the Board of Adjustment may specify.
- O. Implementation of architectural standards.
- P. Streetscaping as deemed appropriate including a mixture of materials, patterns and styles.
- Q. Such other conditions as are necessary.

§ 185-70. Lapse of special exception or variance.

After the Board of Adjustment has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year unless construction is completed or the use has taken place in accordance with the plans for which such special exception or variance was granted, or if the Board of Adjustment does not specify some longer period than one year for good cause shown, and the provisions of these regulations shall thereafter govern.

§ 185-71. Amendment of special exception or variance.

The procedure for amendment of a special exception or variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application except that where the Town Building Code Official determines the change to be minor relative to the original approval, he may transmit the same to the Board of Adjustment with the original record without requiring that a new application be filed.

§ 185-72. Appeals to courts.

Appeals to courts from a decision of the Board of Adjustment may be filed in the manner prescribed by law.

ARTICLE XI, Administrative Provisions

§ 185-73. Changes and amendments.

- A. Initiation of change. The Town Commissioners may, from time to time, amend, supplement, or change, by ordinance, the boundaries of the districts or the regulations herein established. Any such amendment may be initiated by resolution of the Town Commissioners or by petition of any property owner addressed to the Town Commissioners. Petitions for change or amendment shall be on forms and filed in a manner prescribed by Town Commissioners.
- B. Report from the Planning Commission. Before taking any action on any proposed amendment, supplement, or change, the Town Commissioners shall submit the same to the Planning Commission for its recommendations and report, unless, by unanimous vote the Town Commissioners present decide that the change proposed is not significant.

The Planning Commission shall report within one hundred and twenty (120) days after the first meeting of the Planning Commission after the proposal has been referred to the Planning Commission, provided further that a one-time extension of up to sixty (60) days may be requested in writing by motion of the Planning Commission to the Town Commissioners, who shall grant the request, unless the Town Commissioners find the request to be arbitrary or capricious. In order to finalize a report on the proposal, said report or request for extension shall be given at the next Town Commissioners Meeting after the end of the time period or extension period. Failure of the Planning Commission to report within the time frames specified above shall be deemed a recommendation of approval.

- C. Notice and hearings.
 - (1) The Planning Commission shall hold a public hearing on any proposed amendment, supplement, or change before submitting its report to the Town Commissioners and for this purpose may request the submission of all pertinent data and information by any person concerned.
 - (2) Before acting on any proposed amendment, supplement or change, the Town Commissioners shall hold a public hearing thereon in accordance with 22 Del. C. § 304.
- D. Reconsideration, one-year limitation. Whenever a petition requesting an amendment, supplement, or change has been denied by the Town Commissioners, such petition or one substantially similar, shall not be reconsidered sooner than one year after the previous denial.

§ 185-74. Procedures for approval of conditional uses.

- A. The procedures for approval of conditional use are the same as those prescribed for changes and amendments in § 185-73. A conditional use shall only be approved if the location is appropriate, the public health, safety, morals and general welfare will not be adversely affected, adequate off-street parking facilities will be provided, the use will not contribute to a traffic problem on congested roads, the necessary safeguards will be provided for the protection of surrounding

property, persons and neighborhood values, and further provided that additional standards in this article are observed. Unless otherwise specified in this article or specified as a condition of approval, all requirements shall be the same as for other uses in the district in which the conditional use is located.

- B. A preliminary site plan together with the request for a conditional use and a proposed ordinance shall be filed with the Town Commissioners. The preliminary site plan shall comply with the requirements of this chapter and may be accompanied by such other written or graphic material as may be necessary or desirable in aiding the decisions of the Commissioners. Fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42" copies of the plan, plus an electronic copy in Adobe Acrobat format, shall be submitted.
- C. The Town Commissioners may also request electronic copies of all submission materials at their discretion.

§ 185-75. Procedures for approval of site plan.

- A. Site plan review and approval from Town Commissioners shall be required for the development of two dwelling units or any mixed-use structure.
- B. Where the provisions of this chapter require the submittal of site plans, the following schedule of procedure shall apply:
 - (1) A submission for subdivision or land development approval shall be considered a duly filled application only when all required information including plans, studies, forms, permits, completed application, and fees are submitted to the Town Commissioners. The Town shall have five working days from the date of the submission to check the submission to determine if, on face value, it is in proper form and contains the required information. If complete, the date of the submission shall be considered the date the application was duly filed. If the submission is found to be incomplete or defective, a statement of rejection itemizing the deficiencies will be mailed to the applicant within five working days and the submission will be returned. Acceptance for filing shall not constitute a waiver of any deficiencies or irregularities. The applicant may appeal a decision made under this section to the Town Commissioners.

Submissions for approval or a subdivision or land development plan shall be submitted to the Town Building Code Official during normal working hours. The Town Building Code Official upon completion of his acceptability review will then send copies of the submission to the Town Planner and Town Commissioners for review.

- (2) The Town Commissioners shall review the final site plan for compliance with the requirements of the Commissioners and this chapter. The final site plan shall be amended accordingly and shall be placed on record after such approval.
- (3) The number of hardcopies required for each submission is as follows with a date stamp furnished on all plan sheets:
 - a. Sketch Plan Submission – fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42" copies

- b. Preliminary Subdivision Plan Submission – fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42"copies
 - c. Preliminary Subdivision Plan Submission – fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42"copies
 - d. Preliminary Site Plan Submission – fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42"copies
 - e. Final Site Plan Submission – fifteen (15) 11" x 17" and five (5) 24" x 36" or 24" x 42"copies
 - f. Final Record Plan Submission – two (2) mylar copies and four (4) paper copies
 - g. Final Approved Site/Subdivision Plan - four (4) paper copies
- (4) The Town Commissioners may also request electronic copies in Adobe Acrobat format of all submission materials at their discretion.

§ 185-76. Requirements of preliminary site plans.

- A. The preliminary site plan shall show the following:
- (1) Name of the subdivision or development
 - (2) Name and address of the owner and applicant.
 - (3) Name and address of the engineer or surveyor who prepared the plan. Plans shall show the seal and signature of a Registered Delaware Land Surveyor and/or Professional Engineer on all drawings
 - (4) Written and graphic scale, not exceeding 1" = 50' for 24" x 36" or 24" x 42" sheets.
 - (5) Sheet size, refer to § 185-75.C.
 - (6) North arrow.
 - (7) Plan legend.
 - (8) Date of the original plan and all subsequent revision dates.
 - (9) Proposed changes in zoning, if any.
 - (10) Sheet number, if multiple sheets are used.
 - (11) A location map with a scale of no less than 1" = 500' indicating adjacent streets. Existing and surrounding zoning district boundaries will also be shown.
 - (12) Certification of plan accuracy by engineer/surveyor.
 - (13) Certification of ownership.
 - (14) Certification of plan approval.
 - (15) Tax parcel numbers.

- (16) Zoning district of the subject tract.
- (17) Source of title.
- (18) Survey datum and local benchmark.
- (19) Total site gross and net acreage.
- (20) Name of water supplier and the note "Water supply is subject to the State Department of Natural Resources and Environmental Control and the Delaware Department of Health".
- (21) Sanitary sewage disposal method.
- (22) Number of existing and proposed lots or dwelling units.
- (23) Lot numbers for all existing and proposed lots.
- (24) Existing and proposed nonresidential gross floor area.
- (25) Location of existing and proposed building and structures.
- (26) The name, right-of-way width and cartway width of all adjoining streets.
- (27) Tie-in distances from subject property to the nearest street intersection.
- (28) Location of front, side, and rear yard setbacks and all required buffer yards.
- (29) Location and dimensions of all existing and proposed sidewalks.
- (30) Calculation of required off-street parking spaces and number of existing and proposed spaces.
- (31) Location of off-street loading areas.
- (32) Location of all existing and proposed site accesses and entrance driveways.
- (33) Location and design of all proposed off-street parking areas, indicating parking space and access aisle dimensions and directional arrows indicating proposed traffic circulation patterns.
- (34) Approximate number of dwelling units to be included in each type of housing provided.
- (35) Proposed buildings and structures with dimensions, setbacks and heights designated.
- (36) Approximate location and size of recreational and open space areas.
- (37) Approximate location of point of ingress and egress to existing public highways.
- (38) The number of construction phases proposed, if any, with the plot showing the approximate boundaries of each phase, and the proposed completion date of each phase.
- (39) Existing and proposed building coverage.
- (40) Existing and proposed impervious coverage.

- (41) Name and address, tax parcel numbers and zoning of all adjoining property owners.
- (42) Location of any water bodies and watercourses.
- (43) Location of any floodplains, including FEMA map panel number.
- (44) Location of any wetlands areas.
- (45) Location and identification of any historic structures.
- (46) Location of all significant natural or manmade structures.
- (47) Existing and proposed deed restrictions, easements or protective covenants.
- (48) Grading plan indicating existing contours (at 2-foot intervals), proposed grading, spot elevations and finished floor elevations and top and bottom of wall elevations for any retaining walls over two (2) feet.
- (49) Limit of existing tree masses and location, size and species of all individual trees over 6" caliper.
- (50) A limit of disturbance line.
- (51) A soil erosion and sediment control plan.
- (52) Stormwater management plan.
- (53) Solid waste management plan.
- (54) Landscape plan. Plans shall show the seal and signature of a Registered Delaware Landscape Architect on all drawings
- (55) Lighting plan
- (56) A listing of all existing non-conforming buildings, uses or structures.

B. The Town Commissioners may establish additional requirements for preliminary site plans, and may waive a particular requirement if in their opinion, the inclusion of that requirement is not essential to a proper decision on the project. If a preliminary site plan is approved by the Town Commissioners without the inclusion of a particular requirement, the Town is deemed to have waived that requirement.

§ 185-77. Requirements for final site plans.

- A. The final plot plan shall comply with all existing laws, regulations, and ordinances governing the approval of subdivisions and provide sufficiently accurate dimensions and construction specifications to provide the data necessary for the issuance of construction permits.
- (1) The proposed title of the project and the name of the engineer, architect, designer, or landscape architect and the developer.
 - (2) Geographical location, showing existing zoning district and boundaries. The boundaries of the property involved, the location of all existing easements, and property lines, existing streets, building, or waterways, and other existing physical features in the

- project. The location and sizes of sanitary and storm sewers, water mains, culverts, and other underground structures in or near the project.
- (3) Net development area.
 - (4) Number of dwelling units to be included in each type of housing: single-family detached dwellings, townhouse dwellings, and multi-family units in multi-unit structures of dedicated residential use and of mixed-use.
 - (5) The location and character of construction of proposed streets, alleys, driveways, curb cuts, entrances and exits, parking and loading areas (including numbers of parking and loading spaces), outdoor lighting systems, storm drainage and sanitary facilities.
 - (6) The location of proposed lots, setback lines, and easements and proposed reservations for parks, parkways, playground, school sites and open spaces.
 - (7) Location with respect to each other and to lot lines and height of all proposed buildings and structures, accessory and main, or major excavations. The locations should be drawn to scale, and full dimensioning is required.
 - (8) Plans and elevations of the several dwelling types and other buildings, as may be necessary.
 - (9) Architectural renderings as required.
 - (10) Location, heights, and material of all fences, walls, screen planting and landscaping.
 - (11) Proposed location and character of all nonresidential uses.
 - (12) Location, character, size, height, and orientation of proposed signs.
 - (13) A tabulation of total number of square feet in the project gross or net as required in the district regulations, and the percentage thereof proposed to be devoted to the several dwelling types, commercial uses, other nonresidential uses, off-street parking, streets, parks, schools.
 - (14) A tabulation of the total number of dwelling units of all types on the lot or parcel, and the overall proposed dwelling density in gross lot square feet per dwelling unit.
 - (15) A Traffic Impact Study, including mitigation measures if deemed necessary by the study.
 - (16) The name, right-of-way width, cartway width, profiles, cross sections and grading for all proposed streets.
 - (17) Type, location, size, material of construction, slope and profiles for all proposed utilities.
 - (18) Location, size, material of construction slope and profiles for all proposed storm sewers.
 - (19) Location, grate elevation and invert elevation for all catch basins, inlets and manholes.
 - (20) Location of all proposed fire hydrants.
 - (21) Phasing lines for phased developments.

- (22) Sidewalk locations, pedestrian ways, bikeways, walkways.
- (23) Proposed passive and active recreation areas.
- (24) Listing of any required variances.
- (25) Wetland report.
- (26) Floodplain study.
- (27) Construction details for all proposed improvements.
- (28) Environmental Impact Statement
- (29) All applicable outside agency permits

B. The Town Commissioners may establish additional requirements for final site plans, and may waive a particular requirement if, in their opinion, the inclusion of that requirement is not essential to a proper decision on the project. If a preliminary site plan is approved without the inclusion of particular requirement, then it is deemed to have been waived.

§ 185-78. Amendments and additions to site plans.

The procedure for change of the extent of land use for an approved conditional use shall be the same for a new application, except that minor amendments of an approved site plan or of conditions attached to an approved conditional use, or site plan, may be approved by the Town Building Code Official without a public hearing, provided such change or amendment:

- A. Does not alter a recorded plot;
- B. Does not conflict with the specific requirements of the chapter;
- C. Does not change the general character or content of an approved development plan or use;
- D. Applies to an approved condition origination with the Board of Adjustment;
- E. Has no appreciable effect on adjoining or surrounding property;
- F. Does not result in any substantial change of major external access points;
- G. Does not increase the approved number of dwelling units or height of buildings; and
- H. Does not decrease the minimum specified yards and open spaces or minimum or maximum specified parking and loading spaces.

§ 185-79. Certificate of occupancy.

- A. No vacant land shall be occupied or used until a certificate of occupancy shall have been issued.
- B. No premises shall be used, and no building hereafter erected or structurally altered shall be used, occupied, or changed in use, until a certificate of occupancy shall have been issued, stating that the building or proposed use of a building or premises complies with the building laws and the provisions of these regulations.

- C. Certificates of occupancy shall be applied for coincidentally with the application for a building permit and shall be issued within 10 days after the erection or structural alteration of such building shall have been completed in conformity with the checklist approved by the Commissioners and the provisions of this chapter and the requirements of county and state regulations. A record of all certificates shall be kept on file.
- D. No excavation for any building shall be started before issuance of a building permit.
- E. Upon written request from the owner, the Town Building Code Official shall issue a certificate of occupancy for any building or premises existing at the time of adoption of this chapter, or any changes or amendments thereto, certifying after inspection and investigation the extent and kind of use made of the building or premises, and whether such use conforms to the provisions of this chapter or is to be deemed a preexisting nonconforming use.
- F. Application for a certificate of occupancy and building permit on lots within the definition of § 185-8B shall be accompanied by proof of title as of February 11, 1982, and evidence of current title. The Town Building Code Official may require production of deeds, surveys or other evidence prior to acting on such applications.

§ 185-80. Building permits.

- A. No building shall be erected, constructed, altered, moved, converted, extended or enlarged, without the owner or owners first having obtained a building permit, and such permit shall require conformity with the provisions of this chapter. Provided, however, that the Town Building Code Official may at his discretion, issue an emergency permit not in conformity with the provisions of this chapter when:
 - (1) A dwelling has been made uninhabitable by fire, wind, flood, or impact by motor vehicle or airplane, or similar natural or man made disaster;
 - (2) A written statement by the applicant has been filed, certifying the dwelling to be uninhabitable to due to fire, wind, flood, impact, or similar natural or man made disaster; and
 - (3) The Mayor has indicated approval by initialing the application.
- B. A filing fee shall accompany each application for a building permit, in such amount as may be determined by the Town Commissioners, a schedule of such fees to be filed with the Town Manager. Any building permit lawfully in force at the effective date of this chapter, pursuant to which actual construction has not begun prior to that effective date, requires payment of such filing fee prior to start of construction.
- C. Building permits shall be valid for one year from date of issue, and may be renewed on each anniversary date thereafter for the fee of \$50. Failure to renew shall void the permit.
- D. No building permit, lawfully issued by Sussex County to the effective date of this chapter, shall be invalidated by the passage of this chapter, provided actual construction, pursuant to the permit's own terms and provisions, and ordinances and regulations thereto, shall have begun within the effective date of the permit.

- (1) One permit issued to cover more than one building remains valid for all of the buildings covered by the permit, if actual construction as provided above shall have commenced prior to the expiration of the permit, subject only to Subsection D(3) below.
 - (2) In any event, the permit shall be invalidated if actual construction is discontinued for reasons other than those beyond the permit holder's control.
- E. The exemptions listed under Subsection A above do not apply to new construction or substantial improvements in the flood-prone districts.
 - F. Any permitted development in the flood-prone districts is subject to all applicable state and federal codes and regulations.
 - G. All subcontractors shall be identified when applying for a building permit, and all contractors and subcontractors shall be properly licensed in the Town of Dewey Beach prior to beginning work. No building permits or certificates of occupancy shall be issued until all past violations have been corrected.

§ 185-81. Plats.

All applications for building permits shall be accompanied by a drawing or plat in duplicate or as required by the Town Building Code Official showing, with dimensions, the lot lines, the building or buildings, the location of buildings on the lot and such other information as may be necessary to provide for the enforcement of these regulations, including if necessary, a boundary survey and a staking of the lot by a surveyor and complete construction plans. The drawings shall contain suitable notations indicating the proposed use of all land and buildings. A record of the original copy of such applications and plats shall be kept at the building at all times during construction.

§ 185-82. Filing fees.

- A. The applicant, subdivider, developer, or builder will be required to post financial security in an amount and with such surety as shall be approved by the Town Commissioners to guarantee the payment of the services of the Town Building Code Official, Town Planner, and Town Solicitor for services related to plan review and meeting attendance in reviewing the application. In addition, all costs for planning, engineering, legal and professional certification as deemed necessary will be the responsibility of the applicant, subdivider, developer, or builder.
- B. All persons appealing to the Board of Adjustment shall be required to pay, in advance, such amount as may be required by the Town Commissioners.
- C. All persons, firms or corporations applying for conditional use permits under the provisions of Article VII of this chapter or applying for an amendment to this chapter or a change in the classification of a district or a portion thereof, shall be required to pay, in advance, such amount as may be required by the Town Commissioners.
- D. The payment of such money in advance shall be deemed a condition precedent to the consideration of such appeal, conditional use permit, or amendment. Fees shall not be refunded.

§ 185-83. Interpretation, purpose and conflict.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this chapter to interfere with, or abrogate or annul any easement, covenants, or other agreement between parties, provided, however, that where this chapter imposes a greater restriction upon land development or construction, or the use of buildings or premises or upon height of buildings, or requires larger open spaces than are imposed or required by other resolutions, ordinances, rules, regulations, or by easements, covenants or agreements, the provisions of this chapter shall govern. If, because of error or omission in the Zoning District Map, any property in the jurisdiction of the Town is not shown as being in a zoning district, the classification of such property shall be classified NR until changed by amendment.

§ 185-84. Enforcement; violations and penalties.

- A. It shall be the duty of the Building Inspector to enforce the provisions of this chapter and to refuse to issue any permit for any building or certificate of occupancy or for the use of any premises which would violate any of the provisions of said chapter. It shall also be the duty of all officers and employees of the Town to assist the enforcing officer by reporting to him any seeming violation in new construction, reconstruction or land uses.
- B. In case any building is erected, constructed, reconstructed, altered, repaired, or converted or any building or land is used in violation of this chapter, the Building Inspector is authorized and directed to institute any appropriate action to put an end to such violation.
- C. Any person who shall violate any of the provisions of this chapter or fails to comply therewith, or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder shall have committed a civil offense pursuant to Chapter 80 of the Municipal Code of the Town of Dewey Beach. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises, or part thereof, where anything in violation of this chapter shall be placed, or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith and who have assisted in the commission of any such violation, shall have committed a separate civil offense pursuant to Chapter 80 of the Municipal Code of the Town of Dewey Beach.

§ 185-85. Expiration of approved site plan.

Any site plan approval for construction of residential or commercial units in excess of one unit per parcel shall be rendered null and void if substantial construction is not commenced within five years of the date of approval of the plan or within five years after the adoption of Ord. No. 529, 3-12-2005, whichever date occurs last. For purposes of this section, the term "substantial construction" shall mean that the right-of-way has been cleared, the roadway has been graded, the drainage system and/or stormwater management facilities have been completed, erosion and sediment control measures are in place and are being actively maintained, electrical, sewer and water utilities have been installed and building permits have been acquired for all improvements.

§ 185-86. Land Development and Construction Requirements

- A. Inspection Fee Escrow

- (1) Prior to the construction of any improvements approved by the Town Commissioners and prior to final approval of subdivision or site plan, the applicant shall deposit and maintain with the Town a fund of not less than five percent (5%) of the estimated cost of the required on- and off-site improvements, as determined by the Town Building Official, to cover costs of inspection of improvements. The minimum escrow deposit required at any one (1) time shall be two hundred dollars (\$200).
- (2) If at any time during the inspection of the construction of said improvements it becomes evident that the escrow deposit is or will be insufficient to cover the costs thereof, the applicant shall make such additional deposits in amounts to be determined by the Town Planner based upon the estimated costs required to properly review and inspect the on- and off-site improvements.
- (3) Professional fees. The construction and legal escrows as set forth in the aforesaid provisions are minimum amounts representing an estimate of the anticipated costs for such services based on the hourly rates of the respective professional. The hourly rates to be charged each applicant for the services of such professionals shall be the same as those set forth in the contracts between the Town and said professionals. All legal, engineering and planning review fees set forth under the applications for use and bulk variances, appeals, interpretations and miscellaneous applications are nonrefundable minimums. In all other cases, if the actual cost is less than the minimum, the applicant shall receive a refund of the difference for all development applications; if actual costs for such proposed services exceed the minimum deposits, the applicant shall be responsible to pay to the town the difference between the actual amount and the amount deposited.

B. Performance guaranty

- (1) General Requirements
 - a. No final application for development (whether for an entire tract or a section thereof) shall be approved by the Town Commissioners until the satisfactory completion and performance of all required improvements have been certified by the Town Planner. As a condition of final approval for any application for development, all applicants shall submit a performance guaranty, and upon completion and approval of the improvements, a two-year maintenance guaranty for all required on-site and off-site improvements. The form and amount of the aforementioned guaranties must meet the satisfaction of the Town Solicitor and Town Planner.
 - b. A performance guaranty estimate shall be prepared by the applicant's Engineer and submitted to the Town Planner for review and approval, setting forth all requirements for improvements and their estimated cost. The performance and maintenance guaranties shall conform to such approved estimate in the manner calculated below.
- (2) Calculation of Guaranty.

The owner shall present the performance guaranty, in an amount equal to one hundred twenty percent (120%) of the approved performance guaranty estimate required above. The guaranty must then receive the approval as to form, amount and execution by the Town Planner as a condition to approval of the application. No plans will be signed or approval given by the Town until the required performance guaranty has been approved.

(3) Bonding and cash requirements.

The performance guaranty shall be made payable and deposited to the Town of Dewey Beach and shall be in the form of cash, irrevocable letter of credit or certified check or a performance bond in which the owner shall be principal. The bond or letter of credit to be provided must be issued by an acceptable surety or banking company licensed to do business in the State of Delaware. The Town shall issue its receipt for such deposits and shall cause the same to be deposited in the name of the Town to be retained as security for completion of all requirements and to be returned to the owner on completion of all required work or, in the event of default on the part of the owner, to be used by the Town to pay the cost and expense of obtaining completion of all requirements.

(4) Inspection and tests.

- a. All site improvements and utility installations for both site plans and subdivisions shall be inspected during the time of their installation under the supervision of the Town to ensure satisfactory completion. The obligor shall reimburse the Town for all reasonable inspection fees paid to the Town professionals for the foregoing inspection of improvements, provided that the Town may require of the developer a deposit for all or a portion of the reasonably anticipated fees to be paid to the Town professionals for such inspection. The Town professionals shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. The project may be immediately shut down by the Town if sufficient fees for inspections have not been deposited in accordance with this section.
- b. In no case shall any paving work be done without permission from the Town. At least two (2) working day's notice shall be given to that Town prior to any construction so that the Town or a qualified representative may be present at the time the work is to be done.
- c. Streets should not be paved with a wearing course until all heavy construction is completed. Landscaping shall not be planted until all grading and earthmoving is completed. The seeding of grass and the placing of surveyor's monuments shall be among the last operations.
- d. The Town shall be notified prior to each of the following phases of work so that they or a qualified representative may inspect the work relating to road subgrade, curb and curb forms, curb and gutters, roadway paving, sidewalk forms, sidewalk, drainage pipes and other drainage construction, street name signs, monuments, stormwater basins, topsoil and seeding, and plantings.
- e. Any improvement installed contrary to the plan or plat approval by the Town shall constitute just cause to void the municipal approval.
- f. Any improvement installed without notice for inspection shall constitute just cause for:
 - 1 Removal of the uninspected improvement;
 - 2 The payment by the developer of any costs for material testing;
 - 3 The restoration by the developer of any improvements disturbed during any material testing; and/or

- 4 The issuance of a stop-work order by the Town pending the resolution of any dispute.
 - g. Inspection by the Town of the installation of improvements and utilities shall not subject the Town of Dewey Beach to liability for claims, suits or liability of any kind that may arise because of defects or negligence during construction or at any time thereafter, it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owner and his contractor, if any.
- (5) Conditions and acceptance of improvements. The approval of any application for development and release of guaranty by the Town shall in no way be construed as acceptance of any street or drainage system or any other improvement, nor shall such approval obligate the Town in any way to exercise jurisdiction over such street or drainage system or other improvement. No improvement shall be accepted by the governing body unless and until all of the following conditions have been met:
- a. The Town Commissioners shall have certified, in writing, that the improvements are completed and that they comply with the requirements of this chapter.
 - b. The final application for development shall have been approved by the Town Commissioners.
 - c. The owner shall have filed with the Town Commissioners a maintenance guaranty in an amount equal to fifteen percent (15%) of the cost of installing the improvements. The maintenance guaranty shall run for a period of two (2) years from final acceptance of the improvement. The procedures and requirements for acceptance and release governing such maintenance guaranty shall be identical to the procedures and requirements for a performance guaranty set forth in this chapter.

An as-built plan and profiles of all utilities and roads (three (3) black-and-white prints plus a Mylar copy to be sent to the Town), with certification signed and sealed by a Delaware licensed professional engineer as to the actual construction as approved by the Town, shall be provided.

ARTICLE XII, Design Guidelines

§ 185-87. Streets and Rights-of-Way

- A. Street Design Objectives - New streets constructed as a part of a subdivision or land development proposal or extensions and reconstruction of existing streets shall be designed to achieve the following objectives:
- (1) Support the current and future need for safe and convenient vehicular circulation.
 - (2) Support the current and future need for safe, convenient and accessible pedestrian circulation.
 - (3) Integrate new streets into the Town's existing street network by extending and, respecting the existing grid character of the Town's historic street pattern.
 - (4) Limit the need for excessive grading, stormwater management and disturbance of environmentally sensitive areas.

B. Street Network

- (1) Whenever possible, new development shall incorporate the extension of the Town's existing streets and rights-of-way.
- (2) Where topography, site size and shape permits, new development shall to the greatest extent possible utilize a grid system of streets, consisting of a formal block layout, right-angled intersections and through streets to expand upon the Town's historic street pattern. Dead-end streets shall be avoided whenever possible.
- (3) All developments shall include a minimum of two (2) access points to a collector or arterial street.
- (4) When a vehicular connection is not provided, because of physical or environmental restraints, between residential developments, a pedestrian connection must be provided.

C. Cul-de-sac Streets

- (1) Cul-de-sac streets may be used only when, due to physical or environmental constraints, a thru street connection cannot be achieved.
- (2) In any case, cul-de-sac streets may provide access for no more than five (5) dwelling units.
- (3) The turn-around of a cul-de-sac street shall have minimum radii of forty (40) feet to the pavement edge or curb line.

D. Right-of-Way and Cartway Widths

- (1) The minimum right-of-way width and cartway widths for new streets shall be according to the following schedule

<u>Street Type:</u>	<u>Right-of-Way Width:</u>	<u>Cartway Width:</u>
Arterial	Pursuant to DelDOT Requirements	
Collector	60 feet	34 feet
Local (Cul-de-sac)	50 feet	24 feet

- (2) When a subdivision or land development obtains frontage on a street possessing insufficient right-of-way or cartway width the applicant shall be required to dedicate ½ of the necessary additional right-of-way or cartway width, measured from the existing centerline of the street, to meet the ultimate right-of-way and cartway width requirements of this section.

E. Street Alignment

- (1) Horizontal Alignment

To ensure adequate sight distance, minimum centerline radii for horizontal curves shall be as follows:

- a. Local Street: One hundred fifty (150) feet

- b. Collector Street: Three hundred (300) feet
- c. Arterial Street: Five hundred (500) feet

(2) Vertical Alignment

Vertical curves shall be utilized at changes of grade exceeding one (1%) percent and shall be designed to provide the following minimum sight distance:

- a. Local Street: One hundred (100) feet.
- b. Collector Street: Two hundred (200) feet
- c. Arterial Street: Four hundred (400) feet

F. Street Grades

- (1) The minimum centerline grade for all streets shall be .5%.
- (2) The maximum centerline grade for local streets shall be 10%. The maximum centerline grade for collector of arterial streets shall be 6%.
- (3) Where the grade of any street at the approach to an intersection exceeds seven percent (7%), a leveling area shall be provided having not greater than four (4%) percent grade for a distance of twenty-five (25) feet measured from the nearest right-of-way line of the intersecting street.

G. Intersections

- (1) Streets shall be laid out to intersect as nearly as possible at right angles. No street shall intersect another at an angle of less than sixty (60°) degrees.
- (2) Multiple intersections involving the junction of more than two (2) streets are prohibited.
- (3) Clear sight triangles of seventy-five (75) feet measured along street center lines from their point of intersection shall be provided at all street intersections and no buildings or structures shall be permitted within said sight triangle.
- (4) The minimum curb radii at street intersections shall be fifteen (15) feet for intersections involving only local streets and twenty-five (25) feet for intersection involving collector roads and radii as deemed suitable by DelDOT for arterial roadways.

H. Driveways

- (1) Driveway entrances may be constructed no closer than fifty (50) feet from any intersection.
- (2) The maximum width of any driveway entrance shall be twenty (20) feet.
- (3) Sites with a frontage of fifty (50) feet or less shall have no more than one (1) twenty foot wide driveway entrance, or two (2) ten foot wide driveway entrances with a minimum of twenty feet of unencumbered space between such entrances to provide for public parking. In no case shall a site have more than two (2) driveway entrances on any street.

I. Sidewalks

- (1) Sidewalks shall be a minimum of five (5) feet in width. Sidewalks in any planned development, in areas of high pedestrian traffic, adjacent to schools and churches, places of public assembly and along major streets shall be of greater width, as directed by the Town Planner.
- (2) Developers shall be required to repair damaged sidewalks along all roadways upon which their development obtains frontage. Any development properties without sidewalk are required to install sidewalk in situations where one or more of the side neighboring properties have functioning sidewalk in place.
- (3) All street intersections, driveways or other interruptions of sidewalks shall be equipped with sufficient ADA compliant handicap ramps.

J. Street Construction

- (1) All streets, sidewalks, driveway aprons, depressed curbs, handicap ramps, curbs and gutters shall be constructed according to DelDOT standards and specifications.

K. Street Names

- (1) The selection of subdivision and street names shall be coordinated with the post office and the Sussex County Department of Public Safety and Emergency Communications to avoid possible duplication. All street names shall be subject to the review and approval of the Town Commissioners.

§ 185-88. Stormwater Management

A. Stormwater Management Plan

- (1) A development resulting in a net increase of impervious surface on any lot shall be required to prepare and submit a stormwater management plan, indicating the methods and means by which post-development rate of stormwater runoff from the site will be reduced to the pre-development run-off condition. Storms analyzed shall include the 1, 2, 10, 25 and 100 year storms.
- (2) The developer may utilize on-site detention or retention systems constructed above or below ground or may install such off-site improvements necessary to accommodate the increase in run-off.
- (3) All stormwater management facilities shall be designed in accordance with the *State of Delaware Sediment and Stormwater Regulations* and will be subject to the review and approval of the Town professional.

B. Storm Sewers

All storm sewer pipelines shall be reinforced concrete pipe, or equivalent, and shall be designed by either of the following two methods. Both shall be based on the Manning education and shall utilize the "N" factor of 0.015. The minimum allowable pipe size is 15 inches.

- (1) Pipeline submerged.
 - (a) This method is based on the assumption that when the storm sewer system is under

maximum load hydraulic gradient will be at or above the crown of the pipe and that flow in the lines will be controlled by head differentials between structures or other locations where the system is open to the ground surface, such as inlets or outlets, manholes and stream inlets and outlets. The head of water above the crown of any pipe can range from zero feet to a point, which will not cause surface flooding.

- (b) The slope of the hydraulic gradient in any section of storm sewer between opening to the surface shall be calculated on the assumption that the pipe is flowing full at a constant velocity and at the required capacity.
- (c) The elevation of the hydraulic gradient at any point in the pipe shall be no lower than the crown of the pipe and no higher than the surface of the ground.
- (d) The elevation of the hydraulic gradient at any point where the system opens to the surface, such as an inlet or manhole, shall be three feet six inches below the surface of the ground.
- (e) At all structures such as manholes, inlets, etc., where the pipe size does not change, the elevation of the hydraulic gradient shall be dropped 0.2 of a foot to allow for losses therein. Where the inlet and outlet pipe sizes are not the same, the elevation of the hydraulic gradient shall be dropped an amount based on the following formula:

$$H = 0.2 \text{ feet} + 0.8 (D_1 - D_2)$$

Where:

D_1 = Diameter of inlet pipe.

D_2 = Diameter of outlet pipe.

If D_1 is larger than D_2 , head loss = 0.2 feet

- (f) The minimum slope of any pipe shall be such that a minimum velocity of 2.5 feet per second shall be maintained when the pipe is flowing 1/4 full.
- (2) Pipeline flowing full.
 - (a) This method is based on the assumption that the hydraulic gradient will match the inside top of the pipe when the system is under maximum hydraulic load.
 - (b) For this method, head losses through manholes, inlets, etc., shall be ignored.
 - (c) The minimum slope of any pipe shall be such that a minimum velocity of 2.5 feet per second shall be maintained when the pipe is flowing 1/4 full.
 - (d) When the pipe sizes change, the inside tops of the pipes shall be matched.
 - (3) Profile requirements. Continuous profiles for each reach of pipe shall be plotted along with the hydraulic information pertinent to each reach within the system. This information shall include the pipe size and type, the "n" factor, slope of the pipe, the design capacity and the velocity at the design capacity.
 - (4) Endwalls. Standard DelDOT endwalls shall be installed on all influent and effluent pipe.

- (5) **Inlets.**
- (a) Inlets conforming to DeIDOT standards shall be utilized in all applications. The type to be used shall depend on the particular application.
 - (b) Sufficient inlets shall be located and constructed so as to collect all of the flow in the contributory drainage area. In roadways the inlets shall be spaced to allow a maximum gutter flow of 4.0 cubic feet per second. Calculations of inlet capacities shall be in accordance with DeIDOT Guidelines.
 - (c) The gutter of all inlets shall be set not less than two inches, nor more than four inches, below the gutter grade. The surface of the paving adjacent to the inlets shall be constructed to blend into the lowered gutter grade at the inlet in such a manner that sudden drop-off or dip at the inlet will not be created.
 - (d) Where surface water is collected from two directions at one Street corner shall be placed at or near the tangent points of both ends of the radius. The use of an inlet in the radius shall not be allowed.
- (6) **Manholes.** Manholes shall be located at intervals of approximately 250 feet where pipe sizes of 24 inches or less are used, and 400 feet apart for larger sizes. Inlets should be substituted for manholes where they will serve a useful purpose. Manholes or inlets shall be placed at all changes of direction.
- (7) **Open channel design.** Open channel design should be based on the following hydraulic considerations:
- (a) **Manning's equations:**
 - (1) To determine n factor:
 - n = .015 for best concrete lined ditch.
 - n = .025 for best-unlined ditch.
 - n = .03 to .15 for fair to poor natural streams and watercourses.
 - (2) **Allowable velocities:**

Excavation Material	Allowable Velocity
Fine sand and firm loam	2.50 to 3.5 feet per second
Stiff clay and hardpan	3.75 to 6.0 feet per second
Concrete lined ditch	15 feet per second
 - (b) Minimum one foot to zero feet freeboard should be provided on all channels at one-hundred-year storm flows.
 - (c) The channel should be designed to conform, wherever possible, to the adjacent ground conditions. This means that it should not be projecting excessively above the surrounding ground or placed excessively below the surrounding ground.
 - (d) Continuous profiles for each reach of open channel shall be plotted along with

the adjacent average ground and the hydraulic information pertinent to each reach within the system. This information shall include the type of channel lining, the "n" factor, the width of the channel bottom, the side slopes, the water depth, the design capacity and the velocity at the design capacity.

- (e) Open channels shall have a maximum side slope of 3 to 1 and shall have adequate slope protection as required by the Town.
- (f) No open watercourses shall be permitted within the right-of-way of any street.
- (8) No open watercourses shall be permitted within the rights-of-way of any Street.
- (9) Location of sewers. Wherever practicable, storm sewers shall be located behind the curb and within the right-of-way of the street. They shall be protected by a cover of at least 18 inches.
- (9). Change in direction. In lieu of manholes or inlets, special concrete pipe sections with a minimum radius of 10 times the inside pipe diameter may be used where changes are made in direction.
- (10). Stormwater roof drains. Stormwater roof drains and pipes immediately adjacent to a sidewalk shall not discharge water over a sidewalk but shall extend under the sidewalk to the gutter. Where accessible, the roof drain shall be connected with the storm drainage system of the Town.
- (11) All storm sewer piping, inlets, catch basins, culverts and manholes shall be designed and constructed pursuant to DelDOT standards and specifications.
- (12) Storm sewers shall be constructed within public rights-of-way or within an appropriate easement.

C. Detention facilities.

- (1) Storage requirements.
 - (a) Whenever an increase in runoff will occur as the result of development, the developer will be required to provide permanent stormwater management facilities to attain zero increase in runoff. The storage requirements of all stormwater management facilities shall be computed in accordance with the Soil Cover Complex Method and must be submitted to the Town for review and, when required, to DNREC.
 - (b) It should be noted that in addition to the permanent storage facilities, the developer must provide adequate erosion and sedimentation control measures in accordance with the County Conservation District and DNREC.
 - (c) The volume of storage provided shall equal the total additional volume of runoff due to development based on a one-hundred-year frequency twenty-four-hour duration storm. The storage required may be based on "after" construction flows rather than "during," provided that the development is properly staged or other measures are taken to retard the higher "during" construction flows. An

additional storage allowance of 0.06-acre inches must be provided to compensate for sediment accumulation.

(2) Discharge piping.

- (a) Discharged piping shall be reinforced concrete pipe and shall be sized to maximize use and efficiency of the storage provided. Specifically, the most critical duration one-hundred-year storm should fill the storage facility to the spillway level without utilizing the spillway. In no case shall the spillway be utilized in the design routing of one-hundred-year storms.
- (b) The sizing of the discharge piping will therefore require detailed analysis rather than a random sizing correlating to a "before" construction standard frequency storm, such as a ten-year storm. The design engineer's submittal to the Town must include calculations on the methodology of sizing the piping. The capacity of all discharge piping shall be based on "inlet control" or where conditions warrant "outlet control." DNREC standards may be utilized for this.
- (c) Once the discharge piping is sized, storage vs. elevation vs. discharge curve should be prepared and included with the submittal, along with a routing of the most critical one-hundred-year storm. Both ends of the discharge piping shall be provided with headwalls.
- (d) Erosion protection shall be provided in the form of riprap or other acceptable means where required by the Town.
- (e) Anti-seep collars shall be provided for all discharge pipes. The collars shall be a minimum of six inches thick and shall extend a minimum of two feet in all directions from the outside walls of the pipe.

(3) Emergency spillway.

- (a) A concrete lined emergency spillway shall be provided for all storage facilities. Although the storage facility is designed so that the spillway will not be used in a one-hundred-year storm the possibility exists whereby the outlet pipe could be totally blocked during a storm. For this reason it is required that the spillway be sized to accommodate the peak flow rate into the pond when the pond would be completely full during a one-hundred-year storm assuming a totally blocked discharge pipe.
- (b) The spillway capacity should be calculated by the formula

$$Q = 3.087 \times ((D^3))^{0.5} \times L$$

Where:

Q = Capacity in cubic feet per second.

D = Depth of spillway in feet.

L = Length of spillway in feet.

- (c) The minimum depth of spillway shall be two feet.
- (4) Storage area.
 - (a) Side slopes in storage areas shall be no steeper than 3 to 1. Every effort should be made to blend the storage area into the natural topography of its surroundings.
 - (b) The bed of the storage area shall slope towards the discharge pipe from all directions at a minimum slope of 1%.
 - (c) Prior to grading in the storage area, the topsoil shall be stripped and stockpiled. Upon completion of grading, the topsoil shall be redistributed over the storage area (minimum six inches thick). The area should then be seeded with a mixture approved by the Town Planner.
 - (d) All fill material to be utilized in embankment areas shall be selected from the more impervious materials available at the site and shall be compacted to a minimum of 95% of the materials maximum dry density as determined by a Standard Proctor Test. Where necessary, embankment fill materials shall be keyed into virgin soil. Where embankment berms are used, a minimum ten-foot-wide flat area shall be provided at the top of the berm. (Sieve analysis required to accompany submission.)
 - (e) The responsibility for the continued maintenance and operation of the retention facility shall be the obligation of the property owner or Town whichever is applicable. A fence four feet in height with a self-closing gate surrounding the basin may be required as directed by the Town.
 - (f) All storage areas must be located outside of the one-hundred-year floodplain.
 - (g) Underground storage beds will be given consideration in lieu of above ground conventional storage facilities.

D. Water Quality

Maximizing the groundwater recharge capacity of the area being developed is required. Design of the infiltration facilities shall consider groundwater recharge to compensate for the reduction in the recharge that occurs when the ground surface is disturbed or impervious surface is created.

- (1) Infiltration Best Management Practices (BMPs) minimum requirements:
 - (a) Infiltration BMPs intended to receive runoff from developed areas shall be selected based on suitability of soils and site conditions and shall be constructed on soils that have the following characteristics:
 - a. A minimum depth of twenty-four (24) inches between the bottom of the BMP and the top of the limiting zone.
 - b. An infiltration rate sufficient to accept the additional stormwater load and dewater completely as determined by field tests conducted by the Applicant's design professional.

- c. The infiltration facility shall be capable of completely infiltrating the retention (infiltration) volume (Re_v) within four (4) days (96 hours).
 - d. Pretreatment shall be provided prior to infiltration.
- (2) The size of the infiltration facility shall be based upon the following volume criteria:
- (a) One Inch from Impervious Surface - the retention (infiltration) volume (Re_v) will be equal to capturing one (1) inch of rainfall over all proposed impervious surfaces.

$$Re_v = I * \text{impervious area (square feet)} \div 12 \text{ (inches)} = \text{cubic feet (cf)}$$

retention (infiltration) volume Re_v required shall be as much as can be physically accomplished with a minimum of 0.50 inch depending on demonstrated site conditions. It has been determined that capturing and infiltrating 0.50 inch of runoff from the impervious areas will aid in maintaining the hydrologic regime (baseflow) of the watershed. If these goals cannot be achieved, then 0.50 inch of rainfall shall be retained and infiltrated from all impervious areas.

The minimum recharge volume (Re_v) required would, therefore, be computed as:

$$Re_v = I * \text{impervious area (square feet)} \div 12 \text{ (inches)} = \text{cubic feet (cf)}$$

An asterisk (*) in equations denotes multiplication.

Where:

I = The maximum equivalent infiltration amount (inches) that the site can physically accept or 0.50 inch, whichever is greater.

design professional and at minimum address soil permeability, depth to bedrock, and subgrade stability. The general process for designing the infiltration the Best Management Practice(s) shall be:

- (a) Analyze hydrologic soil groups as well as natural and man-made features within the site to determine general areas of suitability for infiltration practices. In areas where development on fill material is under consideration, conduct geotechnical investigations of sub-grade stability; infiltration may not be ruled out without conducting these tests.
- (b) Provide field tests such as double ring infiltrometer or hydraulic conductivity tests (at the level of the proposed infiltration surface) to determine the

(2) In addition to the requirements of this Article, development proposals shall be designed to be consistent with the following design standards:

- (a) Minimum grade for paved surfaces shall be one (1%) percent
 - (b) Maximum grade for parking areas shall be five (5%) percent
 - (c) Maximum grade for residential driveways shall be ten (10%) percent
 - (d) Minimum slope of drainage swales shall be two (2%) percent
 - (e) Minimum slope of lawn areas shall be two (2%) percent
 - (f) Maximum slope for lawn areas shall be 3:1
- (1) Site grading which exceeds a 3:1 slope shall be protected by temporary erosion control matting and planted with an appropriate ground cover.
 - (2) Site grading shall be designed in accordance with the regulations of the Americans with Disability Act Accessibility Design Guidelines (ADAAG).

C. Retaining Walls

- (1) Grading plans shall indicate the top of wall and bottom of wall elevations for all retaining walls.
- (2) Design calculations and construction details must be submitted for retaining walls over three (3) feet in height.

D. Erosion Control

All grading plans shall contain appropriate soil erosion and sediment control measures in accordance with the applicable regulations of the *State of Delaware Sediment and Stormwater Regulations*.

§ 185-90. Utilities

A. Sanitary Sewer

All proposed sanitary sewer systems shall be designed in accordance with the standards and specifications of Sussex County, Delaware.

B. Water

All proposed water systems shall be designed in accordance with the standards and specifications of the local water provider.

§ 185-91. Landscaping

A. Landscape Plan

A landscape plan, prepared by a Landscape Architect licensed in the State of Delaware, must be included in any application for building permit submitted to the Town and shall indicate the location, species (common and botanical names), size and condition of all proposed plantings.

B. Buffer Yards

Vegetation to be used as buffer yards and landscaping for off-street parking and loading areas shall be approved by the Town prior to installation.

§ 185-92. Fences

A. General Requirements

- (1) Ornamental fences or walls may project into or enclose any yard provided:
 - a. No fence or wall shall exceed seven (7) feet in height;
 - b. No fence or wall exceeding three and one half (3 ½) feet in height shall project into or enclose any portion of the yard located within the front-yard setback.
- (2) Razor wire, barb wire, chain link, wire or similar fence material is prohibited in the Town of Dewey Beach.

§ 185-93. Lighting

A. Street Lighting

- (1) For the planned residential and commercial zoned districts, the applicant shall provide a lighting plan showing the existing light levels for the property. Any area falling below a minimum lighting level of 1 foot candle will require the addition of lights. The Town reserves the right to reject any light fixtures that are not appealing and consistent with the Town.
- (2) All required street lighting shall be provided pursuant to DelDOT standards and specifications.

	NR	RR	RR-3	RR-2	RR-1	PR-1	PR-2	PR-3
Zoning District	NR	RR	RR-3	RR-2	RR-1	PR-1	PR-2	PR-3
Floor Area Ratio (FAR)	Maximum FAR: 1.00. Open decks and roof decks, passenger elevators, and private garages not included in the FAR calculation.	Maximum FAR: 1.20. Roof decks and private garages are included in the FAR calculation; passenger elevators and open decks other than roof decks are not included in the FAR calculation.	Maximum FAR: 1.00 for residential and mixed-use development, with passenger elevators, open decks and roof decks not included in the FAR calculation; 1.20 for dedicated commercial development, with passenger elevators, open decks and roof decks not included in the FAR calculation.	Maximum FAR: 1.20, with passenger elevators, open decks and roof decks not included in the FAR calculation.	Maximum FAR: 1.50, with passenger elevators, open decks and roof decks not included in the FAR calculation.	Maximum FAR: 1.35, with passenger elevators, open decks and roof decks not included in the FAR calculation.		
Tiered Setbacks	Covered and/or enclosed portions of a third story; minimum additional 5' setback beyond the minimum front yard or rear yard for any building face abutting a street, the ocean or bay.	Minimum additional 10' setback beyond the minimum front yard or rear yard for any building face abutting a street, the ocean or bay.	Residential and Commercial Uses. See RR District Requirements.	Covered and/or enclosed portions of a third story; minimum additional 5' setback beyond the minimum front yard for any building face abutting a street, the ocean or bay.	Covered and/or enclosed portions of a third story; minimum additional 10' setback beyond the minimum yard for any building face abutting a major street or side street, the ocean or bay.	Covered and/or enclosed portions of a third story; minimum additional 10' setback beyond the minimum yard for any building face abutting a major street or side street, the ocean or bay.		
Maximum Building Frontage	Not to exceed 3 dwelling units per structure; street frontage not to exceed 100' per structure.	Not to exceed 4 dwelling units per structure; street frontage not to exceed 100' per structure.	Not to exceed 3 dwelling units per structure; street frontage not to exceed 100' per structure.					
Minimum Floor Area Per Dwelling Unit (Multi-Unit Structure)	1,200 s.f. living area (including covered decks in the floor area calculation, but not including the floor area of open decks and adjacent storage areas)							
Residential-To-Commercial Use Ratio	Residential only							
Maximum Dwelling Unit Density	1 single family detached dwelling per lot.	1 dwelling unit per 3,600 s.f. land area, may be a detached single family dwelling, or one of several residential dwelling units in a townhouse or multi-family dwelling.	1 dwelling unit per 3,600 s.f. land area; may be a detached single family dwelling, or one of several residential dwelling units in a townhouse, multi-family dwelling or mixed-use structure.	No single-family detached homes, townhouses or residential multifamily dwellings are permitted, but 1 residential dwelling unit in a multi-use structure is permitted per 3,600 s.f. land area.	1 residential dwelling unit in a mixed-use structure, the first floor shall be 100% commercial and the residential-use s.f. may not exceed 2 times the commercial-use s.f. If developed with one or more dedicated 100% residential-use structures, the aggregate total residential-use s.f. may not exceed the aggregate total commercial-use s.f.	1 dwelling unit per 3,600 s.f. land area, may be a detached single family residence or one of several residential units in a townhouse, multifamily or mixed-use structure.		
Residential Parking Requirements	2 off-street spaces for the first 4 bedrooms in a dwelling unit plus one additional space for each additional two bedrooms in the same dwelling unit, such that a 5-bedroom or 6-bedroom dwelling unit requires 3 off-street parking spaces, a 7-bedroom or 8-bedroom dwelling unit requires 4 spaces, etc.							
Bed and Breakfast Parking Requirements	1 off-street space for every two dedicated Bed and Breakfast bedrooms in addition to such spaces as are required under Residential Parking Requirements for the private portion of the home or townhouse.							

Zoning District	NR	RR	PR	RB-3	RB-2	RB-1	P
Convention Center Parking Requirements				1 space per 200 s.f. of patron area or 1 space for every 4 seats, whichever is greater.			1 space per 200 s.f. of patron area or 1 space for every 4 seats, whichever is greater.
Parking Requirements for Office, Public or Institutional Use				One space per 400 s.f. gross building area, for staff and visitor parking. However, a minimum of 50% of such spaces must be dedicated for visitor use.			
Dedicated Patron Parking Requirements for Other Commercial Uses				No off-street parking required for other commercial establishments with less than 2,000 s.f. assigned patron area, one space for each 400 s.f. patron area for other commercial establishments with less than 5,000 s.f. but more than 2,000 s.f. patron area, one space for each 100 s.f. patron area for other commercial establishments with more than 5,000 s.f. floor area assigned for patron use.			One space dedicated to patron parking per 200 s.f. of patron area.
Restaurant Parking Requirements				No off-street parking required for restaurants with less than 2,000 s.f. patron area, one space dedicated to patron parking per 200 s.f. of patron floor area for restaurants with 2,000 s.f. or more patron area, including all exterior areas where service of patrons is permissible.			One space dedicated to patron parking per 200 s.f. of patron area, including all exterior areas where service of patrons is permissible.
Basement	Non-habitable space below grade permitted, but a basement designed for or used as living space is not permitted.	Not permitted	Non-habitable space below grade permitted, but a basement designed for or used as living space is not permitted.				Not permitted.
Planting and Open Space Requirement	Minimum of 15% of gross lot area dedicated to planting and beautification area, a minimum of 50% of this requirement shall be located in the front yard, not withstanding that not more than 50% of the front yard shall be required to be planted.	Minimum of 10% of gross lot area dedicated to planting and beautification area, a minimum of 50% of this requirement shall be located in the front yard, not withstanding that not more than 50% of the front yard shall be required to be planted.	Minimum of 15% of gross lot area dedicated to planting and beautification area, with a required 5' wide planting strip provided along any portion abutting RR and/or NR District.	Minimum of 10% of gross lot area dedicated to planting and beautification area; a minimum of 50% of this requirement shall be located in the front yard, not withstanding that not more than 50% of the front yard shall be required to be planted.	Minimum of 10% of the SR-1 frontside yard setback area dedicated to planting and beautification area; use of planters to meet this requirement is permitted.		Open space provided for passive recreation, green space and beautification areas to be at least 12.5% of the gross lot/parcel area with 10% located in the SR-1 setback. Required public walks, setbacks and green space shall be open to the sky. Unencumbered public access shall be provided to all common areas and beach/bay-front areas.

Sponsors: Rep. Hocker

HOUSE OF REPRESENTATIVES

145th GENERAL ASSEMBLY

HOUSE BILL NO. _____

AN ACT TO AMEND CHAPTER 59, VOLUME 63 OF THE LAWS OF DELAWARE, AS AMENDED, THE CHARTER OF THE TOWN OF DEWEY BEACH TO LIMIT THE HEIGHT OF STRUCTURES WITHIN THE TOWN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House concurring therein):

Section 2. Amend Chapter 59, Volume 63 of the Laws of Delaware, as amended, by deleting Section 25(5) in its entirety and replacing it with new Section 25(5) to read as follows:

5. For the prevention of fire and the preservation of the beauty of the Town, to regulate and control the number of buildings or removal of dwelling houses and other buildings; to establish a code for the same and to provide for the granting of permits for the same; to establish a building line for buildings to be erected; zone or district the Town and make particular provisions for particular zones or districts with regard to building or building materials; provided, however, that no structure within the Town shall exceed thirty-five (35) feet in height, as measured from the center grade of any street upon which the property has frontage, or from the center grade of the street closest to the subject property for any property that does not have frontage on a street; and, generally to exercise all the powers and authorities vested in the legislative body of cities and incorporated towns under by the Constitution and Laws of this State.

Section 3. If any provision of this Act 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 Act that may be given effect without the invalid or unenforceable provision, and to this end, the provisions of this Act are hereby declared to be severable.

Section 4. This Act shall become effective upon its enactment into law. Structures existing at the time of this amendment, however, are excluded from this amendment.

EXHIBIT 2

**MELUNEY
ALLEMAN &
SPENCE LLC**

Stephen A. Spence
1143 Savannah Road, Suite 3-A
Lewes, DE 19958
Direct Dial: 302-551-6819
Steve.Spence@maslawde.com

December 5, 2025

By Email and U.S. Mail

Fred A. Townsend, III, Esq.
Hudson Jones Jaywork & Fisher, LLC
309 Rehoboth Avenue
Rehoboth Beach, DE 19971

Re: 101 Carolina Street, Dewey Beach, DE (the “Property”)

Dear Fred:

I represent Marcia Schieck as litigation counsel, along with Veronica Faust. Ms. Schieck is the beneficial owner of 101 Carolina LLC. I write regarding the Town’s position on my client’s application for a building permit for a swimming pool for the Property relative to the location of the proposed safety fence. The Town shared its position with my client at an earlier in-person meeting. I understand that the Town’s current position is that the permit cannot be approved because of the location of the safety fence. As described below, we respectfully disagree. I write to ask that the Town reconsider its position and approve the permit as presented. To facilitate a resolution, I request that the Town, including the Mayor, agree to meet with my client and her counsel by no later than December 19.

The proposed pool and safety fence are depicted on the enclosed site plan. Also enclosed is a copy of her permit application. The pool is 11.5’ x 24’ and is positioned in front of the proposed dwelling’s front porch, fully within the buildable footprint. The 4.5-foot-high safety fence will be installed 8.5 feet from the pool’s front edge. The pool’s front edge abuts the front yard setback line, and the safety fence is 8 feet into the required front yard, with the safety fence 10 feet from the front lot line.

Preliminarily, below are the key code provisions at issue:

§1-16 Definitions

Yard – “The area extending between the lot lines and respective building setback lines on a lot or parcel.”

§185-51 Accessory buildings and structures.

A. A hedge, fence or wall not more than 3.5 feet in height may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Any fence, hedge, or wall for residential use may project into or enclose other required yards, provided such fences, hedges, and walls do not exceed a height of seven feet. This height limit does not apply to fences or walls used for commercial screening or tennis courts.

B. Accessory swimming pools, open and unenclosed, **may occupy a required yard** or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of concrete, stockade wood or material of equal quality. (emphasis added)

I understand that the Town's current position is that the proposed pool and safety fence is not permitted by the code because the safety fence will be in the required front yard area and is more than 3.5 feet in height. That position is incorrect for at least three reasons.

First, the code allows a safety fence of 4.5 feet for a pool built in a required yard;¹ here, the required front yard. Section B specifically addresses pools and the requirement for a safety fence that is 4.5 feet high. Section B expressly allows a pool to occupy a required yard; i.e., be present within the setback area. Given that the code expressly permits a pool to occupy a required yard, that necessarily means the other required elements—the walk space and safety fence—may also occupy the required yard. Thus, Section B requires a safety fence, which must be 4.5 feet in height, to be built in the required front yard. Because Section B is specific to pools and the required safety fence, Section B controls over the generally applicable Section A, which broadly addresses the height of other residential hedges, fences, and walls in a required yard. *A.W. Fin. Servs., S.A. v. Empire Res., Inc.*, 981 A.2d 1114, 1131 (Del. 2009) (describing and relying upon statutory interpretation principle that “specific provisions should prevail over general provisions.”);

¹ The code does not define “required yard,” but its plain meaning is the yard area between the outside of the buildable footprint and the lot's boundary or street lines. See §1-16 (Setback) & (Setback Line or Building Setback Line).

Shellburne Civic Ass'n, Inc. v. Brandywine Sch. Dist., 2006 WL 4782500, at *4 (Del. Ch. Sept. 1, 2006) (“It is an often cited canon of interpretation that in construing statutes, specific provisions should prevail over general provisions.”). Here, because Section B specifically addresses the rules for a pool and its required safety fence, it prevails over the generally applicable rules stated in Section A.

Second, while we believe our interpretation of Section B is the only reasonable one, the Town’s interpretation that Section A controls the height of all fences in a required yard, prohibiting a safety fence for a pool, may be considered another reasonable interpretation.² Proceeding on that assumption, Delaware law is clear that if the code is ambiguous such that there are two or more reasonable interpretations of a zoning code, the interpretation that favors the landowner prevails. *Jack Lingo Asset Mgmt., LLC v. Bd. of Adjust. of City of Rehoboth Beach*, 282 A.3d 29, 33–34 (Del. 2022) (“In the zoning context, however, we need not consider extrinsic evidence because we have long held that, when an ambiguity is present, ‘the interpretation that favors the landowner controls.’”) (reversing board of adjustment decision in favor of landowner); *Dewey Beach Enterprises, Inc. v. Bd. of Adjustment of Town of Dewey Beach*, 1 A.3d 305, 310 (Del. 2010) (“[T]o the extent that there is any doubt as to the correct interpretation, that doubt must be resolved in favor of the landowner.”) (same). Even if the Town’s interpretation is viewed as reasonable, it does not preclude our interpretation, so there is an ambiguity that must, as a matter of law, be resolved in my client’s favor.

Third, in 2013, the Town Council decided that a pool safety fence in the required front yard did not violate the code, and the Council has not amended Section 185-51 since. My client was the beneficial owner of 114 Chesapeake Street, and a neighbor complained about a pool safety fence being present in the required front yard. As a result, the Town suspended her business license to rent the property, claiming a setback code violation, and further required her to correct the safety fence location to comply with the Town’s interpretation of Section A.

² Section A can be read as only limiting a fence to 3.5 feet when the fence runs from the street line. §185-51(A) (“...from the street line...”). Thus, we maintain the Town’s interpretation and application of Section A is not reasonable. Additionally, I understand you have asserted that the code prohibits *any* accessory building or structure over 3.5 feet from being present in the required front yard. That is incorrect. See §185-48(B) (air conditioners and heat pump compressors can be over 3.5 feet, up to 3 feet from property line); §185-49(D) (open porches, platforms, steps, or paved terraces not greater than 4 feet high, no more than 6 feet from front property line); §185-51(A) (fences and walls for commercial screening and tennis courts); §185-51(B) (pool in the required front yard, including aboveground pools which can be over 3.5 feet).

My client appealed the suspension and alleged code violation, and the appeal was heard by the Council, who presided over the hearing as a quasi-judicial board. Richard Forsten represented the Town at that hearing. To determine whether the suspension was appropriate, the Council had to decide one specific question: was the safety fence located in the required front yard a violation of the code. *See* Appellant's Pre-Hearing Submission; Town's Pre-Hearing Submission (both enclosed). After considering the attorneys' detailed written arguments and hearing the parties' presentations, the Council ruled that the pool safety fence did not violate the code. *See* Riordan Email (summarizing result; enclosed).

The Town should follow this on point precedent here. And, even if that 2013 ruling is not fully binding here, it is equally if not more compelling that the Council has not amended the code in twelve years to require a different result. *See State v. Barnes*, 116 A.3d 883, 892 (Del. 2015) ("When the prior judicial interpretation was subject to being overturned by the operation of the legislative process and was not overturned, the justification for departing from *stare decisis* is even more tenuous.") (citation omitted); 82 *C.J.S. Statutes* § 466 ("A long-standing administrative construction of a statute is accorded great weight in the determination of legislative intent because the legislature is presumed to have acquiesced in that construction if it has not amended the statute."). I have been made aware that then-Mayor Dale Cooke, at the Council meeting following that hearing, strongly urged the Council to amend the code to resolve any ambiguity. But the Council did not do so. In the end, the Council has already directly addressed this issue and ruled in my client's favor, and the Council has not amended the relevant code sections in the decade since.

In conclusion, our interpretation of Section 185-51 is the only reasonable interpretation, prevails in the case of ambiguity, and is supported by the Town Council's 2013 decision and resulting failure to amend the code. As a result, we are confident that we will prevail in an appeal at the Board of Adjustment or in court. However, all parties should seek to avoid that costly effort and instead work to resolve this matter promptly.

Please let me know as soon as possible whether the Town will accept our invitation to meet and discuss this matter. Feel free to call me to discuss. All rights, remedies, and arguments reserved.

December 5, 2025

Page 5

Yours truly,

MELUNEY ALLEMAN & SPENCE, LLC

/s/ Stephen A. Spence

Stephen A. Spence

Encls.

cc: Veronica Faust, Esq. (email)

Mayor William Stevens (by mail)
Town Manager Bill Zolper
Assistant Town Manager Jim Dedes
Town of Dewey Beach
105 Rodney Ave.
Dewey Beach, DE 19971

Town Manager

From: criordan4@comcast.net
Sent: Wednesday, November 13, 2013 8:18 AM
To: Katrina White
Cc: Town Manager; Diane Hanson; Anna Legates; Gary Mauler; Ellen Danaher
Subject: Re: Commissioners Appeal Hearing

Katrina,

I believe that I first stated the Motion as "To find in favor of the defendant" who was the appellant for the Hearing.

Mr. Forstner then advised me that I should clarify that the motion meant that the Council should find no violation of the Code and as a result the proposed suspension would be rejected for lack of a violation.

I adopted that revision to the motion and the Council then voted 4 to 1 to approve the motion.

Courtney

From: "Katrina White" <kwhite@townofdeweybeach.com>
To: "Diane Hanson" <hanson@team-doctor.com>, "Anna Legates" <annalegates@gmail.com>, "criordan4" <Criordan4@comcast.net>, "Gary Mauler" <gary@maulers.net>, "Ellen Danaher" <danaherdeweyfiles@gmail.com>
Cc: "Town Manager" <townmanager@townofdeweybeach.com>
Sent: Tuesday, November 12, 2013 2:58:32 PM
Subject: Commissioners Appeal Hearing

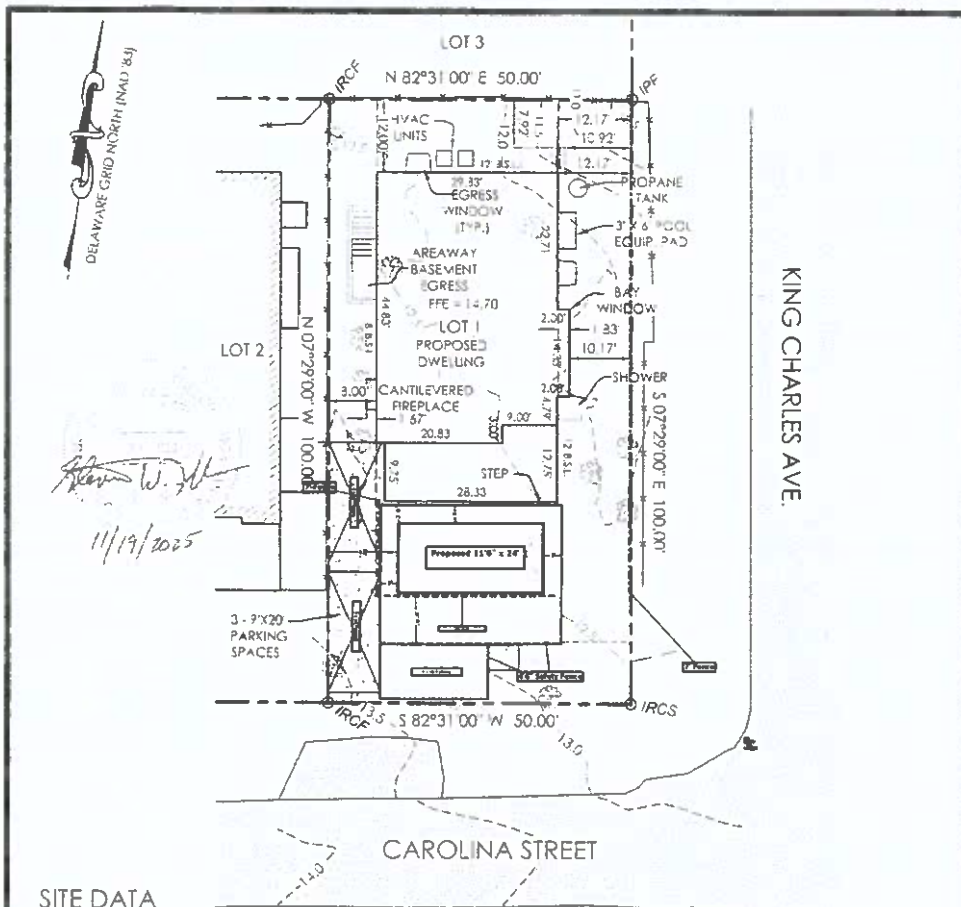
Mayor & Commissioners,

There was a problem with the recording on the November 9th Appeal Hearing. Could you send me the text version of the motion at the end of the meeting before the vote? I believe it was made by Commissioner Riordan. Thank you.

Katrina

Katrina L. White

Town Clerk/IT Tech
Town of Dewey Beach
105 Rodney Ave
Dewey Beach, DE 19971
Telephone 302-227-6363
Fax 302-227-8319



SITE DATA

1. CURRENT OWNERS: REHOBOTH BY THE SEA REALTY CO
2400 COASTAL HIGHWAY
DEWEY BEACH, DE 19971
2. SURVEYOR: SOLUTIONS IPBM LLC
303 N. BEDFORD ST.
GEORGETOWN, DE 19947
410-572-8833
TM: 334-20 19-89 01
DB 348/596
263/49
3. TAX PARCEL: NR - NEIGHBORHOOD RESIDENTIAL
10,200 ± SQ. FT.
4. DEED REFERENCE: 1000SC0354K
5. PLAT REFERENCE: THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X. AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN
6. ZONED: NR - NEIGHBORHOOD RESIDENTIAL
7. AREA OF LOT: 10,200 ± SQ. FT.
8. BASED UPON FEMA FLOOD INSURANCE RATE MAP 1000SC0354K, PANEL 354 OF 660 WITH AN EFFECTIVE DATE OF MARCH 15, 2015, THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X. AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN
10. HORIZONTAL DATUM SHOWN HEREON IS REFERENCED TO NAD 83 (DE STATE PLANE)
11. OFFSET DISTANCES MEASURED TO BUILDING DECK AND PORCH FOUNDATIONS WITHOUT STONE VENEER OR SIDING.
12. GREEN SPACE = 2,590 ± S.F. (25.76%)
IMPERVIOUS SPACE = 2,401 ± S.F. (24.01%)
13. FLOOR AREA RATIO (FAR): MAXIMUM FAR ALLOWED = 4.000 S.F.
PROPOSED FIRST FLOOR = 1,339 S.F.
PROPOSED FIRST FLOOR PORCH = 303 S.F.
PROPOSED SECOND FLOOR = 1,310 S.F.
PROPOSED FAR = 2.952 S.F.
14. MAXIMUM BUILDING HEIGHT ALLOWED = 35' ABOVE GRADE = 47.83'
PROPOSED BUILDING HEIGHT = 45.05'

LEGEND

DECIDUOUS TREE	
MAJOR CONTOUR	
MINOR CONTOUR	
IRON ROD & CAP FOUND	○ IRCF
IRON ROD & CAP SET	● IRCS
IRON PIPE FOUND	○ IPPF



<p>solutions Integrated Planning Engineering & Architecture, LLC</p>	<p>3003 Merritt Hill Road Solihbury, MD 21804 T: 410-572-8833 www.solutionsipbm.com</p> <p>© copyright © 2025</p>	<p>SITE PLAN</p> <p>LOT 1, BLOCK 28 REHOBOTH BY THE SEA</p> <p>LEWES AND REHOBOTH HUNDRED</p> <p>DEWEY BEACH, SUSSEX COUNTY, DELAWARE</p>	
	<p>Drawn by: RAM</p> <p>Job No: S25060</p>	<p>Scale: 1" = 20'</p>	<p>Date: 09-05-25 Revised: 09-29-25</p>

NICHOLAS H. RODRIGUEZ
DOUGLAS B. CATTS
WILLIAM D. FLETCHER, JR.
CRAIG T. ELIASSEN
WILLIAM W. PEPPER SR.
CRYSTAL L. CAREY*
SCOTT E. CHAMBERS*
FRED A. TOWNSEND III
NOEL E. PRIMOS
WALT F. SCHMITTINGER
R. SCOTT KAPPES
JEFFREY J. CLARK
KYLE KEMMER**
KRISTI N. VITOLA
B. BRIAN BRITTINGHAM
ANTHONY V. PANICOLA

*ALSO ADMITTED IN MARYLAND
**ALSO ADMITTED IN PENNSYLVANIA

LAW OFFICES
SCHMITTINGER AND RODRIGUEZ, P.A.
414 SOUTH STATE STREET
POST OFFICE BOX 497
DOVER, DELAWARE 19901
TELEPHONE 302-674-0140
FAX 302-674-1830

HAROLD SCHMITTINGER
1928 - 2008
JOHN J. SCHMITTINGER
1941 - 2011

NEWARK OFFICE
CHRISTIANA EXECUTIVE CAMPUS
220 CONTINENTAL DRIVE, STE 203
NEWARK, DELAWARE 19713
TELEPHONE 302-894-1960
FAX 302-894-1965

REHOBOTH BEACH OFFICE
WELLS FARGO BANK BUILDING
18489 COASTAL HIGHWAY, 2ND FLR
REHOBOTH BEACH, DELAWARE 19971
TELEPHONE 302-227-1400
FAX 302-645-1843

MIDDLETOWN OFFICE
651 N. BROAD STREET, STE 104
MIDDLETOWN, DELAWARE 19709
TELEPHONE 302-378-1697
FAX 302-378-1659

November 8, 2013

VIA ELECTRONIC MAIL

Commissioners
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

RE: Appeal - Suspension of Business License/114 Chesapeake Street

To the Commissioners:

A hearing on the above-referenced matter is scheduled for November 9, 2013, at 2:00 p.m. This letter summarizes the Town's argument on whether the improvements (*i.e.*, swimming pool and fence) constructed by the Appellant, 114 Chesapeake, LLC (hereinafter "the Appellant") at 114 Chesapeake Street (hereinafter "the Property") are, or are not, compliant with the Town's Zoning Code (hereinafter "the Code").

The Improvements Are Not Compliant With the Code

The Code sets forth the following setback requirements concerning the improvements on the Property:

(1) The minimum front yard setback requirement for the Neighborhood Residential (hereinafter "NR") District is 18 feet. See Code Section 185-23.G. and Table 2 of Attachment 1 to Chapter 185 ("Bulk Zoning Standards in All Districts").

(2) According to Section 185-51.A., a fence projecting into a front yard setback may be no higher than 3.5 feet.

(3) According to Section 185-51.B., a swimming pool must be surrounded by a walkway at least three feet wide which is in turn bordered by a fence at least 4.5 feet high.

Therefore, because a swimming pool must be surrounded by a three-foot walkway and a 4.5 foot safety fence, and because no fence within a front yard setback may be higher than 3.5 feet, the safety fence surrounding a pool in the front yard of a lot in the

NR District must be set back from the front property line at least 18 feet, and the pool must be set back from the property line at least 21 feet (to allow for the three-foot-wide walkway).¹ It is undisputed that the improvements on the Property do not comply with these requirements: the fence is currently 15 feet from the front property line, and the pool is 18.5 feet from the front property line.

The Code's language regarding these requirements is clear. Therefore, there is no need to resort to the rules of statutory interpretation. However, even if the Commissioners were to determine that the language of the Code is ambiguous in this regard, the Town's interpretation of these Code sections upholds two cardinal rules of statutory interpretation: (1) that the various parts of a municipal code are to be interpreted in such a way that they are consistent with one another,² and (2) that code provisions are to be interpreted so as to avoid absurd results.³

Appellant's Proposed Interpretation Would Render the Code Internally Inconsistent and Yield Absurd Results

Through counsel, either verbally or in writing, Appellant has posited at least two separate arguments in support of its contention that the improvements in their current location are Code compliant:

(1) Appellant has argued that, because Section 185-51.B. provides that swimming pools "may occupy a required yard or side yard," this means that a pool may be located in a "required [front] yard," i.e., within the front yard setback, and Appellant has further argued that requiring the pool to be at least 21 feet back from the front property line (because the 4.5-foot safety fence must be at least 18 feet from the front property line) would nullify this possibility. Related to this argument is Appellant's contention that the 4.5-foot safety fence requirement of Section 185-51.B. is separate and independent from the 3.5-foot restriction of Section 185-51.A. (and therefore, under this argument, the 3.5-foot and 7-foot restrictions of Section 185-51.A. do not apply to pool safety fences).

¹The Town maintains that Appellant's representatives indicated their assent to these requirements by submitting a drawing to the Town prior to the construction of the improvements showing a safety fence to be built 18 feet from the front property line and a pool to be built 21.5 feet from the front property line.

²Tony Ashburn & Son, Inc. v. Kent County Reg'l Planning Comm'n, 962 A.2d 235, 240 (Del. 2008).

³Tomei v. Sharp, 902 A.2d 757, 769 (Del.Super. 2006).

(2) Appellant has also argued that because a pool safety fence is not an "ornamental" fence, the restrictions of Section 185-92.A.(2) (which limit the height of ornamental fences within front-yard setbacks to 3.5 feet) do not apply to pool safety fences, and thus (given Appellant's arguments above regarding Section 185-51.A.) that there are allegedly no Code restrictions on the height of a pool safety fence located within a front yard setback.

Both of these arguments violate the principles of statutory interpretation noted above.

First, if the various provisions of the Code are to be read consistently with one another, then the 3.5 foot height restriction on fences within a front-yard setback must be read as applying to **all** fences, whether or not they are pool safety fences. Stated differently, if Sections 185-51.A., 185-51.B., and 185-92.A. are all to be read consistently, then fences greater than 3.5 feet in height cannot be permitted within front-yard setbacks, and pool safety fences must be located at least 18 feet from front property lines within the NR District.

Secondly, and perhaps more importantly, adopting Appellant's interpretation over the Town's would yield at least two absurd results:

(a) If the 3.5-foot height restriction did not apply to pool safety fences in front-yard setbacks, then there would be **no** height restriction on such safety fences,⁴ and property owners could construct pool safety fences within their front-yard setbacks up to a height of 35 feet.⁵

(b) If swimming pools were permitted within front yard setbacks, then all Town residents could construct swimming pools in their front yards as close as three feet to their front property lines.

⁴This is because, if the 3.5-foot front-yard fence restriction of Section 185-51.A. does not apply to pool safety fences, neither does the seven-foot general fence restriction of Section 185-51.A. Section 185-51.B. itself sets no **maximum** height restriction on a pool safety fence: instead, it provides that pool safety fences must be "at least" 4.5 feet high. Therefore, any height restriction for pool safety fences **must** be found in Section 185-51.A.

⁵This is the overall height restriction for all zoning districts in the Town. See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

November 8, 2013
Page 4

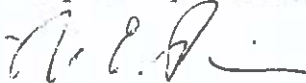
Since the primary purpose of applying the rules of statutory interpretation is to ascertain legislative intent,⁶ it is clear that the Commissioners could not have intended such absurd results when they enacted these requirements.

The interpretation that avoids these absurdities is as follows: the first sentence of Section 185-51.B. is concerned with the positioning of a swimming pool in a "required [rear] yard or side yard," since the sentence goes on to state that pools may be located no "closer than 10 feet to an interior side lot line or six feet to a rear lot line." Therefore, a swimming pool in a rear yard may be located within a rear setback (since the rear setback in every zoning district in the Town is greater than six feet⁷), and in a side yard a pool may or may not be located within the side setback (since side yard setbacks in the Town vary from 0 to 12 feet).⁸

Conclusion

The Code is clear: a swimming pool in a front yard must be surrounded by a 4.5-foot safety fence that must be no closer than 18 feet to the front property line (pushing the pool at least 21 feet back from the front property line). It is undisputed that the current fence is 15 feet from the front property line, and that the current pool is 18.5 feet from the front property line. Therefore, the as-built improvements are not compliant with the Code.

Very truly yours,



NOEL E. PRIMOS

cc: Richard A. Forsten, Esquire
Michael W. McDermott, Esquire
Mr. Marc Appelbaum, Town Manager

⁶Sussex County Dep't of Elections v. Sussex County Republican Comm., 2013 Del.LEXIS 29 (Del.)

⁷The rear setback in the Resort Residential and all business districts is 10 feet, and the rear setback in the NR and Planned Residential districts is 12 feet. See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

⁸See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

APPELLANT 114 CHESAPEAKE LLC'S PRE-HEARING SUBMISSION

This Appeal comes before the Town Commissioners in connection with a "Notice" issued by the Town Manager on October 11, 2013 alleging "setback violations" relating to a fence located at 114 Chesapeake Street (the "Property") and purporting to suspend the business license issued to the owner of the Property (the "Property Owner").

Both the Town Manager and the Town Attorney refused, despite repeated requests, to provide any legal basis for the alleged setback violations. That inexplicable and irresponsible refusal forced this appeal. Only after this appeal was filed did the Town Manager, through the Town Attorney, finally disclose his theory behind the Property's alleged "clear setback violations."

The Question on Appeal

With the benefit of independent counsel hired by the Town Commissioners (the "Council") to conduct tomorrow's appeal hearing, a narrow legal question has been identified for resolution:

Is the safety fence located at the Property *legal or illegal* based upon the two competing readings of the Town's Zoning Code that have been presented on appeal?

The Legal Standard Applicable to the Council's Consideration of the Question on Appeal

Because here the Council sits in a quasi-judicial capacity it is, respectfully, bound to the same applicable legal standard that a Delaware court would recognize. First, Council must determine whether the specific provision of the Town Code that governs the placement of a safety fence surrounding a pool is ambiguous, because if it is not, then the plain meaning of the statutory language controls.¹ The mere fact that the parties here disagree about the meaning or application of a code provision does not create an ambiguity.² Rather, an ambiguity arises *only* if the code provision can be read more than one way and *both* readings are reasonable.³ Finally, it is well settled under Delaware law that any ambiguity or uncertainty that arises in a zoning provision *must be decided in favor of the property owner*.⁴

The Plain Meaning of Section 185-51(B) Demonstrates That the Safety Fence is Legal.

The only provision of the Town Code governing the placement of swimming pools and safety fences is Section 185-51(B). That provision expressly *permits* an accessory swimming pool to "occupy a required yard" and specifically *requires* two additional minimum elements: a minimum 3 foot "walk space" and a minimum 4.5 foot "safety fence." Section 185-51(B) reads in its entirety:

¹ *Chase Alexa, LLC v. Kent Cnty. Levy Court*, 991 A.2d 1148 (Del. 2010).

² *Id.*

³ *Id.*

⁴ *The Commissioners of Bellefonte v. Coppola*, Del.Ch., C.A. No. 6005, Brown, V.C. (March 2, 1982), citing *Mergenthaler v. State*, 293 A.2d 287 (Del. 1972); *Dewey Beach Ent., Inc. v. Board of Adjustment of the Town of Dewey Beach*, 1 A.3d 305, 310 (Del. 2010).

Accessory swimming pools, open and unenclosed, may occupy a required yard or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of concrete, stockade wood or material of equal quality.

The Town Code at Section 1-16 defines the words “yard” and “setback” nearly identically:

YARD: The area extending between the lot lines, and the building set back lines...

SETBACK: An area extending from the lot lines to the building setback lines...

A “required yard” is the yard measured from the lot line to the setback line—the “least minimum depth” designated in a district’s bulk regulations.³ Section 185-51(B) expressly permits a swimming pool to be built within, or to “occupy,” the **required** 18 foot yard in the NR district, also commonly referred to as the front setback. Therefore, a swimming pool is expressly permitted to be built within, or “occupy,” the front setback, and the swimming pool’s required safety elements are likewise expressly permitted to be within, or “occupy,” the front setback. Notably here, the swimming pool at the Property was not built within front setback, or “required yard,” at all, but only its required walk space and safety fence occupy approximately three feet of the front setback. Accordingly, applying the plain language of Section 185-51(B) shows that the safety fence is legal.

The Town’s Interpretation Relies Entirely Upon A Code Provision That Does Not Apply To Accessory Swimming Pools or Required Safety Fences

After this appeal was filed, the Town Manager became compelled to rationalize, in writing, his cloak and dagger routine. He dispatched the Town Attorney, for the first time last week, to shed light on his rationale. The Town’s uninvited written response to the appeal, dated October 31, states in “conclusion” that:

The requirements of the Town Code are clear: (1) there must be a three-foot walkway between a swimming pool and the fence surrounding it; (2) the fence surrounding a swimming pool must be at least 4.5 feet in height; and (3) no fence higher than 3.5 feet is allowed within a front setback. Therefore, the improvements constructed on the Property are not compliant with the Code.

To the extent the Town’s rationale is even complete—which it is not—those requirements, separately stated, are indeed “clear.” And each of those requirements is “clear” in the context of the code provision in which they exist. **The problem is that one of those “clear” requirements exists in a an entirely different code provision** - a code provision that does not apply—*at all*—to swimming pools or safety barriers. And the other problem is that the Town’s conclusion intentionally avoids the clear provision (Section 185-51(B)) that expressly permits a swimming pool

³ See Definition of “SETBACK LINE or BUILDING SETBACK LINE” at Section 1-16: “A line parallel to the front or street line and distant from it the least minimum depth of a required front yard...”

and its required safety fence to “occupy” the front setback. So, if the Town’s position was intellectually honest it would state:

The requirements of the Town Code are clear: **(#) a swimming pool is allowed to be built within the front setback** (1) there must be a three-foot walkway between a swimming pool and the fence surrounding it; (2) the fence surrounding a swimming pool must be at least 4.5 feet in height; and (3) no fence higher than 3.5 feet is allowed within a front setback. Therefore, the improvements constructed on the Property are not compliant with the Code.

But the Town declines to acknowledge the plain language of Section 185-51(B) that expressly permits a swimming pool to “occupy” the front setback for at least two obvious reasons. First, it is inconvenient to their claim that the fence is a “clear” violation. Second, it renders absurd the Town’s argument that it is *actually illegal* to have a *code-required* safety fence within the front setback protecting a swimming pool that is permissibly within the front setback.

Looking in tandem at the plain language of each of the two separate code provisions relied upon by the Town further demonstrates the absurd result of trying to reconcile the “fences” referenced in them:

Section 185-51(A) permits—within the front setback—“A hedge, fence or wall not more than 3.5 feet in height...for residential use”

Section 185-51(B) permits—within the front setback— a swimming pool that “...shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of stockade wood or material of equal quality.”

Because statutes are to be construed as a whole, and in a way that gives effect to each provision while avoiding any absurd result, the Town’s interpretation must fail.⁶ Simply stated, the Town’s interpretation requires the Council to accept that the drafters of these code provisions intended for the accessory use of permissible hedgerows of bushes in one section to also mean the same thing as a required safety stockade fence referred to in a another section.

Where it is reasonably possible, Delaware law states that arguably conflicting provisions should be harmonized. But the two accessory “fences” described in the two code sections above ***are not arguably in conflict and cannot be harmonized*** because they are different accessory fences meant for different accessory uses. Attempting to reconcile those two code sections by assuming that they separately refer to the same kind of fence—creates an equally absurd result as the one set forth above. The two fences are intended to be different accessory fences and *both* are legal within the front setback.⁷

The Zoning Code Expressly Permits a Swimming Pool And Its Required Walk Space and Safety Fence Elements to “Occupy” the Front Setback

⁶ *Doroshov, Pasquale, Krawitz & Bhaya v. Nanticoke Mem. Hosp., Inc.*, 36 A.3d 336, 343 (Del. 2012) (quoting *Moore v. Wilm. Hous. Auth.*, 619 A.2d 1166, 1173 (Del. 1993)).

⁷ Even if the Council accepts that the conflicting provisions can be reasonably reconciled, it must be reconciled in a way that favors the Property Owner. See fn. 4 above.

The Property Owner anticipates that the Town Manager will offer an alternative interpretation concerning the setback violations—a theory not yet presented in writing to the Property Owner or the Council. The Town’s legal argument avoids directly addressing the issue – but seems to suggest that Section 185-51(B) *does not actually permit* an accessory swimming pool to occupy the front setback at all, but rather only permits a pool “to occupy a required yard or side yard” and proposing that “required yard” must be read to *only* mean “required rear yard.” The first sentence of Section 185-51(B) reads:

Accessory swimming pools, open and unenclosed, may occupy a required yard or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line.

But the absence of qualifying language in between the words “required” and “yard” cannot be read, fairly or reasonably, to exclude the word “front” or to include the word “rear.” A further proviso qualifying setbacks for side and rear lot lines is included – while none is specifically referenced for front lot lines. But the absence is explained by qualifying setbacks that result from the requirement for parking spaces, driveways or sidewalks in the front setback. The only reasonable reading is that “required yard” means both front and rear yard. The unreasonable reading declares that it *only* means “required rear yard.” Where the drafters of the Section 185-51(A-F) intended to specifically refer to a “front” or “rear” yard in connection with the various accessory uses– they expressly did so. For example:

Section 185-51(C) governs accessory storage of a boat or camper trailer... but it **“shall not be allowed in a front yard.”**

Section 185-51(D) governs accessory storage buildings... that **“may be constructed in a rear yard.”**

Section 185-51(E) governs accessory use of satellite antenna... which **“shall be permitted... only in the rear yard.”**

In other words, where the drafters of Section 185-51(A-F) actually intended to limit the accessory uses of certain elements to *only* a front yard or a rear yard—they so stated it expressly. The plain language of Section 185-51(B) cannot be fairly read to *prohibit* accessory swimming pool use in the front yard any more than it can be fairly read to *permit* an accessory swimming pool use only in the rear yard. It simply does not say either one. Thus, the plain reading of the reference to “required yard” in Section 185-51(B) is that it means both front and rear yard/setback.

The Property Owner Must Prevail As A Matter of Law

Section 185-51(B), plainly read, permits a swimming pool to “occupy” a front setback and requires a minimum 4.5 safety fence surrounding that pool. For that reason alone, the safety fence at issue here is legal. The Town’s claim of illegality is based upon its reading of an entirely different code provision - Section 185-51(A). That different interpretation does not create an ambiguity in Section 185-51(B)—the safety fence at issue here is still legal. Even if Council believes that the Town’s different interpretation is reasonable, Property Owner’s reasonable interpretation prevails as a matter of law.



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

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

APPLICATION FOR A PERMIT

Answer all blank spaces accurately & thoroughly. Incomplete, inaccurate, & illegible applications will be returned.

PROPERTY OWNER(S) NAME(S): 101 Carolina LLC	
MAILING ADDRESS: 19606 Coastal Hwy 103 Rehoboth DE 19971	
PHONE #: 3028530935	EMAIL: mlschieck@gmail.com

A PERMIT IS REQUESTED FOR PROPERTY LOCATION listed below:

911 ADDRESS: 101 Carolina street Dewey Beach DE

PERMIT REQUEST INFORMATION

PROVIDE A DETAILED DESCRIPTION OF THE WORK TO BE DONE:
 Intall inground pool 11'6" wide x 24 long located 18'1" from the front yard set back, approx 12 feet from the east corner set back (10 feet required) and 10 feet from the west side yard sset back.
 There will be a 3 foot walkway around the pool.
 Install pool safety fence positioned 10 feet from the front property line. Fence construction will be wood and height will meet requirement of 4'6".

The safety fence will run along the front of the pool as depicted at 4.5 high and along the east and west side as depicted at 4.5 high. The fence on east and west sides will be constructed at a height of 7 feet at the point measured 18'1" from the front property line and continue to the rear of the lot and along the back lot property line.

see attached site plan, contract and Pool construction plan

PROVIDE THE TOTAL COST OF THE WORK: (including all LABOR AND MATERIALS): \$ 81,365.68 pool
7,900 fence

All costs ≥\$15,000 require a \$150.00 application fee payable with this application.

BUILDER / CONTRACTOR		
NAME: Coastal Pools	PHONE: 443 926 6945	DEWEY BUSINESS LICENSE #: on file
ALL CONTRACTORS, SUBCONTRACTORS and TRADES ARE REQUIRED TO HAVE A CURRENT TOWN BUSINESS LICENSE Copies of signed contract(s) between the property owner(s) & ALL contractor(s) must be included with this application.		

(If applicable):
 SIGNATURE OF ASSOCIATION (CONDO/HOA) REPRESENTATIVE: _____
 PRINT NAME OF ASSOCIATION (CONDO/HOA) REPRESENTATIVE: _____
 CONTACT PHONE #: _____ DATE SIGNED: _____

I certify that I am the owner of record for this property, OR I have been authorized by the owner of record to make this application. This information is true and correct to the best of my knowledge.

SIGNATURE OF APPLICANT: Marcia Schieck DATE SIGNED 12.3.25
 PRINT NAME Marcia Schieck
 APPLICANT EMAIL: mlschieck@gmail.com CONTACT PHONE #: 302-252-0955

TAX DISTRICT ; 334	MAP :	PARCEL :	UNIT :
BUILDING PERMIT #	FLOOD ZONE:	+ 2 FOOT FREEBOARD MANDATORY or OPTIONAL 3 FOOT FREEBOARD	
FEE: \$	<input type="checkbox"/> Final building permit fee analysis upon completion of project.		Rev. 07/2025

DIGITAL APPLICATION SUBMISSION: building@townofdeweybeach.com OR drop off to TOWN HALL



New Construction Proposal Form 3502-1

Issue Date September 17, 2025

APPROVED

PREPARED BY

Chris Conley
 Coastal Pools
 (410) 310-2447
 chris.conley@coastalpoolbuilders.net
 500 Saddler Rd, Grasonville, MD 21638, USA

PREPARED FOR

Marcia Schleck
 Marcia Schleck
 (302) 853-0935
 marcia@luxuryvillasbythesea.com
 Carolina St, Rehoboth Beach, DE 19971, USA

NEW CONSTRUCTION PROPOSAL FORM DETAILS

101 Carolina Street
 Carolina St, Rehoboth Beach, DE 19971, USA

Welcome Message

Welcome to the Coastal Pool family! Here at Coastal Pools, we are looking forward to beginning your project as much as you are. This proposal is designed to help you better understand all the details of your specific project as well as provide you with contact information for each of your partners for each step of the process. We will guide you from the beginning; design phase, to the very end; relaxation.

Once your project is completed, you will receive another packet from us regarding Warranty Information, Care instructions, as well as a complete and detailed list of all your specific selections so you may reference them for future.

By signing below you agree to the design, work description, features, options upgrades and construction selections for your project as included in this Proposal and you agree that you have read and agree to the terms of the Coastal Pools Construction Agreement attached hereto and made a part hereof (Exhibit A). Your entire agreement with Coastal Pools regarding this project consists of this Proposal, the Exhibits to this Proposal and the Construction Plans agreed to between the parties.

DESCRIPTION	QTY	UNIT PRICE	TOTAL
Permitting			\$1,785.71
Delaware Permitting Permitting and Design Fee's associated with your County, City or Township. Jobs requiring a professional stake out may incur additional charges. Stake out prices range from \$750-\$2,000. Some municipalities and or properties may require additional time, fees or phases to obtain your permit. These can be, but are not limited to planning and zoning review, variances, buffer management plans, grading plans, site containment (silt fence), Storm water management plans, and additional fees sometimes associated with building a new home in conjunction with a new pool. While we try to predict as many of these as possible we cannot always know when these will occur. When they do we will work with you as best we can to keep the process smooth, but additional fees associated with these issues will be passed onto the homeowner.			\$1,785.71
Base Pool Shell 11.5' x 24', 5' Deep with Full Width Steps			\$43,102.47
Pool Excavation Includes excavation of pool with one load of stone placed on floor of pool. Additional dig charges will apply for more complex digs and digs that take more than one day. Over dig situations will typically exceed one day, your project manager will discuss this with you further during your pre-construction meeting.			

Forming And Short Plumb

During the forming and short plumbing phase of your project a Coastal Pools Team will be on site for 1-2 days depending on the complexity of your project. During this time, we will level and form the shape of your pool and install the internal plumbing of the pool. Over digs, pools elevated more than 2', or more complex digs in general may require additional time, materials, and charges to complete. Your Project Manager, or Designer will discuss these with you if necessary.

Steel

Standard pool steel application covers the engineer spec'd placement of rebar in your pool to reinforce the structure. This is calculated based on square footage and features. If additional steel is needed on your project it will be discussed with you by your designer, and or project manager.

Concrete Application For Pool Shell

Standard pool shell concrete will be either Gunite or Shotcrete. Both options are concrete applications and pneumatically applied to achieve a minimum of 4,000 PSI cure strength. Property must have water source for concrete application.

***Shell must be watered twice per day for first 10 days.**

Miracote XL Waterproofing

Given the rise in cases of ASR (concrete Cancer) across the country Coastal Pools has decided to take the extra step of waterproofing every pool shell to help protect the concrete against ASR. In addition to this process Coastal Pools always uses a concrete product containing Fly Ash, or Slag to help prevent the start of ASR in our concrete. We urge any of our customers that are considering buying a new pool to educate themselves on what ASR is and make sure that no matter who you use to build your pool that they are taking all of the necessary precautions to insure your pool will stand the test of time and not fail prematurely.

276 Square Feet

Tile And Coping Installation

Labor charges for the installation of your tile and coping. Certain materials or features may require additional installation charges. Final pricing will be confirmed at your design and selections meeting.

Electric For Base Pool

Includes a 50 Amp feed up to 25ft from house panel to pool equipment panel, wiring of pool pump and mounting pool equipment panel to house or treated post. Additional equipment and or longer runs will be priced separately. * Your pool panel must be within 5' of pool equipment or additional charges will apply.

Electrical Bonding For Pool And Patio
 Proper equipotential bonding of the pool, pool equipment, and patio surrounding the pool is required by code. Coastal Pools will provide the necessary items to satisfy this code, except for if your local code requires a deck bonding grid. If this is required, we will provide at an additional charge.

***If Coastal Pools is not installing the patio it is the homeowners responsibility to ensure we can get the bonding installed and inspected prior to patio.**

Plaster Prep
 Installation of all wall fittings and cleaning of the pool shell in preparation of plaster.

Pool School/Start Up
 Each new pool includes a startup and pool school. We strongly suggest customers be present for startup and receive pool school at the same time. Coastal Pools provides pool school only once.
 Each new pool will include the following tools: net, brush, telescopic pole, vacuum hose, test strips and vacuum head.
 Each new pool will include the following chemicals: Alkalinity Up, Chlorine Tabs, Calcium Chloride, Stabilizer and Muriatic Acid.

Pool Coping **\$1,340.76**

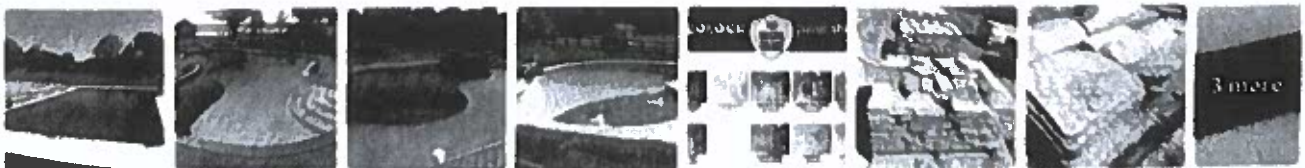
Standard Coping 71 Linear Feet \$18.88 **\$1,340.76**

There are many options when it comes to coping. We have included some of our most popular options in your standard allowance. Other options are available at an additional cost. Standard options included are:

Tumbled irregular bluestone- A great natural stone option for coping. When bluestone gets tumbled it creates a smooth surface with rounded edges perfect for around a pool. Available in full color, or true blue. Full color will provide colors ranging in the blues and greys with some hints of browns and tans. True blue will eliminate the tans and browns and be just the blues and greys. This is a natural stone as such color variation and imperfections are normal and a part of the character of the material.

Clay Brick- Available in Plantation Red, Chino, or Autumn Leaves. This is a good durable option that comes with a full bullnose. The smooth texture of the brick and the full bullnose make this material comfortable on the hands and legs when grabbing the coping, or sitting on the side of the pool.

Nicolock Fullnose Paver Brick- Available in 17 colors included in the standard allowance (more colors available for an additional charge). Bullnose paver brick is a great option to install around your pool especially if you are looking to match a paver patio installed around your pool.



Pool Tile

\$609.13

Porcelain Waterline Tile

40 Square Feet

\$15.23

\$609.13

There are many options for tile included in the standard budget. Attached are pictures of the most popular options when choosing from the standard allowance. There are many more available. The material allowance is \$10.71 per S.F. Most standard 6"x6" stone look tiles from NPT are included. Please feel free to view more options at the link below.

<https://www.nptpool.com/tile/>

If you feel like these tile options or similar will suit your project, please select this group.

Otherwise please view some of the additional Porcelain and Glass tile options.



Dirt Removal

4 Each

\$285.72

\$1,142.86

Dirt Removal

4 Each

\$285.71

\$1,142.86

Dirt Removal is based on a per load rate and is an estimate until the day of excavation. We estimate this number as close as possible. Price assumes we can find a free dump site. If we are unable to secure a free dump site in close proximity of your project a change order will be delivered for the dump fees.

Equipment/Plumbing Options

\$7,889.18

All pool equipment packages are for installation within 50' of the pool. The pool equipment pad will be a poured in place concrete pad, and location will need to be confirmed with your Designer or Project Manager. There are areas where code will require the equipment to be installed on an elevated deck. If so additional fees will apply. See the groups below to select the equipment package you prefer for your pool project.

Standard Pool Equipment/Plumbing

1 Each

\$7,889.18

\$7,889.18

Package With Salt Chlorine System
Equipment package includes a 1 hp Pentair Whisperflo pump, Pentair Clean and Clear 420 Cartridge filter, Pentair IC40 salt chlorine system, and an Intermatic dual timedlock with load center. Plumbing includes up to 50' of plumbing trench, water bonding and associated valves.



Pool Cleaner

\$586.17

Polaris Skimbot Solar Cleaner
 The solar powered Polaris® Skimbot® surface cleaner removes floating debris from the pool's surface before it can sink to the floor or reach your filtration system.
 Say So Long to Surface Debris
 Complete Pool Surface Coverage
 Powered by the Sun
 Single-Button Operation
 2L of Debris Collection

1 Each

\$586.17

\$586.17



Heaters

\$5,610.41

Pentair MasterTemp High Performance Gas Heater 400K BTU
 The compact design and quiet operation of the Pentair Mastertemp 400 gas pool heater won't intrude on your swimming and poolside enjoyment, but will heat more efficiently than other units twice as big and loud. Price includes the heater, plumbing into the pool equipment with a valved bypass, and electrical connections.

1 Each

\$5,610.41

\$5,610.41

****All gas supply and venting connections will need to be performed by others. Your contractor will need to pull the gas permit for this part of the project. Coastal pools recommends contacting your gas supplier to handle these connections, and we will be happy to coordinate these phases with the installer of your choice.
 Home Owner's responsibility to confirm with Natural Gas or Propane Provider to verify their current meter/tank is sufficient for this 400k BTU Unit****



Pool Lighting

\$1,971.41

12Watt LED Light Package
 Light package includes Jandy Hydrocool LED Light with up to 100' of cord, 100-Watt transformer for up to 6 lights and up to 50' of conduit per light. Transformer must be upgraded to 300 Watt when utilizing more than 6 lights.
***Additional charges will apply for lights longer than 100' and conduit runs over 50'.**

2 Each

\$985.71

\$1,971.41



Grading

\$3,492.89

Grading

\$3,492.89

Includes rough grade around pool prior to patio, trench backfill and final grade of disturbed area with contractor seed and straw. Price includes up to one load of topsoil for final grading. Any fill dirt needed will be priced separately.

**If access is excessively long (100' or more) additional grading charges may apply.

**If additional areas of disturbance beyond 20' around immediate pool/patio area are created additional charges may apply to restore these areas

*Sod options available at an additional cost.

Patio

\$0.00

Patio Options

\$0.00

Dry Laid Paver Patio

1 Each

\$0.00

\$0.00

No Patio or Expansion joint is currently Quoted, Coastal Pools provides both services and can handle if needed for additional costs.



Plaster Finishes

\$13,018.80

Choose your preferred pool finish below.



Pebble Sheen Tier 1

276 Square Feet

\$47.17

\$13,018.80

Our most popular pool finish features a blend of slightly smaller pebbles for a more refined texture, while still retaining the natural beauty and inherent qualities of a PebbleTec® pool finish. Tier one finishes include White Diamond, Desert Gold and French Grey.

10yr Manufacturer Warranty

<https://peboretec.com/>



Microglass

\$244.46

Microglass SetNCure

276 Square Feet

\$0.89

\$244.46

MicroSetNCure is a plaster enhancing admixture that reduces color loss, craze-cracking, efflorescence, etching and cloudy water from new plaster dust.

<https://www.microglassllc.com/>



Winter Covers

\$0.00

- Not Applicable**
Select this line item if you don't want anything from this selection group.

\$0.00

Water

\$571.43

Water Delivery

1 Each

\$571.43

\$571.43

Pricing is an estimate for each 6,000 gallon load of water. With fuel surcharges always fluctuating and each area varying in price based on distance the water has to be trucked we have estimated this price as best we can, but it is possible there could be additional charges for water once the final bill is received. Please note, not all properties are accessible via a water tanker. Your property may be evaluated at any point during construction and deemed not suitable for a water tanker to access. If this is the case we will try to coordinate smaller trucks, (which do cost extra) if none are available you may need to fill the pool from your hose.

Disclaimer

\$0.00

Excavation/Utility Mitgation

Prior to construction of your pool Coastal Pools and or its sub contractors will contact Ms Utility to have all public utilities marked. Public utilities are typically defined as a utility line coming from public easements to your home. Any utilities not marked by Ms Utility are not the responsibility of Coastal Pools or its sub contractors. These utilities may be, but are not limited to underground septic systems, well lines, pier electric/water supply garage electric, Irrigation etc. If you have known private utilities and would like to have them located this can be done for an additional fee. If any utilities or obstructions are found during construction a Coastal Pools employee will communicate the cost to mitigate or re-route these and also let you know how this may effect your schedule if at all.

\$0.00

EXHIBIT 3

EXHIBIT 3A

IN RE: TOWN COUNCIL MEETING OF THE TOWN OF
DEWEY BEACH, DELAW.

AUDIO TRANSCRIPTION OF RECORDED
TOWN COUNCIL MEETING OF THE TOWN OF
DEWEY BEACH, DELAW.
NOVEMBER 9, 2013

SPEAKERS:

JANE PATCHELL

NOEL PRIMOS

DIANE HANSON

GARY MAULER

JOHN FORSTEN

MICHAEL MCDERMOTT

1 (RECORDED AND TRANSCRIBED)
 2
 3 MICHAEL MCDERMOTT: She's not happy.
 4 She's not here. So.
 5 MAYOR DIANE HANSON: Again. She's like
 6 (indiscernible).
 7 BOARD MEMBER: (Indiscernible). Someone
 8 stole my (indiscernible) one minute or (indiscernible).
 9 Okay. (Indiscernible). Are we recording --
 10 MICHAEL MCDERMOTT: (Indiscernible) knows
 11 this opportunity (indiscernible).
 12 MAYOR DIANE HANSON: (Indiscernible) right
 13 now?
 14 MICHAEL MCDERMOTT: Yeah.
 15 MAYOR DIANE HANSON: Okay. Our attorneys
 16 are here. Right? Okay. I guess we can call the
 17 meeting to order here.
 18 At this time, the town council will hear an
 19 appeal brought by 114 Chesapeake Street.
 20 BOARD MEMBER: (Indiscernible).
 21 MAYOR DIANE HANSON: Oh, yeah. Oh, yeah.
 22 Thank you. We have to have a motion to come out of
 23 executive session.
 24 BOARD MEMBER: I say move.
 25 MAYOR DIANE HANSON: A second?

1 property owners in the town, through their legal
 2 counsel, will make a presentation to council sitting --
 3 setting forth their position as to why a zoning code
 4 violation exists or does not exist.
 5 Each side will have no more than 30 minutes
 6 to make their presentation, unless such time runs
 7 longer, due to questions from council members.
 8 Council members may ask questions during the
 9 presentation or any time thereafter if they so choose.
 10 Because the property owner is the appellant,
 11 the property owner should go first, and May also has
 12 saved some of their 30 minutes to respond to the town's
 13 presentation. So, Mr. McDermott, at this time, I need
 14 to ask you, --
 15 MICHAEL MCDERMOTT: (Indiscernible).
 16 MAYOR DIANE HANSON: -- would you prefer
 17 to reserve some of your 30 minutes for rebuttal?
 18 MICHAEL MCDERMOTT: I will.
 19 MAYOR DIANE HANSON: All right.
 20 MICHAEL MCDERMOTT: I'm not sure yet.
 21 (Indiscernible) first. Yeah. Probably about 20
 22 minutes.
 23 MAYOR DIANE HANSON: So about 20 and ten?
 24 MICHAEL MCDERMOTT: (Indiscernible).
 25 MAYOR DIANE HANSON: Okay. At the

1 MICHAEL MCDERMOTT: Second.
 2 BOARD MEMBER: Second.
 3 MAYOR DIANE HANSON: All in favor?
 4 COUNCIL MEMBERS: Aye.
 5 MAYOR DIANE HANSON: Thank you. Now we
 6 can call the meeting to order. Sorry. We were talking
 7 about that and then forgot about it again.
 8 All right. So at this time, the town
 9 council will hear an appeal brought by the owners of
 10 114 Chesapeake Street, LLC and the owner located at 114
 11 Chesapeake Street.
 12 The appeal is brought pursuant to Section
 13 11710 of the Town and appeals from the October 11th,
 14 2013 letter from the Town Manager to the property
 15 owners stating that due to the property not being in
 16 compliance with the zoning code, the rental license for
 17 the property would be suspended.
 18 Because of that, this is a quasi-judicial
 19 proceeding and an appeal. The town commissioners sit
 20 in a judicial capacity.
 21 This is not a public hearing, where any
 22 member of the public is free to speak or address
 23 council. Rather, this proceeding will be conducted as
 24 follows.
 25 Each of the parties to this matter, the

1 conclusion of each side's presentation, the town
 2 council will deliberate.
 3 Council's deliberations will be public
 4 unless issues arise, which allow for an executive
 5 session.
 6 If the council's desire to reach a
 7 determination on the question before it today.
 8 However, council reserves the right to go into recess,
 9 come back at a later date for further deliberations.
 10 If this matter is recessed, no council
 11 member will discuss it with any member of the public,
 12 the Town or each other until coming back into public
 13 session.
 14 In order to avoid any appearance of
 15 impropriety or undue influence or bias, the council has
 16 retained Special Counsel to advise it in this matter in
 17 lieu of its regular town attorneys.
 18 And that would be Richard Porson over here.
 19 This is being done for appearance's sake and is not
 20 meant as any reflection on the town's attorneys. So
 21 with that, I would ask Mr. McDermott again.
 22 MICHAEL MCDERMOTT: Thank you. Good
 23 afternoon. May it please the council. My name is
 24 Michael McDermott, of the law firm Berger Harris, and I
 25 represent Mr. Hanna Winkel, the property owner in this

1 appeal, which is an appeal from a notice.

2 First of all, thank you for hearing us.
3 This is an appeal from a notice alleging illegal
4 conduct by my client in the placement -- the illegal
5 placement of a safety fence at his property and the
6 suspension of his business license.

7 The town first provided its legal theory for
8 that illegal conduct last week. Thus began the tree
9 killing campaign, regrettably, that you have in front
10 of you all of the paper.

11 And unfortunately, we lawyers are good at
12 that. But that's because a record needs to be made.
13 Clear record needs to be made, and a fulsome record
14 needs to be made.

15 And that's because there's so much at stake
16 here. My client's business license is at stake, my
17 client's livelihood is at stake.

18 Due process for every license holder, for
19 every property owner in this town is at stake. And the
20 credibility of the town and its officials is at stake.

21 My clients are incurring ongoing damages as
22 a result of this action, and we ask that it be resolved
23 today, respectfully.

24 This compels me to briefly address a whisper
25 campaign that's going on around town about how my

1 disturbs your neighbors with their guests.

2 Responsibility above all. You don't have to
3 be friends, but you do have to be considerate and
4 responsible.

5 In the conduct of your affairs, in the
6 conduct of yourself and your guests and your rancher,
7 responsible with the condition and maintenance of your
8 property, responsible with the improvements that you
9 make to your business property and to your residential
10 property.

11 Now, as we all know, this was set in motion
12 by an email complaint by a neighbor to the town
13 manager.

14 And if the property owners had been made
15 aware of that, they would have walked down the street
16 to their neighbor and said, how can we address your
17 concerns about our undertaking of responsible
18 improvement of our property as your neighbor?

19 They would have shown him the plans and the
20 permits to improve two rundown cottages next to each
21 other.

22 And they would have addressed those
23 concerns. Any concerns responsibly and directly.

24 The neighbor then filed a complaint publicly
25 with the Board of Adjustment, and the town manager

1 client sought to trick the town, and that doesn't make
2 any sense.

3 My client's invested too much time, too much
4 money in his business, too much time and money in
5 improving his property and properties throughout the
6 town. Too much time and money to engage in trickery.

7 Besides the narrow legal question that
8 you're being asked to decide today, is defense legal or
9 illegal, under the current language of the zoning code?

10 If you'll indulge me, it also involves
11 another question that underpins the entire debate.
12 What do you expect from your neighbors?

13 Especially in a little town like this where
14 every property is adjacent, every property owner is
15 really an adjacent owner.

16 They're inextricably bound to each other.
17 Your fellow business owners, your fellow town officials
18 and fellow town employees, your fellow dog lovers.

19 And I say what we expect from our neighbors
20 is courtesy, punctuated by responsibility.

21 The courtesy of a waive, the courtesy of a -
22 - I kept an eye on your place while you were out of
23 town or while a storm came through.

24 The responsibility to clean up after your
25 dog, or to not let your dog bark all night so that it

1 struck the names of that manager out of those
2 neighbors, out in black marker, so that my client could
3 not walk up the street and identify and address
4 responsibly with that neighbor. They were denied the
5 ability to do that.

6 And they were denied the ability to talk to
7 their neighbor about the concerns, the concerns that
8 the town has now raised in their legal briefs to you.

9 Concerns like whether my clients intended to
10 build a pool three feet from the street line with a 35
11 foot safety pool fence around it.

12 And that doesn't make sense. That's where
13 we are. That's what we're down to in connection with
14 this appeal.

15 The argument that if the code permits the
16 property owner here to construct the improvements, the
17 way that he did lawfully than other, less responsible
18 neighbors, will all build three foot setback pools in
19 the front yard with 35 foot pool safety fences.

20 That's a boogeyman argument. That's a straw
21 man argument. It's not a legal argument based upon
22 plain statutory language.

23 If the town believes that the code as it's
24 currently written, creates the impractical possibility
25 that someday irresponsible and inconsiderate property

1 owner will build a 35 foot pool safety fence in their
 2 front yard, three feet from the street, the orderly
 3 mechanism for the Town to address that is an amendment
 4 or clarification to the currently existing code.
 5 What the straw man argument does not do is
 6 render the current fence illegal. I'm going to reserve
 7 the balance of my time for rebuttal, and I'm going to
 8 ask Ms. Patchell to address the zoning code
 9 specifically because it's the Town's threshold burden
 10 to show that my client has acted illegally.
 11 Their burden to prove beyond a doubt and
 12 without ambiguity that illegal conduct. It's a sacred
 13 burden that the Town must meet, because it deprives my
 14 client of his business license.
 15 It interrupts his livelihood with his home
 16 and his property, and it's causing him both money
 17 damages and other irreparable damages.
 18 And likewise, respectfully, it's not the
 19 town council's burden or obligation to demonstrate the
 20 illegal conduct of my client.
 21 And it's certainly not the property owner's
 22 burden to disprove allegations of illegal conduct.
 23 Although we've done so, we've disproven it
 24 in our papers to you, and we've done so at great
 25 expense to my clients.

1 You said (indiscernible) --
 2 MICHAEL MCDERMOTT: No.
 3 GARY MAULER: Okay. And one other
 4 question in regards to this offense can be 35 feet tall
 5 (indiscernible), and this will be a question for Noel
 6 as well. Is there no other restriction on fence height
 7 in the code?
 8 MICHAEL MCDERMOTT: It's Mr. -- it's Mr.
 9 Primos's argument --
 10 GARY MAULER: Okay.
 11 MICHAEL MCDERMOTT: -- to address. Thank
 12 you. And it's a burden to me.
 13 NOEL PRIMOS: I would point out that the
 14 town was informed that the sole subject of this hearing
 15 was the legal question of whether the improvements in
 16 this portion is ascending was whether the improvements
 17 that are located at 114 Chesapeake Street here in Dewey
 18 Beach are compliant with the code.
 19 The appellant's attorney has brought in a
 20 number of other issues. I would like to -- opportunity
 21 briefly to respond to those, even though they were not
 22 the subject of today's hearing.
 23 First of all, it's important for the
 24 commissioners to remember that when the property owner
 25 applied for a building permit to construct a swimming

1 I'm going to repeat that. It's not the
 2 property owner's burden to disprove allegations of
 3 illegal conduct.
 4 That's unfair. It's inequitable. It's
 5 arguably un-American. It's no way for the Town,
 6 respectfully, to apply its zoning code.
 7 And it's no way for a town to treat its
 8 citizens under the zoning code.
 9 And with that, Mr. Primos, I'll reserve the
 10 balance of my time for rebuttal.
 11 GARY MAULER: (Indiscernible) I'll ask one
 12 or two questions for the record, if I may. Just so the
 13 record is clear, because I want to make sure there are
 14 no facts in dispute.
 15 And so, just for my own edification, and so
 16 the record is clear, there is a fence around the pool,
 17 right?
 18 MICHAEL MCDERMOTT: That is correct.
 19 GARY MAULER: It is four and a half tall?
 20 MICHAEL MCDERMOTT: That's correct.
 21 GARY MAULER: And at its closest point to
 22 the front of the property, it is 15 feet?
 23 MICHAEL MCDERMOTT: It's the -- yes. As
 24 according to the documents that are in front of.
 25 GARY MAULER: Okay. Can you dispute that?

1 pool and a fence at 114 Chesapeake Street, part of that
 2 application, the property owner submitted a drawing.
 3 And I believe you've seen a copy of this.
 4 This is a larger version. Mr. Forsten, would I be
 5 allowed to --
 6 ATTORNEY JOHN FORSTEN: Sure.
 7 NOEL PRIMOS: -- distribute this? Okay.
 8 ATTORNEY JOHN FORSTEN: Also a copy for
 9 Mr. McDermott?
 10 NOEL PRIMOS: Yes, I do. I do.
 11 GARY MAULER: We're. Yeah.
 12 MICHAEL MCDERMOTT: I can -- I mean, this
 13 is a -- this is not a disputed fact. They have these
 14 papers in front of -- they have the plant in front of
 15 them.
 16 It's already been submitted. Was submitted
 17 in connection with our papers?
 18 GARY MAULER: No, no. But if he wants to
 19 put it in front of them in connection.
 20 MICHAEL MCDERMOTT: And I would point out
 21 this is a larger version of what the commissioners
 22 have. So it's easier to read. Thank you.
 23 GARY MAULER: (Indiscernible).
 24 MICHAEL MCDERMOTT: Sure. Okay.
 25 (Indiscernible).

1 NOEL PRIMOS: So this was the drawing that
 2 was submitted by the appellant when the building permit
 3 was applied for.
 4 And as you see at the top of the drawing is
 5 Chesapeake Street, it maybe a little bit difficult to
 6 see, but there is, toward the left side, there's a
 7 measurement of 18 feet between the property line and
 8 the fence.
 9 And then if you see toward the right hand
 10 side of the drawing, there's a measurement showing of
 11 21.5 feet between the property line and the fence.
 12 So this was submitted in connection with the
 13 building permit application. It shows that the
 14 property owners were aware of the requirements of the
 15 code when they submitted their building permit
 16 application.
 17 They were aware that the fence -- the safety
 18 fence surrounding the pool needed to be at least 18
 19 feet from the front property line because it was 4.5
 20 feet high.
 21 They were aware that therefore, because of
 22 the requirement of the three foot wide walkway between
 23 the fence the pool needed to be at least 21 feet from
 24 the property line.
 25 The building permit was issued on that

1 feet from the property line.
 2 It's 15 feet. And the pool is not 21.5 feet
 3 from the front property line, it's 18.92. That's the
 4 sole question before you.
 5 But actually -- and I think there's been
 6 perhaps some confusion, perhaps an attempt to confuse.
 7 I'm not sure. On some of the papers
 8 presented by the appellant. The only question before
 9 this quasi-judicial body, the only question before you
 10 today, is whether the fence, or whether a pool safety
 11 fence, 4.5 feet in height, may be constructed within a
 12 front setback.
 13 The question of whether a pool may be
 14 constructed within a front yard setback is not before
 15 you today. Despite what the appellants may be saying.
 16 And the reason for that is because the
 17 swimming pool constructed by the appellants is not
 18 within the front setback.
 19 The Town is not saying that. The swimming
 20 pool that was actually constructed is 18 feet from the
 21 front property line. The front setback is 18 feet.
 22 The pool as constructed is not within the
 23 front setback, so the commissioners need not decide
 24 today whether the code permits a swimming pool to be
 25 constructed within a front setback.

1 basis. In a sense, it was like a contract. This is
 2 what the property owners bargained for.
 3 This is what they asked for. This is what
 4 they represented to the Town that they would build, and
 5 they did not build it. And that is the issue here.
 6 And I would also point out that with regard
 7 to neighboring property owners who bring complaints,
 8 that is a right of every citizen in this country.
 9 To inquire about the enforcement of rules,
 10 laws and regulations, to submit complaints to public
 11 officials.
 12 And they should not be made to feel like
 13 criminals for doing so. Rules mean something. If we
 14 be -- if we fail to enforce rules in our society, then
 15 we descended into anarchy. And rules are important.
 16 Now, the -- as I said, the issue before and
 17 the sole issue before the commissioners today is
 18 whether the improvements constructed, actually
 19 constructed at 114 Chesapeake Street are compliant with
 20 the town code.
 21 The improvements that were actually
 22 constructed were not constructed consistent with the
 23 drawing that you had before you.
 24 It's undisputed that the survey performed on
 25 September 25th of 2013, showed that the fence is not 18

1 The only question before the commissioners,
 2 and the only question that the commissioners need to
 3 decide today, is, is a pool safety fence, 4.5 feet in
 4 height, allowed to be constructed within the front
 5 setback?
 6 GARY MAULER: No. Let me just make sure I
 7 understand --
 8 NOEL PRIMOS: Sure.
 9 GARY MAULER: -- and I'm going to ask
 10 other questions (indiscernible) --
 11 NOEL PRIMOS: Sure.
 12 GARY MAULER: -- back up. I'm not taking
 13 sides, but is that accurate? I mean, if your reading
 14 of the code is correct, that a 4.5-foot fence cannot be
 15 constructed within 18 feet of the street, and I have to
 16 have a fence around a pool that's at least 4.5 feet
 17 tall, doesn't that mean I can't put a pool closer than
 18 18 feet to the street, because I'd have to have a fence
 19 closer than 18 feet to the street?
 20 NOEL PRIMOS: That's a result of that
 21 interpretation. But my point is that, and of course,
 22 Mr. Forrest (phonetic) is aware that judicial bodies
 23 should not reach questions, particularly questions of
 24 interpretation of the code that it is not required to
 25 reach.

1 And my point is simply that the only
2 question of interpretation of the code that the
3 commissioners need to reach today is whether a fence
4 4.5 feet in height may be constructed within a front
5 setback.

6 Now, the town's position, of course, is that
7 the 3.5-foot height restriction of Section 185 --

8 MAYOR DIANE HANSON: (Indiscernible) turn
9 our cell phones off, guys.

10 GARY MAULER: Yeah.

11 NOEL PRIMOS: The Town's position is that
12 the four point, I'm sorry, the 3.5 foot height
13 restriction of Section 18551A, does apply to pool
14 safety fences.

15 And I'd just like to briefly read that.
16 Section 18551A of the code. A hedge fence or wall not
17 more than 3.5 feet in height may project into or
18 enclose any required front or side yard to a depth from
19 the street line equal to the required depth of the
20 front yard.

21 So, in other words, a fence higher than 3.5
22 feet is not allowed in a front yard setback.

23 The code is clear. The language is clear.
24 There are no exceptions stated. It doesn't say a
25 hedge, fence or wall other than a pool safety fence,

1 And it's a rhetorical point. His point is
2 that at the time this drawing was submitted, and it
3 showed 18 feet fence, it was submitted showing 18 feet.
4 because that's what the property -- the property owners
5 must have thought 18 feet was the property --

6 MICHAEL MCDERMOTT: Well, the property
7 owner wanted it as close to the house as possible.

8 GARY MAULER: Well, that's another view.
9 But --

10 MICHAEL MCDERMOTT: The code didn't
11 change. The code existed at the time they put the plan
12 in and it says what it says.

13 NOEL PRIMOS: Our --

14 GARY MAULER: He's making -- he's not
15 stating it as a fact. He's stating it from a
16 rhetorical fact.

17 NOEL PRIMOS: Our point is that it wasn't
18 merely coincidental that the fence was shown 18 feet
19 from the front property line.

20 The property owner didn't pick 18 feet out
21 of the air and say, I think I'll make the fence 18 feet
22 from the front property line.

23 It's because the code requires it. Because
24 the code says that a fence may not be higher than 3.5
25 feet in the front setback.

1 must be limited to 3.5 feet in height. That
2 restriction is clear, that restriction is unqualified,
3 and it applies to any fence.

4 And that is the essence of the Town's
5 position in this case. That's why the code was clear.

6 That's why the property owner submitted a
7 drawing showing that their fence would be 18 feet from
8 the front property line, because they knew that that
9 requirement was in the code. The code is clear.

10 MICHAEL MCDERMOTT: (Indiscernible)
11 question (indiscernible).

12 NOEL PRIMOS: The code --

13 GARY MAULER: It is his argument.

14 MICHAEL MCDERMOTT: I mean
15 (indiscernible). I mean, you're talking about my
16 client's knowledge, and that's not what we're here to
17 talk about.

18 We're talking here -- to talk about the
19 plain language of the code.

20 NOEL PRIMOS: I believe that Mr. McDermott
21 made a number of factual arguments and statements in
22 his statement, which --

23 GARY MAULER: Well, we're just going to
24 just -- here's what I understand (indiscernible) his
25 point to be.

1 It wasn't a coincidence. It wasn't picked
2 out of the air. Eighteen feet was shown on the
3 drawing, because 18 feet is what is required.

4 The commissioners need not even apply the
5 rules of statutory interpretation in this case, because
6 the code is clear.

7 But even if the commissioners decide that
8 the code is ambiguous, that somehow it's not clear
9 whether a pool safety fence is a fence, or whether a
10 pool safety fence falls under the requirements that a
11 fence no greater than 3.5 feet may be present in front
12 setback.

13 Even if that is the case, the rules of
14 statutory interpretation compel the result that the
15 Town's interpretation of the code is the correct one.

16 And one of the primary reasons for that is
17 that if the appellant's interpretation is accepted, it
18 yields an absurd result.

19 The Town is not saying that the appellant
20 intended to construct a 35-foot fence in the front
21 yard.

22 What the Town is saying is that if the
23 height restrictions of Section 18551A do not apply to
24 pool safety fences, if pool safety fences are exempted
25 from the height restrictions of 18551A, then there are

1 no height restrictions on pool safety fences other than
2 the 35-foot overall height limitation in the Dewey
3 Beach Code. That is an absurd result. Now, one of the
4 cases that the appellant --

5 GARY MAULER: (Indiscernible) before we
6 (indiscernible).

7 NOEL PRIMOS: Sure.

8 GARY MAULER: The other language in the
9 section on fences simply says no fence or wall shall
10 exceed seven feet in height.

11 And so under the theory that you read
12 sections of the code consistently where possible, you
13 could still apply the seven foot height restriction to
14 any fence.

15 And so under your theory, rather than a 35-
16 foot-tall fence, somebody could build a seven-foot-high
17 fence, but they could never build higher than seven
18 feet, isn't it?

19 NOEL PRIMOS: But our argument is that
20 under the appellant's interpretation, Section 18551A
21 does not apply at all to pool safety fences.

22 So the problem is the appellant is saying,
23 well, 18551A doesn't apply to pool safety fences.

24 So what that means is neither the 3.5 feet
25 height restriction for fences and front yard setbacks,

1 statute is reason for rejecting that interpretation in
2 favor of another, which would produce a reasonable
3 result.

4 We read statutes by giving language its
5 reasonable and suitable meaning while avoiding patent
6 absurdity.

7 It is a well-established rule of statutory
8 interpretation that the law favors rational and
9 sensible construction.

10 An interpretation of the code, which would
11 say that the height restrictions of Section 18551A do
12 not apply to pool safety fences, would be a patent
13 absurdity.

14 What we're trying to do with rules of
15 statutory interpretation, and again, Mr. Forsten can
16 confirm this for you, is to get at the intent of the
17 code drafters.

18 The drafters of this code provision could
19 not have been -- have intended that there was no height
20 restriction on pool safety fences.

21 If you look at Section 18551B, which
22 specifically talks about pool safety fences being at
23 least 4.5 feet in height, you'll notice it says every
24 swimming pool should be protected by a safety fence or
25 barrier at least 4.5 feet in height.

1 nor the seven-foot height restriction for all fences
2 applies to pool safety fences.

3 If 18551A does not apply to pool safety
4 fences, then it doesn't apply to them anywhere.

5 And that's our point, that that would yield
6 an absurd result, because it would mean that pool
7 safety fences could be 35 feet high anywhere.

8 Whether in the front yard, whether in the
9 side yard, whether in the rear yard, because they're
10 exempt.

11 In fact, this was -- as you noted in the
12 paper that was submitted yesterday by the appellant,
13 this was specifically stated.

14 That 185A does not apply to pool safety
15 fences because it's a separate provision, and only
16 18551B applies to pool safety fences, but that yields
17 an absurd result.

18 I'd like to read from a case that was cited
19 by the appellant yesterday. This is the Doroshov
20 Pasquale Krawitz and Bhaya vs. Nanticoke Memorial
21 Hospital Case, and it's dealing with the subject or the
22 question of statutory interpretation.

23 According to the golden rule of statutory
24 interpretation, unreasonableness of the result produced
25 by one among alternative possible interpretations of a

1 There's no maximum height limit on pool
2 safety fences in Section 18551B, there's only a
3 minimum.

4 What it's saying is a pool safety fence must
5 be a minimum of 4.5 feet. But there's no maximum
6 height.

7 So if the height restrictions of Section
8 18551A do not apply to pool safety fences, and the only
9 place in the code that you can find a maximum height
10 limit is the 3.5-foot height limit that applies to all
11 structures in the town of Dewey Beach, and that is a
12 patent absurdity.

13 The only interpretation that is logical, the
14 only interpretation that is not absurd, is that the
15 height restrictions of Section 18551A apply to fences,
16 whether they are pool safety fences, whether they are
17 other types of fences, whether they are not pool safety
18 fences.

19 No fence greater than 3.5 feet in height may
20 be located within a front setback. No fence.

21 And no fence of any type anywhere may be
22 greater than seven feet other than fences or walls used
23 for commercial screening or tennis courts.

24 Those are the height restrictions that are
25 set forth in the code. Those are the height

1 restrictions, that if we're going to interpret the
2 various provisions of the code consistently, must
3 prevail, because not only are those height limitations
4 set forth here, but they're also set forth in Section
5 18592A.

6 Before referring specifically to ornamental
7 fences. Again, we see the same limitations there.

8 We see the limitation of 3.5 feet, or three
9 and a half feet for ornamental fences located in a
10 front setback and seven feet for ornamental fences in
11 other places.

12 So if we're going to interpret the code
13 provisions consistently, we're -- if we're going to
14 interpret them all together so that they make sense,
15 then we're -- then we must apply the 3.5 feet
16 limitation to a pool safety fence located in the front
17 yard setback.

18 And the course the pool safety fence must be
19 at least 4.5 feet in height. Again, that's why it has
20 to be not within the front setback.

21 Here, at least 18 feet back. That's why it
22 was so indicated in the drawing that the property owner
23 submitted when they applied for their building permit.

24 MICHAEL MCDERMOTT: Can I ask a question?

25 GARY MAULER: Sure.

1 Section 18551B is addressing a particular,
2 the language it uses is protective fences or barrier
3 walls.

4 And so it's attempting to address that
5 particular issue. But the general restrictions of
6 Section 18551A are not then forgotten.

7 They're not thrown out the window. They
8 still apply. But after it's set a maximum in Section
9 18551A, a maximum of 3.5 feet and a setback or a
10 maximum of seven feet anywhere else.

11 It sets a minimum for pool safety fences or
12 barrier walls. So the minimum it's saying in 18551B is
13 4.5 feet for pool safety fences and barrier walls.

14 GARY MAULER: (Indiscernible) me to
15 comment on this.

16 NOEL PRIMOS: Sure.

17 GARY MAULER: -- I guess when I think of a
18 pool, I think of the hole in the ground, I think of the
19 walkway, and I think of the fence.

20 That's the elements that make up for a pool.
21 So could it be possible that the people that composed B
22 would really think of that object, a pool, consisting
23 of all three elements?

24 NOEL PRIMOS: Well, Mr. Mauler, that's why
25 we have rules of statutory interpretation so that we're

1 MICHAEL MCDERMOTT: The thing is, I'd like
2 to get your comment on is the different wording was
3 used between DNA regarding defenses.

4 So in the talk, it talks more about fences.
5 I'm sorry, in Section A, a hedge, a fence,
6 (indiscernible) --

7 NOEL PRIMOS: Hedge fences wall?

8 MICHAEL MCDERMOTT: Hedge fences and more
9 of just for the looks. But then when you get down to
10 D, it actually talks about the protective fence.

11 And then it goes on to talk about a barrier.
12 So it looks like that there was an intent there,
13 possibly to consider the requirement of the 4.5 to be
14 more specifically a barrier as opposed to a hedge or
15 some word, you know, something just enhance the beauty
16 of the front yard. Can you comment on that?

17 NOEL PRIMOS: Certainly, Commissioner
18 McDermott. Section 18551A is intended to apply to all
19 situations that might be encountered involving hedges,
20 fences or walls.

21 MICHAEL MCDERMOTT: (Indiscernible). Why
22 would they use different words? (Indiscernible).

23 NOEL PRIMOS: Well, yeah. Section 18551A
24 is an attempt to set a general standard for hedges,
25 fences and walls.

1 not left guessing or in the dark about what could they
2 have meant this or could they have meant that.

3 And that's -- And Mr. Forsten will advise
4 you of this. If you're thrown into the area of, well,
5 we think the code's ambiguous and the town saying, you
6 don't even have to get there because the code language
7 is clear.

8 But if you fall into that area, then you
9 could -- then you use these set and prescribed rules of
10 statutory interpretation.

11 And one of those is if you're trying to
12 decide between two interpretations and one
13 interpretation would yield an absurd result and the
14 other would not, then you go with the one that would
15 not.

16 You go with the one that would not yield the
17 absurd result. So you're not left guessing about,
18 well, could they have met this or could they have met
19 that?

20 So that's why, you know, we don't have to
21 reach that question of what -- of all the different
22 possibilities they could have met.

23 What is the interpretation that yields the
24 logical result as opposed to the absurd result?

25 And that is that the height restrictions of

1 3.5 feet and a front setback and seven feet everywhere
2 else, they apply throughout the code, other than
3 commercial screenings or fences and walls around tennis
4 court. So that's the logical interpretation.

5 GARY MAULER: (Indiscernible) have another
6 question for you.

7 NOEL PRIMOS: Sure.

8 BOARD MEMBER: I'm a little confused. Why
9 is it that you don't use the absurdity test with
10 regards to two sections of the code, namely, what is
11 it? 18551B and one and two.

12 And why is it not absurd but if you read the
13 code, you say to read it, that because it says in one
14 case we allow swimming pools, but in fact, if we read
15 the code by your section that prohibits putting
16 swimming pools in the front yard.

17 I mean, that's just -- so isn't that kind of
18 absurd too if they have -- in their section says you
19 can have swimming pools in the front yard, but then
20 there's a section just preceding it that says, no,
21 unfortunately you can't because you can't have a fence
22 one foot higher than we allow in the front yard. Why
23 isn't that an absurd kind of challenge?

24 NOEL PRIMOS: I understand your concern,
25 Commissioner. But this is -- this gets back to my

1 initial point.

2 And again. Mr. Forsten can advise you, is
3 that that is a question that the commissioners need not
4 reach.

5 In other words, well, does the code allow
6 pools to be built in front yard setbacks or does it
7 not?

8 Because the reason you need not reach that
9 is because the property owners did not construct the
10 pool within their front yard setback.

11 But even if that were the case that you had
12 to reach that question, and I don't believe you do, the
13 question then becomes, which is more absurd?

14 Is it more absurd to be talking about
15 allowing 35-foot pool safety fences anywhere on a
16 property?

17 Offenses that are surrounding swimming pools
18 to be up to 35 feet, is that more absurd, or is it more
19 absurd to say when the code drafters were writing
20 18551B, were they concerned -- what were they concerned
21 about in the first sentence of 18551B?

22 And let me read that, accessory swimming
23 pools, open and unenclosed, may occupy a required yard
24 or side yard, provided they are not closer than ten
25 feet to an interior side lot line, or six feet to a

1 rear lot line.

2 Well, the code drafters seemed to be
3 concerned with setting certain requirements or
4 clarifying where pools could be if they were located
5 inside yards or rear yards.

6 Now, perhaps the wording wasn't the best to
7 be used, but again, you not -- you need not reach that
8 question, but it says may occupy a required yard or
9 side yard.

10 Now that property owners, their
11 interpretation or they're arguing, and again, we're
12 saying you need not even reach this question, but
13 they're arguing that when it says required yard here it
14 means required and you would have to supply front or
15 rear yard or side yard.

16 But even that interpretation or that
17 suggestion doesn't really make sense because side yards
18 are required yards as well.

19 So why would you say required yard or side
20 yard? If you look at the definition of setback line,
21 which is in Section 1-16 of the code, which has, of
22 course, all the definitions of terms in the code,
23 setback line or building setback line, a line parallel
24 to the front or street line and distant from it, the
25 least minimum depth of a required front yard.

1 A line parallel to a side boundary line and
2 distant from it, the least minimum depth of a required
3 side yard.

4 A line parallel to the rear boundary line
5 and distant from it, the least minimum debt of a
6 required rear yard.

7 So we know there are required rear yards, we
8 know there are required side yards and we know there
9 are required front yards.

10 So what would be the point of saying a pool
11 may occupy a required yard or side yard, if there are
12 required side yards?

13 BOARD MEMBER: I had no idea, that's why I
14 didn't want to do that. And I think we're counting
15 angels on the head of a pin. I don't know
16 (indiscernible).

17 NOEL PRIMOS: And the commissioners need
18 not even reach this question. And Mr. Forsten can
19 advise you on that.

20 But why get into that part of the code when
21 the only question before you today is was the pool
22 safety fence, which is constructed 15 feet -- is the
23 pool safety fence, which is constructed 15 feet from
24 the front property line and is 4.5 feet high, is that
25 compliant with the code?

1 You need not even reach these questions of
2 required yards, and is a pool allowed in a required
3 front yard because the appellants didn't build a pool
4 within the front yard.

5 BOARD MEMBER: (Indiscernible) ambiguity
6 because they built a pool. Frankly, the pool was
7 allowed.

8 And so there's some kind of obvious
9 ambiguity in the language of those two sections that
10 allowed people or they went ahead and built a few pool
11 in the front yard. And at the point -- at that point
12 in time, no one started screaming, I mean --

13 NOEL PRIMOS: Well, the town is not saying
14 that a pool cannot be built in front of a house. It's
15 simply saying it can't be built within a front setback.

16 But that need not even be reached. Because
17 the appellants didn't build their pool in a front
18 setback, they built a fence that was 4.5 feet in height
19 within a front setback. And that's the only --

20 BOARD MEMBER: But the notice of spending
21 our license says pool and fence are illegal. Both pool
22 and (indiscernible).

23 GARY MAULER: These guys get to ask
24 questions. I get to ask questions, you know
25 (indiscernible).

1 NOEL PRIMOS: Sure.

2 GARY MAULER: (Indiscernible). But isn't
3 the upshot of your argument, I mean, you're talking
4 about, well, the pool isn't in the front yard, so we're
5 not going to reach that question.

6 The upshot of the town's position, and I'm
7 not saying it's right or wrong, is that the pool can't
8 be built closer than 21 feet to the street, because a
9 fence has to necessarily be on the pool.

10 So if I can't build a fence taller than 3.5
11 feet in the front yard setback, that means the pool's
12 got to be set back at least three feet from that line,
13 correct?

14 NOEL PRIMOS: That's a necessary result of
15 what we're saying. And that's something that the
16 drawing indicated when it was submitted to the town.

17 GARY MAULER: So your position -- just, I
18 mean, you say we don't have to decide the issue of
19 whether it's right or not, but really, your position is
20 a pool could be built within 21 feet of the street.

21 NOEL PRIMOS: Exactly. And not even --
22 and it's not even the town's position if you parse it
23 that much, it can't just be succinctly stated.

24 Well, a pool can't be built within the front
25 yard setback. But as you say, a pool can't be built

1 even any closer than 21 feet to the front property
2 line.

3 But that's just a result of the fact that
4 all of the sections of the code have to be read
5 consistently, and -- yeah.

6 GARY MAULER: No, I understand that point.
7 I just wanted to make sure everybody was clear on that.

8 And I think, you know, time flies when
9 you're having fun. And so you used up your 30 minutes
10 just for the record.

11 I didn't want to make sure that we're clear.
12 You know, I asked this question, Mr. McDermott, the
13 fence is 4.5 feet tall, and is 15 feet from the front
14 property line. And you agree with that?

15 NOEL PRIMOS: Yes.

16 GARY MAULER: And again, just so the
17 record's clear, the only basis for revoking the permit
18 based on a letter that was sent October 11th, is this
19 fence.

20 You're not complaining about anything else
21 about the property, correct? Nothing --

22 Yeah.

23 GARY MAULER: -- else excited.

24 NOEL PRIMOS: Right. And as Mr. McDermott
25 did point out that the letter does refer to the fence

1 and pool, and again, that goes along with the
2 discussion we were just having because of the town's
3 position regarding the fence that pushes the pool back
4 by 21 feet.

5 But nothing else on the property, you're
6 correct, was the cause of the suspension or the notice
7 of suspension.

8 GARY MAULER: Do the other commissioners
9 have any other questions? All right. Well, thank you.

10 They may have more questions later. Thank
11 you very much. By my calculations, Mr. McDermott only
12 used nine minutes in his initial presentation. So he
13 has 21 minutes left on the clock.

14 ATTORNEY JANE PATCHELL: Good afternoon.
15 I'm Jane Patchell from the law firm of Tunnel and
16 Raysir, and I've represented Rich and Marcia on this
17 particular property prior to the time that they even
18 applied for a permit.

19 Contrary to what's been argued by the town
20 that they intentionally submitted a survey that met the
21 front setback requirements.

22 They consulted with me regarding the express
23 language in the code prior to even applying for.

24 And I've read them, the express language in
25 the code regarding the swimming pool contained in

1 Section 181, excuse me. 18551B, that states that an
2 accessory swimming pool, open and unenclosed, may
3 occupy a required yard or side yard, provided they are
4 not closer than ten feet to an interior side lot line,
5 or six feet to a rear lot line.

6 A walk space at least three feet wide shall
7 be provided between the pool walls and protected fences
8 or barrier walls.

9 Every swimming pool shall be protected by a
10 safety fence or barrier, at least 4.5 feet in height
11 and constructed of concrete, stockade, wood or
12 material, or equal quality. Now, according to Mr.
13 Primos, the town's position now is --

14 GARY MAULER: Well, (indiscernible)
15 focused on that before so I apologize for interrupting.

16 Should we make anything of the fact that it
17 gives a -- it says they may be in a required yard or
18 side yard, provided they are not closer than ten feet
19 to an interior side line, six feet from a rear lot
20 line. But there's no mention of a front yard.

21 ATTORNEY JANE PATCHELL: Correct. And
22 that is the exact point of what we are arguing. The
23 express terms of the code permit the pool to occupy a
24 required yard with only two conditions.

25 It's not closer than ten feet to the

1 the required yard, and would make this whole provision
2 of the code mute and prohibit anybody from occupying a
3 required yard for a swimming pool is not the tenet of
4 statutory construction.

5 Statutory construction, the very first thing
6 that you look at is if you use a plain meaning of the
7 words in the statute doesn't make sense.

8 You only resort to whether there are two
9 interpretations, one of which may be unreasonable and
10 result in an absurd circumstance in the event that
11 there's an ambiguity.

12 We do not believe there is any ambiguity in
13 the sentence that says the accessory swimming pool may
14 occupy a required yard. It's a defined term --

15 GARY MAULER: Let me just ask
16 (indiscernible) the swimming pool. You say there's no
17 ambiguity when there's -- since you are not aware,
18 except there's the expression expressive
19 (indiscernible) of something. It basically says, if I
20 list certain things and don't list others --

21 ATTORNEY JANE PATCHELL: Correct.

22 GARY MAULER: -- and I can ignore them.
23 And it seems odd to me, but we'll say it isn't. Why
24 would I write a provision in the code that allows a
25 pool to be no closer than six feet to the rear lot

1 interior side, and it's six -- closer than six feet to
2 a rear lot line.

3 It does not address anything about the front
4 yard. If you use the plain and ordinary meaning of the
5 words, which is the basic rule of construction of a
6 statute, yard is defined in the code section, meaning
7 an area extending between the lot lines and the
8 building set lines -- setback lines on a lot required
9 is determined by the, well, zoning standards in all
10 districts contained in Table 2 of attachment to Chapter
11 15.

12 Every zoning district has a separate setback
13 requirement. As such, the ordinance is written to
14 encompass all setback requirements in different zones,
15 to permit swimming pools to be permitted in different
16 zones, and to allow them to occupy a required yard
17 area.

18 That is the basic meaning using the plain
19 meaning of it to contort and try and jump through hoops
20 to say that that sentence that says a swimming pool may
21 occupy a required yard, which is the setback -- the
22 yard setback to now say from the town standpoint that
23 no, even though it expressly states this in the
24 statute, that a swimming pool must be 21.5 feet from
25 the front boundary of the lot, which is in excess of

1 line, no closer than ten feet to either side on, but
2 under your reading, no closer than three feet to the
3 front line. Does that seem absurd?

4 ATTORNEY JANE PATCHELL: I do not believe
5 that it is absurd. I think that the statute is very
6 clear in that the required yard -- first off, let's
7 address the required yard versus the side yard, which
8 Mr. Primos seems to think is an automatic ambiguity.

9 The required yard is a setback. The side
10 yard is an additional side yard that is not in a side
11 yard setback, plain and ordinary meaning controls.

12 So if it's a required side yard, it's in a
13 setback. If it's merely a side yard, it's an
14 additional side yard that is not in setback area.

15 You could have a 25-foot side yard, you
16 could have a 50-foot side yard.

17 GARY MAULER: Well, let me (indiscernible)
18 if you say that there's no ambiguity, if there is any
19 ambiguity, don't you win anyway?

20 ATTORNEY JANE PATCHELL: We did. Even if
21 there is an ambiguity. Basically, if there is an
22 ambiguity, Delaware law is very specific that if there
23 is any doubt ambiguity in a statutory construction, the
24 doubt must be resolved in favor of the landowner.

25 So whether you interpret this with clear,

1 plain meaning, or whether you buy into the town's
2 argument that there's an ambiguity and therefore you
3 need to go through statutory construction, our client
4 wins. He wins under plain meaning, and the doubt has
5 to be resolved in his favor.

6 GARY MAULER: Can't you also read that
7 sentence to say that the drafters didn't think a pool
8 would ever be in a front yard?

9 Because if they thought a pool would be in a
10 front yard, it would have put in a limitation like they
11 did for rear yards and side yards.

12 ATTORNEY JANE PATCHELL: You could
13 possibly go to that. However, there is no evidence of
14 that intent that's been presented. We haven't heard a
15 single thing of what the intent was.

16 So to say that there's any ambiguity and
17 then say you must resolve it based on legislative
18 intent when no legislative intent has been presented,
19 makes it impossible for anyone to make a determination
20 of what the true legislative intent was.

21 GARY MAULER: So your position then is I
22 can go up to three feet, but even if I can't go up to
23 three feet, I can't -- then it's ambiguous, and
24 therefore you (indiscernible).

25 ATTORNEY JANE PATCHELL: Can you repeat

1 that? I could go up to three feet, but even if I can't
2 go up to three feet --

3 GARY MAULER: I'm just focusing because I
4 haven't read this, and I apologize. I haven't read
5 this particular sentence before this morning.

6 I read everything else. The statute says
7 that I can do swimming pools in yards -- the required
8 yards, provided they're not located closer than ten
9 feet to a side yard or six side yard line, or six feet
10 to the rear (indiscernible) line.

11 Can you read that sentence to say that
12 someone can go as close as three feet to the front
13 line?

14 One possibly could read that sentence to
15 say, well, they didn't say anything about the front
16 yard, so maybe that means I can't have pools in the
17 front yard at all.

18 ATTORNEY JANE PATCHELL: Well, I think the
19 basic canon that says that the exclusion of one, or the
20 inclusion of one means the exclusion of the other.

21 If you include the side yard and the rear
22 yard, but you don't include the front yard in a
23 specific code provision, it can easily be interpreted
24 and should be interpreted that it was meant not to be
25 included in there. And it --

1 MICHAEL MCDERMOTT: This is also addressed
2 at Page 4 of my preview. Talking about the qualifying
3 language and the fact that there's -- that there are
4 natural setbacks built in to the front yard, the
5 parking spaces and the open space that's required.

6 And so, you know, if you do have enough
7 space to put a fence in or to put a pool in your
8 required yard, and you don't want to have any parking
9 spaces because you don't -- you only have one bedroom,
10 it's -- there are natural --

11 GARY MAULER: That's not the case in this
12 situation.

13 MICHAEL MCDERMOTT: That's right. It's
14 not.

15 GARY MAULER: Far from it.

16 MICHAEL MCDERMOTT: So they can't be three
17 feet from the street line here because they have to
18 have parking spaces and open spaces and gardens and
19 things like that.

20 GARY MAULER: And they do.

21 ATTORNEY JOHN FORSTEN: My point is, we
22 could argue that it's public in the front and
23 protecting the neighbors.

24 But the street is what is occupying the
25 space (indiscernible) okay. So I believe, I mean, we

1 can get into a million explanations about what the hell
2 is going on. And I'm saying that's an ambiguity.
3 (Indiscernible).

4 GARY MAULER: Well, that's why I asked the
5 question. Because she was saying it wasn't ambiguous
6 and you're saying it is.

7 ATTORNEY JOHN FORSTEN: Yeah.

8 GARY MAULER: I just want to make sure
9 we're all understanding each other.

10 ATTORNEY JANE PATCHELL: We believe that
11 the plain meaning is there to interpret it.

12 That even if you accept an ambiguity, an
13 ambiguity is decided in favor of the landowner.

14 So the landowner should get the benefit of
15 the doubt. Now if the town commissioners are concerned
16 that the statute as written, does not adequately
17 address their concerns or the regulations from the
18 zoning code that it wants to have, then that needs to
19 be changed by changing the code.

20 It's not an interpretation. It's not a
21 statutory interpretation issue. It's an insufficient
22 code issue that needs to be resolved by following the
23 code provision that requires you to basically refer it
24 back to the Planning Commission.

25 And unless you think it's just a minimal

1 change to it, the Planning Commission then holds a
2 public hearing.

3 They have to give you a report, comes back
4 to you. You hold a public hearing.

5 That's how a statute is changed. That's how
6 the ordinance is changed. It is not changed through a
7 statutory interpretation of a plain meaning, or even an
8 ambiguous that would not result in an absurd or
9 legislative intent that has never been proven, that you
10 can't say we know what the legislative intent was.

11 GARY MAULER: How do you respond to the
12 Town's notion that if your reading of the code is
13 correct, that means you could build a fence that's 35
14 feet tall?

15 ATTORNEY JANE PATCHELL: Again, there is -
16 - specific always outweighs the general.

17 Mr. Primos argument was that Section 8551A
18 is a general rule, a general rule for fences.

19 It is then made specific by the exception
20 under 50 -- 18551B that is applicable only to swimming
21 pools.

22 The specific always overrides the general.
23 If you want the specific to address it --

24 GARY MAULER: You haven't answered my
25 question.

1 ATTORNEY JANE PATCHELL: Well, I was going
2 to. If you want the specific exception to address the
3 height of the swimming pool, then you should make an
4 amendment to the code, the ordinance section that deals
5 with that and put a height limitation on there.

6 The way it is written now, there is no
7 height limitation. There is only a minimal height. It
8 has to be at least 4.5 feet high --

9 GARY MAULER: (Indiscernible) on the
10 seven-foot height requirement applies, since it puts a
11 height limitation on all fences, and the 4.5 limitation
12 is just a minimum height. Why would the seven-foot
13 height limitation apply to all fences?

14 ATTORNEY JANE PATCHELL: We do not believe
15 that that would apply for the simple reason that that
16 section, the two sentences, the first sentence doesn't
17 -- it's in direct contradiction with Section B --
18 Section A and section B.

19 One, the first sentence says it cannot be
20 higher than three and a half feet and B, for a swimming
21 pool, it must be at least four and a half feet.

22 MICHAEL MCDERMOTT: If I may add to that
23 as well. It's silent (indiscernible). And that's the
24 answer, is that it's silent.

25 In much the same way that 18551A says this

1 height limit, the seven-foot height limit doesn't apply
2 to walls used for commercial screening or tennis
3 courts.

4 There's a 35-foot height limit for tennis
5 court fences because it's silent. And in the absence
6 of the specific -- I mean, in the absence of anything,
7 and, you know, you may want to address that by way of
8 amendment because the Town's now raised it as a bona
9 fide concern.

10 ATTORNEY JANE PATCHELL: Okay.

11 BOARD MEMBER: I just wanted to clear
12 something for the record. In your opening statement,
13 when you said you were working with your clients at the
14 very beginning or before all this, you used the word
15 survey, did you -- because it's my understanding there
16 wasn't a survey --

17 ATTORNEY JANE PATCHELL: It was a survey
18 submitted with the application.

19 BOARD MEMBER: Survey or (indiscernible).

20 ATTORNEY JANE PATCHELL: I believe there
21 was a survey by Wingate and I submitted with the
22 application.

23 BOARD MEMBER: But not a survey of the
24 pool and effects (indiscernible)?

25 ATTORNEY JANE PATCHELL: There was a

1 survey at the site that was provided.

2 Not that there was a rendering from an
3 engineer that used the Wingate survey that showed the
4 pool and the fence

5 But the survey was of the existing property
6 as it existed, without a pool, without a fence.

7 BOARD MEMBER: So the survey what, showed
8 the property lines (indiscernible)?

9 ATTORNEY JANE PATCHELL: And where the
10 building was located, the setback of the building from
11 the street, et cetera.

12 BOARD MEMBER: I was under the impression
13 that a survey had been done. We were told that.

14 ATTORNEY JANE PATCHELL: There was a
15 survey --

16 ATTORNEY JOHN FORSTEN: (Indiscernible)
17 survey done by the town.

18 BOARD MEMBER: I know that. All I'm
19 saying, was there a survey done before that?

20 MAYOR DIANE HANSON: This is the survey
21 that was submitted.

22 MICHAEL MCDERMOTT: (Indiscernible).

23 ATTORNEY JANE PATCHELL: There was a
24 survey done before the pool application was submitted.

25 MAYOR DIANE HANSON: Of the property line?

1 BOARD MEMBER: Yes.
 2 ATTORNEY JANE PATCHELL: Yes.
 3 BOARD MEMBER: The town provided it to the
 4 Board of Adjustment as an exhibit. (Indiscernible).
 5 ATTORNEY JANE PATCHELL: I believe it was
 6 actually on the board at the Board of Adjustment
 7 hearing that they (indiscernible).
 8 MICHAEL MCDERMOTT: This was not submitted
 9 to the town. This survey.
 10 BOARD MEMBER: Yeah.
 11 MICHAEL MCDERMOTT: The only drawing that
 12 was submitted to the town was what was just shown to
 13 the commissioners.
 14 BOARD MEMBER: This one.
 15 MICHAEL MCDERMOTT: The drawing by
 16 element.
 17 BOARD MEMBER: This one.
 18 MICHAEL MCDERMOTT: Right. Exactly. That
 19 the survey was not submitted.
 20 BOARD MEMBER: And it's my understanding
 21 (indiscernible) --
 22 ATTORNEY JANE PATCHELL: It's my
 23 understanding that it was submitted. The code requires
 24 that a survey be committed -- submitted with an
 25 application for a building permit.

1 is, I was wondering about the fence. I don't think
 2 (indiscernible) --
 3 MICHAEL MCDERMOTT: (Indiscernible)
 4 before.
 5 BOARD MEMBER: Okay, so really, it's not
 6 comparing --
 7 ATTORNEY JANE PATCHELL: Okay.
 8 BOARD MEMBER: -- apples to apples. It's
 9 apples to oranges.
 10 ATTORNEY JANE PATCHELL: Correct. Now.
 11 when you look at the code section dealing with the
 12 accessory swimming pool, in addition to it permitting a
 13 swimming pool to occupy a rear yard, it has several
 14 conditions that go with it.
 15 Around the swimming pool, there must be a
 16 three-foot walkway, and the swimming pool and the
 17 walkway must be enclosed with a safety fence or a
 18 barrier at least four feet in height.
 19 Those are mandatory provisions under 18551B
 20 of the code. Therefore, if the pool is permitted to
 21 occupy the required yard or side yard under the express
 22 terms of the code, all of the requirements and
 23 accessories that go with it that are required in this
 24 section also are permitted under a plain rule -- a
 25 plain reading of the statute.

1 So I think that -- I think that the code is
 2 crystal clear. It says a plot must accompany, not may
 3 accompany, must accompany an application for a building
 4 permit.
 5 MICHAEL MCDERMOTT: (Indiscernible) says
 6 that.
 7 ATTORNEY JANE PATCHELL: It was used by
 8 the Board of Adjustment.
 9 MICHAEL MCDERMOTT: This is the plat that
 10 was submitted. Element. The one showing the
 11 improvements.
 12 GARY MAULER: Regardless of whether there
 13 was a survey --
 14 ATTORNEY JANE PATCHELL: Yeah.
 15 GARY MAULER: -- submitted or not, there
 16 was an issue before the board is the legal question
 17 regarding (indiscernible) defenses permitted or
 18 (indiscernible).
 19 So the issue about whether there was an
 20 actual survey submitted or whether this just this plan,
 21 that doesn't go to the question of zoning code
 22 compliance. I don't want to see us get off --
 23 BOARD MEMBER: No, I was just --
 24 GARY MAULER: (Indiscernible).
 25 BOARD MEMBER: The reason for my question

1 The one and the same. They're all the same
 2 requirements for this accessory swimming pool to occupy
 3 it.
 4 So the Town's position that you now need to
 5 push the swimming pool out of the required area that it
 6 is permitted to occupy by the express terms of the
 7 code, to have a fence of 4.5 feet, that is a mandatory
 8 requirement for a swimming pool. It is a safety
 9 barrier. It is not an ornamental fence as what you
 10 find in Section 18292A.
 11 An ornamental fence by definition is for
 12 decoration. Obviously a concrete stockade wood or
 13 material of equal quality fence that is used for safety
 14 purposes cannot be defined in any way, shape or form as
 15 decoration or as an ornament.
 16 So the absurd result that the Town has
 17 proposed to you using that as a guideline, again,
 18 should be read in the landowners favor.
 19 The code has plain meaning. It is clear.
 20 It is not ambiguous. Even if it is ambiguous, it is --
 21 the ambiguity is determined in favor of the landowner,
 22 and the accessory swimming pool is an entire unit that
 23 contains a swimming pool, a mandated walkway, and a
 24 mandated safety fence. There's different purposes for
 25 different fences.

1 Different fences because they have different
2 purposes, whether they be for ornamentation, for
3 decoration, for enclosing a small dog, or for safety of
4 a swimming pool, that is a natural hazard that attracts
5 people to try and climb over a fence and get into it
6 logically should have different height requirements,
7 and that's exactly what your code addresses.

8 The superior court in the American Insurance
9 Association vs. Delaware.

10 GARY MAULER: It's been 21 minutes. So I
11 think we're out of time (indiscernible).

12 MICHAEL MCDERMOTT: Close your -- closing
13 that (indiscernible).

14 ATTORNEY JANE PATCHELL: Okay. I just had
15 a quote to close with from a superior court -- a
16 superior court case, the American Insurance Association
17 vs. Delaware Department of Insurance. Cobbling
18 together the language of several disparate statutory
19 provisions is not a permissible way to supplement a
20 statute the commission finds to be inadequate.

21 That goal is best achieved by completing the
22 process that was initially undertaken. Legislative
23 change.

24 In this case, the town is attempting to
25 cobble together disparate code sections and is asking

1 (indiscernible).

2 NOEL PRIMOS: I'm more concerned with Mr.
3 Forrest with opening a door. I don't -- we don't --

4 MICHAEL MCDERMOTT: (Indiscernible)
5 picture of the current property.

6 NOEL PRIMOS: We don't have an objection
7 to this picture, but we don't know what other pictures
8 may now be introduced, or.

9 MICHAEL MCDERMOTT: No further pictures
10 will be introduced other than the picture Commissioner
11 Mauler asked to see.

12 NOEL PRIMOS: Then we have no objection to
13 that.

14 MICHAEL MCDERMOTT: The rest of those are
15 all pictures. Okay (indiscernible).

16 GARY MAULER: Okay (indiscernible). You
17 may come up with questions, but for now I guess we'll
18 start deliberation portion. Unless you guys want to
19 take a brief recess.

20 MAYOR DIANE HANSON: I don't know what
21 questions to ask. Anybody have any questions?

22 ATTORNEY JOHN FORSTEN: Let me ask you to
23 make a decision as to whether (indiscernible).

24 GARY MAULER: This is an appeal brought by
25 the property owner challenging the revocation of their

1 you to change the ordinance pertaining to swimming
2 pools through your interpretation of the ordinance,
3 rather than through legislative change.

4 The courts have ruled that this type of
5 rewriting of a statute is not permissible, and do not
6 fall into that trap. Thank you.

7 GARY MAULER: At this time, all the legal
8 argument has been presented based on the time allotted.

9 So unless you folks have additional
10 questions for the lawyers for the parties, then I thank
11 you up to the end that portion of this proceeding, and
12 then move on to discussion and deliberation amongst
13 counsel.

14 MICHAEL MCDERMOTT: I just noticed the --
15 they have exhibits. Is there something maybe we can
16 see these other exhibits?

17 GARY MAULER: (Indiscernible).

18 MICHAEL MCDERMOTT: (Indiscernible)
19 provide.

20 NOEL PRIMOS: (Indiscernible) object. We
21 were told that it would appear to be presentation of
22 legal argument.

23 GARY MAULER: I don't see it as being
24 prejudicial. I mean, it's just a picture, right? I'm
25 not even sure what this is a picture of

1 rental permit.

2 The ground for that revocation is that the
3 fence is four and a half feet in height, and it's 15
4 feet from the front property line, and it should be a
5 minimum of 18 feet from the front property.

6 MAYOR DIANE HANSON: It should be what?

7 GARY MAULER: Should be 18 feet
8 (indiscernible). That's the Town's position, the fence
9 needs to be either three foot back or a foot shorter.

10 It can't be a foot shorter than if it's
11 surrounding a pool, because the pool is supposed to be
12 surrounded by 4.5-foot fence.

13 The property owner's position is, I'm
14 allowed to have pools in any yard, including a front
15 yard, and that means I can have a pool in front yard. I
16 can have a fence -- a safety fence around it, so.

17 MAYOR DIANE HANSON: And the question is
18 whether the fence (indiscernible)?

19 GARY MAULER: Correct.

20 ATTORNEY JOHN FORSTEN: One way we can
21 answer that. If you say one foot difference in fence
22 height in a front setback is inconsequential enough --
23 not consequential enough to deny someone a license.

24 That's one answer, right? We could come up.

25 GARY MAULER: Yeah. Your code says this

1 is an appeal on whether or not the permit should be, in
2 this case, revoked. And you could --

3 ATTORNEY JOHN FORSTEN: No, it says
4 whether the license (indiscernible).

5 GARY MAULER: Sorry, license
6 (indiscernible).

7 NOEL PRIMOS: And Richard, it wasn't
8 revoked. A notice of suspension was given. Not
9 revocation, sir, just to correct that.

10 ATTORNEY JOHN FORSTEN: So one answer is
11 we could give one foot difference in the height of the
12 fence and setback.

13 Even if it's a violation. It isn't a
14 significant enough violation to propose to suspend
15 someone's license, or it is. I mean, that's -- we can
16 answer it that way, correct?

17 GARY MAULER: You could -- as I read your
18 code, which on this particular provision simply says
19 they appeal to you.

20 It doesn't say what the grounds for your
21 decision are, so you could I believe, decide that the -
22 - say, punishment does not fit the crime.

23 That is a possible basis for a decision. I
24 don't know that it resolves the ultimate issue because
25 there might -- that might lead to (indiscernible).

1 ATTORNEY JOHN FORSTEN: Not resolving
2 (indiscernible) issue. But my problem is, the next
3 step to resolve the ultimate issue, we have to come up
4 with a decision as to whether or not -- there's
5 conflict or ambiguity in the code, which would allow us
6 to decide in favor of the defendant and say the
7 violation therefore isn't supportable, and therefore
8 revocation or suspension of the code is not supported.
9 That would be another answer.

10 GARY MAULER: I think both the parties
11 ultimately agree that -- and this is the law.

12 If there is ambiguity in the code, meaning
13 that it's susceptible to two reasonable
14 interpretations, then if there's ambiguity, you should
15 find in favor of the property owner.

16 The property owner wins (indiscernible). If
17 you should find in favor of the town. If you believe,
18 as the town asserts, that the zoning code is clear and
19 that no fence taller than three and a half feet may be
20 closer than 18 feet to the front property line.

21 ATTORNEY JOHN FORSTEN: Okay.

22 GARY MAULER: So it really comes down to
23 is it ambiguous, or is it clear?

24 MICHAEL MCDERMOTT: And if I may, we
25 submitted a question based on the procedures that we

1 agreed to that would be essentially, is the fence legal
2 or illegal? And that's the question that we briefed
3 for this -- for the purposes of this hearing.

4 BOARD MEMBER: I don't know if I can ask
5 this question. You can tell me. But I would like to
6 know, why the pool was not built as the plans were that
7 were submitted, and then (indiscernible) be in this
8 mess.

9 GARY MAULER: Yeah, I don't think -- I
10 don't think that's an appropriate question because from
11 what I can tell, there's lots of interesting stories
12 and conflicting ideas about that, and we could be here
13 for another long time.

14 And really that doesn't go to a legal issue.
15 In other words, it could be ambiguous (indiscernible)
16 the property owner.

17 If it's not ambiguous, I think you rule in
18 favor of the town. How we got here isn't germane to
19 answering that question.

20 MICHAEL MCDERMOTT: And I would point out
21 just one other thing, Richard. He did say two
22 reasonable interpretations, I believe.

23 GARY MAULER: Yeah. You guys are done
24 talking.

25 MICHAEL MCDERMOTT: Okay.

1 ATTORNEY JOHN FORSTEN: Can we among about
2 ourselves?

3 GARY MAULER: You can talk amongst
4 yourselves and talk with me, but nobody else wants to
5 talk.

6 ATTORNEY JOHN FORSTEN: I prefer -- I
7 would like (indiscernible) be the best solution
8 (indiscernible) just say, one foot, just
9 (indiscernible) so -- I'm ready to (indiscernible).

10 BOARD MEMBER: I just -- I want to make a
11 statement that we are here -- the only reason we have
12 the thought that we have been given the authority to
13 make any kind of decisions because of Chapter 117 that
14 says if a suspension of a license is given by the town
15 and its appeal, we are the group that the appeal -- we
16 review the appeal and make a decision on appeal.

17 And the problem I have with our code is that
18 185, any violation falls under that.

19 So 185 Chapter 25, which is our zoning is in
20 that -- is a piece of that. And I feel that we're
21 being put in a position as commissioners to do code
22 interpretation, determine is this -- is it reasonable?

23 Is it, you know, how to interpret the code,
24 to be fair. Fair and reasonable interpretation of the
25 code.

1 And I think for commissioners, it's a tough
2 job to look at the code and decide to what extent is it
3 -- to what extent is it ambiguous, to what extent is --
4 what is fair here?

5 When you look at the drawing and the permit
6 and all that. It's a little tough. And I guess I'm
7 just looking for some understanding.

8 GARY MAULER: It is tough. You've got two
9 lawyers making arguments and they're not in agreement.
10 So yeah, it's hard. But (indiscernible) then.

11 MICHAEL MCDERMOTT: I've been rereading
12 Paragraph A and B this whole time, and I think this is
13 -- you know, this is nothing negative about the town
14 employees at all.

15 But I think the commission, this commission,
16 but really the commission was -- that put this in
17 place, did a disservice to the town.

18 And I think this could really be rewritten
19 quite a bit to make it very clear that the way it's
20 written -- I mean, I look at the pool as a unit.

21 And they even went as far as talking about
22 barrier walls, which they didn't talk about in A.

23 I mean, it just goes back one thing after
24 another and makes you think, what were they thinking?

25 And now you try to make a criminal -- I'm

1 -- I, you know, I listen (indiscernible) it's like I,
2 you know, I think you get swayed either way.

3 And just because I am swaying either way
4 makes me think it's not -- it's -- there's ambiguity in
5 the way this thing reads.

6 I mean, if it wasn't, I don't think I would
7 sway. I'm like, on the fence right now. No pun
8 intended.

9 ATTORNEY JOHN FORSTEN: I tell you, I
10 talked about the one-foot (indiscernible) incident.

11 I add to that the fact that you can
12 attribute ambiguity to the language of the program.

13 That I am going to make a motion. The
14 motion is that we find in favor of (indiscernible).
15 The law says that when there's ambiguity on
16 (indiscernible) significance and ambiguity with regards
17 to the intention of the code, that find in favor of the
18 property owner.

19 MICHAEL MCDERMOTT: I'll second.

20 MAYOR DIANE HANSON: Okay. Any
21 discussion? All in favor?

22 COUNCIL MEMBERS: Aye.

23 BOARD MEMBER: Aye. (Indiscernible).

24 GARY MAULER: (Indiscernible).

25 MAYOR DIANE HANSON: (Indiscernible) I'm

1 sorry, I shouldn't say that. But, you know, a big to
2 do over a one foot height difference when this is just,
3 like, kind of like all over the place.

4 I mean, yeah, I mean, I could see where both
5 sides could interpret it the way they want to interpret
6 it, but -- and they both could be right.

7 But in this case, some of these guys went
8 out and did the best effort to build a beautiful
9 addition in Dewey Beach. And they read what was there.
10 And it certainly looks like it's a possibility.

11 I would think that, you know, that there is
12 uncertainty here, and if the law says we have to rule
13 in favor of the property damage, that almost seems like
14 that's kind of a fair thing to do.

15 And maybe we learn the hard lesson that we
16 ought to be very careful in the future writing these
17 regulations.

18 MAYOR DIANE HANSON: We've learned that
19 already from the Watertown thing, and we need to redo
20 things.

21 MICHAEL MCDERMOTT: And learn -- every
22 time I come down here, we learn that we need to do more
23 -- get more procedures and more precise and wording
24 that we use.

25 You're (indiscernible) free to, so. I just

1 just going to see. You're an attorney. You've been on
2 (indiscernible). You've been on (indiscernible). I
3 don't understand this.

4 GARY MAULER: Okay. So (indiscernible).

5 MAYOR DIANE HANSON: The vote is 4 to 0
6 (indiscernible).

7 MICHAEL MCDERMOTT: I'm sorry.
8 (Indiscernible) I respectfully ask for clarification on
9 your motion (indiscernible) find in favor of defendants
10 on the question of the legality of the fence.

11 MAYOR DIANE HANSON: (Indiscernible).

12 MICHAEL MCDERMOTT: The fence is
13 (indiscernible).

14 MAYOR DIANE HANSON: The only question we
15 were told to answer.

16 MICHAEL MCDERMOTT: Very well. Thank you.

17 MAYOR DIANE HANSON: Okay. Any other
18 comments?

19 BOARD MEMBER: Or I just would recommend
20 we put on the agenda for the next meeting to
21 (indiscernible).

22
23 (End of Recording).
24
25

CERTIFICATE

I, Jaynes Michael Devon,
Transcriptionist, do hereby certify that the foregoing
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had in the foregoing matter, all done to the best of my
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Dated this 19th day of February 2026.

Jaynes Michael Devon,
Electronic Transcriber.

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<hr/> <p style="text-align: center;">8</p> <hr/> <p>8551A 46:17</p>			

EXHIBIT 3B

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November 8, 2013

VIA ELECTRONIC MAIL

Commissioners
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

RE: Appeal - Suspension of Business License/114 Chesapeake Street

To the Commissioners:

A hearing on the above-referenced matter is scheduled for November 9, 2013, at 2:00 p.m. This letter summarizes the Town's argument on whether the improvements (i.e., swimming pool and fence) constructed by the Appellant, 114 Chesapeake, LLC (hereinafter "the Appellant") at 114 Chesapeake Street (hereinafter "the Property") are, or are not, compliant with the Town's Zoning Code (hereinafter "the Code").

The Improvements Are Not Compliant With the Code

The Code sets forth the following setback requirements concerning the improvements on the Property:

(1) The minimum front yard setback requirement for the Neighborhood Residential (hereinafter "NR") District is 18 feet. See Code Section 185-23.G. and Table 2 of Attachment 1 to Chapter 185 ("Bulk Zoning Standards in All Districts").

(2) According to Section 185-51.A., a fence projecting into a front yard setback may be no higher than 3.5 feet.

(3) According to Section 185-51.B., a swimming pool must be surrounded by a walkway at least three feet wide which is in turn bordered by a fence at least 4.5 feet high.

Therefore, because a swimming pool must be surrounded by a three-foot walkway and a 4.5 foot safety fence, and because no fence within a front yard setback may be higher than 3.5 feet, the safety fence surrounding a pool in the front yard of a lot in the

NR District must be set back from the front property line at least 18 feet, and the pool must be set back from the property line at least 21 feet (to allow for the three-foot-wide walkway).¹ It is undisputed that the improvements on the Property do not comply with these requirements: the fence is currently 15 feet from the front property line, and the pool is 18.5 feet from the front property line.

The Code's language regarding these requirements is clear. Therefore, there is no need to resort to the rules of statutory interpretation. However, even if the Commissioners were to determine that the language of the Code is ambiguous in this regard, the Town's interpretation of these Code sections upholds two cardinal rules of statutory interpretation: (1) that the various parts of a municipal code are to be interpreted in such a way that they are consistent with one another,² and (2) that code provisions are to be interpreted so as to avoid absurd results.³

Appellant's Proposed Interpretation Would Render the Code Internally Inconsistent and Yield Absurd Results

Through counsel, either verbally or in writing, Appellant has posited at least two separate arguments in support of its contention that the improvements in their current location are Code compliant:

(1) Appellant has argued that, because Section 185-51.B. provides that swimming pools "may occupy a required yard or side yard," this means that a pool may be located in a "required [front] yard," i.e., within the front yard setback, and Appellant has further argued that requiring the pool to be at least 21 feet back from the front property line (because the 4.5-foot safety fence must be at least 18 feet from the front property line) would nullify this possibility. Related to this argument is Appellant's contention that the 4.5-foot safety fence requirement of Section 185-51.B. is separate and independent from the 3.5-foot restriction of Section 185-51.A. (and therefore, under this argument, the 3.5-foot and 7-foot restrictions of Section 185-51.A. do not apply to pool safety fences).

¹The Town maintains that Appellant's representatives indicated their assent to these requirements by submitting a drawing to the Town prior to the construction of the improvements showing a safety fence to be built 18 feet from the front property line and a pool to be built 21.5 feet from the front property line.

²Tony Ashburn & Son, Inc. v. Kent County Reg'l Planning Comm'n, 962 A.2d 235, 240 (Del. 2008).

³Tomei v. Sharp, 902 A.2d 757, 769 (Del.Super. 2006).

(2) Appellant has also argued that because a pool safety fence is not an "ornamental" fence, the restrictions of Section 185-92.A.(2) (which limit the height of ornamental fences within front-yard setbacks to 3.5 feet) do not apply to pool safety fences, and thus (given Appellant's arguments above regarding Section 185-51.A.) that there are allegedly no Code restrictions on the height of a pool safety fence located within a front yard setback.

Both of these arguments violate the principles of statutory interpretation noted above.

First, if the various provisions of the Code are to be read consistently with one another, then the 3.5 foot height restriction on fences within a front-yard setback must be read as applying to **all** fences, whether or not they are pool safety fences. Stated differently, if Sections 185-51.A., 185-51.B., and 185-92.A. are all to be read consistently, then fences greater than 3.5 feet in height cannot be permitted within front-yard setbacks, and pool safety fences must be located at least 18 feet from front property lines within the NR District.

Secondly, and perhaps more importantly, adopting Appellant's interpretation over the Town's would yield at least two absurd results:

(a) If the 3.5-foot height restriction did not apply to pool safety fences in front-yard setbacks, then there would be **no** height restriction on such safety fences,⁴ and property owners could construct pool safety fences within their front-yard setbacks up to a height of 35 feet.⁵

(b) If swimming pools were permitted within front yard setbacks, then all Town residents could construct swimming pools in their front yards as close as three feet to their front property lines.

⁴This is because, if the 3.5-foot front-yard fence restriction of Section 185-51.A. does not apply to pool safety fences, neither does the seven-foot general fence restriction of Section 185-51.A. Section 185-51.B. itself sets no **maximum** height restriction on a pool safety fence; instead, it provides that pool safety fences must be "at least" 4.5 feet high. Therefore, any height restriction for pool safety fences **must** be found in Section 185-51.A.

⁵This is the overall height restriction for all zoning districts in the Town. See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

November 8, 2013

Page 4

Since the primary purpose of applying the rules of statutory interpretation is to ascertain legislative intent,⁶ it is clear that the Commissioners could not have intended such absurd results when they enacted these requirements.

The interpretation that avoids these absurdities is as follows: the first sentence of Section 185-51.B. is concerned with the positioning of a swimming pool in a "required [rear] yard or side yard," since the sentence goes on to state that pools may be located no "closer than 10 feet to an interior side lot line or six feet to a rear lot line." Therefore, a swimming pool in a rear yard may be located within a rear setback (since the rear setback in every zoning district in the Town is greater than six feet⁷), and in a side yard a pool may or may not be located within the side setback (since side yard setbacks in the Town vary from 0 to 12 feet).⁸

Conclusion

The Code is clear: a swimming pool in a front yard must be surrounded by a 4.5-foot safety fence that must be no closer than 18 feet to the front property line (pushing the pool at least 21 feet back from the front property line). It is undisputed that the current fence is 15 feet from the front property line, and that the current pool is 18.5 feet from the front property line. Therefore, the as-built improvements are not compliant with the Code.

Very truly yours,



NOEL E. PRIMOS

cc: Richard A. Forsten, Esquire
Michael W. McDermott, Esquire
Mr. Marc Appelbaum, Town Manager

⁶Sussex County Dep't of Elections v. Sussex County Republican Comm., 2013 Del.LEXIS 29 (Del.)

⁷The rear setback in the Resort Residential and all business districts is 10 feet, and the rear setback in the NR and Planned Residential districts is 12 feet. See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

⁸See Chapter 185, Attachment 1, Table 2, "Bulk Zoning Standards in All Districts."

EXHIBIT 3C

APPELLANT 114 CHESAPEAKE LLC'S PRE-HEARING SUBMISSION

This Appeal comes before the Town Commissioners in connection with a "Notice" issued by Town Manager on October 11, 2013 alleging "setback violations" relating to a fence located at 114 Chesapeake Street (the "Property") and purporting to suspend the business license issued to the owner of the Property. (the "Property Owner").

Both the Town Manager and the Town Attorney refused, despite repeated requests, to provide any legal basis for the alleged setback violations. That inexplicable and irresponsible refusal forced this appeal. Only after this appeal was filed did the Town Manager, through the Town Attorney, finally disclose his theory behind the Property's alleged "clear setback violations."

The Question on Appeal

With the benefit of independent counsel hired by the Town Commissioners (the "Council") to conduct tomorrow's appeal hearing, a narrow legal question has been identified for resolution:

Is the safety fence located at the Property *legal or illegal* based upon the two competing readings of the Town's Zoning Code that have been presented on appeal?

The Legal Standard Applicable to the Council's Consideration of the Question on Appeal

Because here the Council sits in a quasi-judicial capacity it is, respectfully, bound to the same applicable legal standard that a Delaware court would recognize. First, Council must determine whether the specific provision of the Town Code that governs the placement of a safety fence surrounding a pool is ambiguous, because if it is not, then the plain meaning of the statutory language controls.¹ The mere fact that the parties here disagree about the meaning of the code provision does not create ambiguity.² Rather, an ambiguity arises *only* if the code provision can be read more than one way and *both* readings are reasonable.³ Finally, it is well settled under Delaware law that any ambiguity or uncertainty that arises in a zoning provision *must be decided in favor of the property owner.*⁴

The Plain Meaning of the Applicable Provision Here Demonstrates No Violation.

The applicable Town code provision governing the placement of pools and fences, Section 185-51(B), is not ambiguous. It *permits* an accessory swimming pool to "occupy a required yard" and it *requires* two additional minimum elements; a 3 foot "walk space" and a 4.5 foot "safety fence." Section 185-51(B) reads in its entirety:

¹ *Chase Alexa, LLC v. Kent Cnty. Levy Court*, 991 A.2d 1148 (Del. 2010).

² *Id.*

³ *Id.*

⁴ *The Commissioners of Bellefonte v. Coppola*, Del.Ch., C.A. No. 6005, Brown, V.C. (March 2, 1982), citing *Mergenthaler v. State*, 293 A.2d 287 (Del. 1972); *Dewey Beach Ent., Inc. v. Board of Adjustment of the Town of Dewey Beach*, 1 A.3d 305, 310 (Del. 2010).

Accessory swimming pools, open and unenclosed, may occupy a required yard or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of concrete, stockade wood or material of equal quality.

The Town Code at Section 1-16 defines the words “yard” and “setback” nearly identically:

YARD: The area extending between the lot lines, and the building set back lines...

SETBACK: An area extending from the lot lines to the building setback lines...

A “required yard” is the yard measured from the lot line to the setback line—the “least minimum depth” designated in a district’s bulk regulations.⁵ The applicable code section thus expressly permits a swimming pool to be built in, or to “occupy,” the required 18 foot yard in the NR district, also defined as the front setback. Therefore, a swimming pool is expressly permitted to be in the setback, and its required elements are also expressly permitted to be in the setback. Notably here, the swimming pool at issue was not constructed in the required yard/setback at all, but its required walk space and safety fence occupy approximately three feet of the required yard/setback. Accordingly, a plain reading of the applicable provision shows that allegedly offending fence is legal.

The Town’s Interpretation Relies Entirely Upon A Code Provision That Does Not Apply To Accessory Swimming Pools or Required Safety Fences

After this appeal was filed, the Town Manager became compelled to rationalize, in writing, his cloak and dagger routine. He dispatched the Town Attorney, for the first time last week, to shed light on his rationale. The Town’s written response to the appeal date October 31 concludes:

The requirements of the Town Code are clear: (1) there must be a three-foot walkway between a swimming pool and the fence surrounding it; (2) the fence surrounding a swimming pool must be at least 4.5 feet in height; and (3) no fence higher than 3.5 feet is allowed within a front setback. Therefore, the improvements constructed on the Property are not compliant with the Code.

To the extent the Town’s rationale is even complete—which it is not—those requirements, separately stated, are indeed “clear.” And each of those requirements is “clear” in the context of the code provision in which they exist. **The problem is that one of those “clear” requirements exists in an entirely different code provision** - a code provision that does not apply—at all—to swimming pools or safety barriers. And the other problem is that the Town’s conclusion intentionally avoids the clear provision that permits a swimming pool and its required safety fence to “occupy” the setback. So if the Town’s position was intellectually honest it would state:

⁵ See Definition of “SETBACK LINE or BUILDING SETBACK LINE” at Section 1-16: “A line parallel to the front or street line and distant from it the least minimum depth of a required front yard...”

The requirements of the Town Code are clear: **(#) a swimming pool is allowed to be built within the front setback** (1) there must be a three-foot walkway between a swimming pool and the fence surrounding it; (2) the fence surrounding a swimming pool must be at least 4.5 feet in height; and (3) no fence higher than 3.5 feet is allowed within a front setback. Therefore, the improvements constructed on the Property are not compliant with the Code.

The Town does not acknowledge the plain statutory language of Section 185-51(B) that expressly permits a swimming pool to “occupy” the front setback (“the required yard”) for an obvious reason—it renders absurd the Town’s argument that it is actually illegal to have a *code-required* safety fence protecting a swimming pool that is permissibly within the front setback. Because statutes must be construed as a whole, and in a way that gives effect to all of their provisions while avoiding any absurd result, the Town’s interpretation fails.⁶

Looking at the plain language of the two separate code provisions relied upon by the Town further demonstrate the absurd result of trying to reconcile which of the two different fences prevails:

Section 185-51(A) permits “A hedge, fence or wall not more than 3.5 feet in height...for residential use” within the front setback.

Section 185-51(B) permits a swimming pool that “shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of stockade wood or material of equal quality” within the front setback.

Simply stated, the Town’s interpretation requires the Council to accept that the drafters of the code intended for a permissible hedgerow of bushes in one sections to also mean the same thing as a required a safety stockade referred to in a another section.

Where it is reasonably possible, Delaware law states, arguably conflicting provisions should be harmonized. But the two accessory “fences” in those two code sections above ***are not arguably in conflict and cannot be harmonized*** because they are different accessory fences. Attempting to reconcile those two code sections by assuming that the separately refer to the same kind of fence—creates an equally absurd result as the one set forth above. The two fences are intended to be different accessory fences that are *both* permissible in the front setback.⁷

The Zoning Code Expressly Permits a Swimming Pool And Its Required Walk Space and Safety Fence Elements to “Occupy” the Front Setback

The Property Owner anticipates that the Town Manager will offer an alternative interpretation concerning the setback violations—a theory not yet presented in writing to the Property Owner or the Council. The Town’s legal argument avoids directly addressing the issue – but seems to suggest that Section 185-51 B does not actually allow an accessory swimming pool to occupy the front setback

⁶ *Doroshov, Pasquale, Krawitz & Bhaya v. Nanticoke Mem. Hosp., Inc.*, 36 A.3d 336, 343 (Del. 2012) (quoting *Moore v. Wilm. Hous. Auth.*, 619 A.2d 1166, 1173 (Del. 1993)).

⁷ Even if the Council accepts that the conflicting provisions can be reasonably reconciled, it must be reconciled in a way that favors the landowner. See Fn 4 above.

at all, but rather only permits a pool “to occupy a required yard or side yard” and that “required yard” here must be read to mean “required rear yard.” The first sentence of Section 185-51(B) reads:

Accessory swimming pools, open and unenclosed, may occupy a required yard or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line.

But the absence of qualifying language in between the words “required” and “yard” cannot be fairly or reasonably understood to exclude “front” or to include “rear.” A further proviso qualifying setbacks for side and rear lot lines is included – while none is specifically referenced for front lot lines. But the absence is explained by qualifying setbacks that result from the requirement for parking spaces, driveways or sidewalks in the front setback. The only reasonable reading is that “required yard” means both front and rear yard. The unreasonable reading declares that it *only* means “required rear yard.” Where the drafters of the section intended to specifically refer to a “front” versus “rear” yard in connection accessory uses– they expressly did so, for example:

Section 185-51(C) governs accessory storage of a boat or camper trailer... but it “**shall not be allowed in a front yard.**”

Section 185-51(D) governs accessory storage buildings... that “**may be constructed in a rear yard.**”

Section 185-51(E) governs accessory use of satellite antenna...which “**shall be permitted... only in the rear yard.**”

In other words, where the drafters of Section 185-51(A-F) intended to limit the accessory use of certain elements to only a front or rear yard—they so stated it expressly. The plain language of Section 185-51(B) cannot be fairly read to prohibit accessory swimming pool use in the front yard any more than it can be fairly read to permit accessory swimming pool use only in the rear yard. It simply does not say either one. Thus, the plain reading of the reference to “required yard” in Section 185-51(B) is that it means both front and rear yard/setback.

The Property Owner Must Prevail As A Matter of Law

Section 185-51(B), plainly read, permits a swimming pool to “occupy” a front setback and requires a minimum 4.5 safety fence surrounding that pool. For that reason alone, the safety fence at issue here is legal. The Town’s claim of illegality is based upon its reading of an entirely different code provision – Section 185-51(A). That different interpretation does not create an ambiguity in Section 185-51(B)—the safety fence at issue here is still legal. Even if Council believes that the Town’s different interpretation is reasonable, Property Owner’s reasonable interpretation prevails. governing accessory “hedges...for residential use”(185-51A) to supercede a separate section of the code governing accessory “protective safety fences or barrier walls around a swimming pool...made of concrete or stockade wood” (185-51B).

EXHIBIT 3D

Town Manager

From: criordan4@comcast.net
Sent: Wednesday, November 13, 2013 8:18 AM
To: Katrina White
Cc: Town Manager; Diane Hanson; Anna Legates; Gary Mauler; Ellen Danaher
Subject: Re: Commissioners Appeal Hearing

Katrina,

I believe that I first stated the Motion as "To find in favor of the defendant" who was the appellart for the Hearing.

Mr. Forstner then advised me that I should clarify that the motion meant that the Council should find no violation of the Code and as a result the proposed suspension would be rejected for lack of a violation.

I adopted that revision to the motion and the Council then voted 4 to 1 to approve the motion.

Courtney

From: "Katrina White" <kwhite@townofdeweybeach.com>
To: "Diane Hanson" <hanson@team-doctor.com>, "Anna Legates" <annalegates@gmail.com>, "criordan4" <Criordan4@comcast.net>, "Gary Mauler" <gary@mauiers.net>, "Ellen Danaher" <danaherdeweyfiles@gmail.com>
Cc: "Town Manager" <townmanager@townofdeweybeach.com>
Sent: Tuesday, November 12, 2013 2:58:32 PM
Subject: Commissioners Appeal Hearing

Mayor & Commissioners,

There was a problem with the recording on the November 9th Appeal Hearing. Could you send me the text version of the motion at the end of the meeting before the vote? I believe it was made by Commissioner Riordan. Thank you.

Katrina

Katrina L. White

Town Clerk/IT Tech
Town of Dewey Beach
105 Rodney Ave
Dewey Beach, DE 19971
Telephone 302-227-6363
Fax 302-227-8319

EXHIBIT 4

 Outlook

RE: 101 Carolina Street

From William Stevens <wstevens@townofdeweybeach.com>
Date Sat 1/10/2026 11:53 AM
To Town Manager <townmanager@townofdeweybeach.com>
Cc Jim Dedes <jdedes@townofdeweybeach.com>

I support your decision

From: Town Manager <townmanager@townofdeweybeach.com>
Sent: Saturday, January 10, 2026 9:16 AM
To: William Stevens <wstevens@townofdeweybeach.com>
Cc: Jim Dedes <jdedes@townofdeweybeach.com>
Subject: 101 Carolina Street

Mayor,

I've reviewed the attached a number of times before making my decision on 101 Carolina Street. I paid particular attention to page 5 the commissioner's meeting on Nov 9 2013. The commissioners voted 4 yea, 0 nea, and 1 abstention. They voted on the fence in the front yard 4-0-1. To me this is same situation that Fred, Jim, and I reviewed. I believe until we pass the new ordinance/ resolution this matter in ambiguous/grey at best.

Bill

Get [Outlook for iOS](#)

I SE



FW: 101 Carolina Building/Pool

From William Stevens <wstevens@townofdeweybeach.com>
Date Wed 1/14/2026 10:24 AM
To Town Manager <townmanager@townofdeweybeach.com>, Jim Dedes <jdedes@townofdeweybeach.com>

These issues are compounding and it is not a good!

From: Cindy Souza <souza667@yahoo.com>
Sent: Wednesday, January 14, 2026 9:06 AM
To: Town Manager <townmanager@townofdeweybeach.com>, Jim Dedes <jdedes@townofdeweybeach.com>, William Stevens <wstevens@townofdeweybeach.com>, Gary Persinger <garypersinger@townofdeweybeach.com>, Elisabeth G <elisabethg@townofdeweybeach.com>, elisabethg@townofdewey.com, David Jasinski <davidj@townofdeweybeach.com>, Paul Bauer <paulbauer@townofdeweybeach.com>
Subject: 101 Carolina Building/Pool

It has come to my attention that a home is to be built at the corner of King Charles and Carolina St. 101 Carolina is the address. There are several troubling issues for me

1. A permit was issued by the Town on November 10, 2025 (Permit #25-00475) to remove 3 (THREE) trees on the property BUT the survey posted at the site (I've also attached a photo here) shows 9 (NINE) trees to be removed!! And between 3-5 of those trees were NOT in the footprint of the proposed house! The removal of these trees simply flies in the face of Dewey's recent ordinance encouraging and mandating trees be on each property. But even more egregious is that a new build permit hasn't even been issued so WHY were 9 trees allowed to be removed before any final approval of the home dimensions/building permit had been given?? Will there be a fine issued due to 8 additional trees being removed??

2. On February 13, 2025 a permit was applied in Dewey to be "Build a New Home" - no mention of any pool to be included on the Dewey website. Sussex County has a permit to build a NEW home AND a POOL --- in the front yard. Was there an update to the application in Dewey, and if so, why wasn't it posted on the Town site?

To be clear, I understand that the Town code allows for a pool in a yard but not in the front primarily due to fence requirements. Any new front yard fence can only be 42" high (my neighbor was required to reduce their front fence as it was a 'new fence' not a repair to their old fence) - a fence around a pool must be 54". But even more serious, the permit request is for a pool to be built 10' back from the FRONT property line - not the required 18 feet. Any of us building new homes have been required to adhere to the 18 ft setback. This pending application would place the pool 10 ft from the front property line and a higher (not allowed by code) 54" fence in the front yard. WHY is this even being considered??

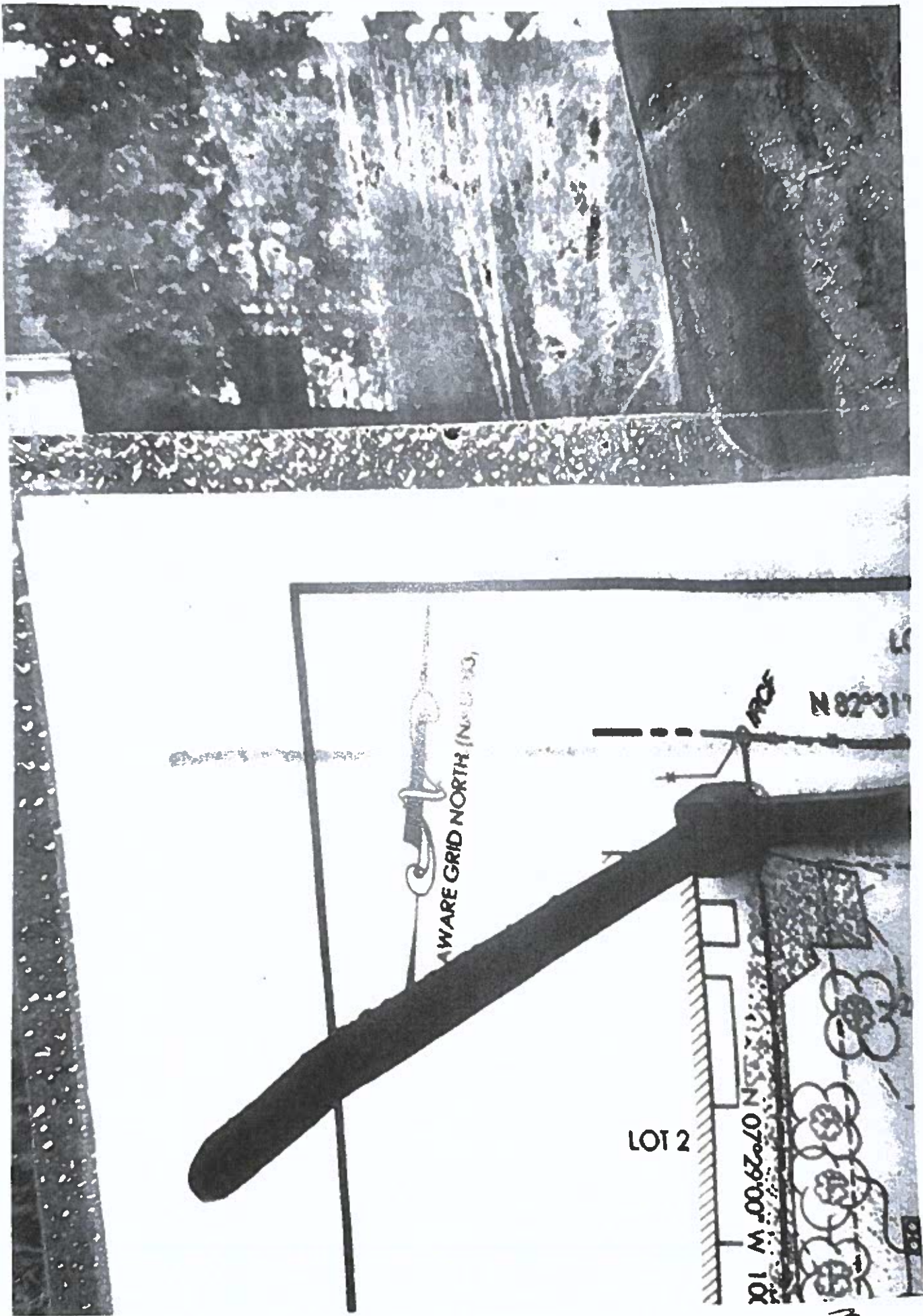
The Town Code ONLY permits a FRONT yard fence of 42-inches. The applicant has applied to put a pool in the front yard AND a taller fence AND more importantly, 8' closer to the front lot line - all trying to find a loophole instead of adhering to the code.

Here is where I have a huge issue - this applicant could build a pool in the backyard - why the front? No one knows. This same applicant installs small 'no parking' signs on yards of property owned so that guests on those streets think they can't park there (they actually can) - this person doesn't want the grass damaged. This same applicant also has placed moveable mailboxes in positions to again thwart other people from parking on their property. A Town official had written to me 1.5 years ago to say they were to be moved - it has never happened. Why NOT??

I am very dismayed that the Town (especially now that there is currently NO Building Official in place) would ever consider issuing a final building permit for the house and pool when legal protocols are NOT being followed.

But I am very disheartened that this application is even being considered given that it truly is designed to get around the spirit and guidelines of current Town Code. I really do hope that the application is denied.

2



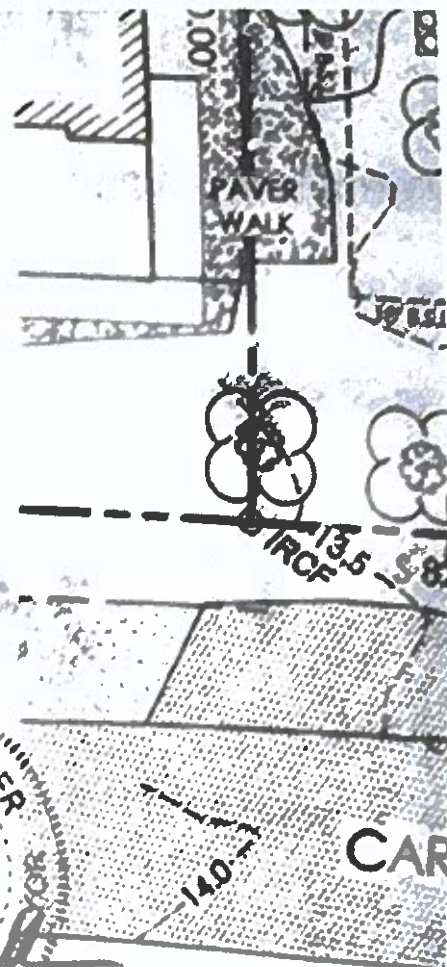
AWARE GRID NORTH (N 0° 0' 00\"/>

N 82° 31'

LOT 2

N 07° 29' 00\"/>

10



8/15/2025

TE

SITE DATA

- 1. CURRENT OWNERS: REHOBOTH BY THE SEA RE
2400 COASTAL HIGHWAY
DEWEY BEACH, DE 19971
- 2. SURVEYOR: SOLUTIONS IPM LLC
303 N. BEDFORD ST.
GEORGETOWN, DE 19947
410-572-8833
TM: 334-20.10-89.01
DB 348/596
263/49
- 3. TAX PARCEL: R2 - RESIDENTIAL LOW DENSITY
10,000 ± SQ. FT.
- 4. DEED REFERENCE:
- 5. PLAT REFERENCE:
- 6. ZONED:
- 7. AREA OF LOT:
- 8. BASED UPON F.E.M.A FLOOD INSURANCE RATE MAP 10005C1
PANEL 354 OF 660, WITH AN EFFECTIVE DATE OF MARCH 14, 2005
THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X, AREAS D
TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN.
- 10. HORIZONTAL DATUM SHOWN HEREON IS REFERENCED TO NAD 83 STATE PLANE)
- 11. OFFSET DISTANCES MEASURED TO BUILDING, DEPT FOUNDATIONS WITHOUT STONE VENEER

4



Thanks
Cindy Souza
113 West St
301-332-5032 cell

FOIA request per Delaware Freedom of Information

8 messages

Tue, Feb 10, 2026 at 7:34 PM

Marcia Schieck <mschieck@gmail.com>
To: Kate Banaszak <kate@townofdeweybeach.com>
Cc: Town Manager <townmanager@townofdeweybeach.com>
Bcc: "Faust, Veronica O." <VFaust@morrisjames.com>

Delaware's Freedom of Information Act (FOIA) is codified at **29 Del. C. §§ 10001-10008**.

Please provide the following communication including emails, text, paper mail, notes or any other type of communication submitted or directed to Dewey Beach Sr. management, managers, employees, board members, volunteers, associates, contractors or subs, consultants or any other person associated with Dewey beach that was submitted by the general public or other persons not employed directly by Dewey Beach relative to the following

1. communications regarding any aspect of 101 Carolina, 101 Carolina LLC, its principal Marcia Schieck, the construction project, permits or any other issues relative to 101 Carolina from January 2025 to present.

Thanks,

Marcia Schieck

Kate Banaszak <kate@townofdeweybeach.com>
To: Marcia Schieck <mschieck@gmail.com>

Mon, Mar 2, 2026 at 1:32 PM

Good Afternoon Marcia,

See below for records relevant to your FOIA request.

FOIA 2026-13 RESP.pdf (284 pages)

Kate Banaszak



EXHIBIT 5



DEWEY BEACH



Building & Zoning FAQ

[Home](#) > [Groups](#) > [Building & Zoning Department](#) > [Building & Zoning FAQ](#)

Search FAQs

Search

Building Permits

[What type of work requires a permit?](#)

All construction including remodeling, repairs, demolition, additions to any building, structure or parcel requires a permit. Interior and exterior projects require permits. In Chapter 71 of the Town Code, "construction activities" are defined as any activity whatsoever relating to construction, including, but not limited to: site preparation, grading and excavation; construction of foundation; construction, fabrication, and placement of any structure upon or within the premises, painting, drywalling, roofing and application of any materials whatsoever to the structure being constructed or placed upon the premises, including installation of plumbing, electrical fixtures and wiring, heating, ventilation and air-conditioning equipment; and any activity whatsoever related to construction, installation, site preparation, landscaping, paving or improvement of the premises.

[How do I file a building permit application?](#)

You may complete the Building Permit Application located on our website, and email to building@townofdeweybeach.com. You may also stop by Town Hall to fill out an application in person. A signed estimate will be required to file your **permit application**.

[Will my project require county approval?](#)

Depending on the scope of work, your application may require approval from Sussex County. If so, a letter will be provided to you from the Dewey Beach Building Official to present to the County Building Permit Office in Georgetown.

What fees are associated with a building permit?

The building permit fee is 3% of the total cost of the job, including labor and materials. If your proposed cost is \$15,000 or more, you must also pay a \$150 application fee.

What is the process for a commercial building permit?

1. You'll first apply for a building permit with Dewey Beach. Submit your completed application form along with 4 complete sets of sealed/stamped hardcopy plans. Digital plans are also required. Bring these to the Town Hall and give to a staff member at the Town Hall service window. The turn-around time cannot be speculated since it depends on your application (is it complete), the scope of work, accurate documents provided and the volume of applications and work requirements ahead of your submission. The review process and time is based on the complexity of each project.

2. Once we review the plans in accordance with the Town's building and zoning codes, we will give you paperwork for you to take to the county office along with your approved sets of sealed plans. There will need to be a county commercial plan review (ultimately the county will do inspections).

3. While the county is doing their plan review, another set of sealed plans will need to be given to the State Fire Marshal office in Georgetown for their plan review. The county will not issue a building permit without the Fire Marshal approval of the plans, or paperwork stating they have no objection to your project. and they will not be doing any inspections.

4. Once you have received the county paperwork/permit, please:

- Bring ALL of the county paperwork/permit (including your stamped plans) and give to a staff member at the Town Hall service window. The county paperwork and your plans will be returned to you along with the Dewey Beach building permit.
- After receiving the county's paperwork, the Building Department will begin processing the Dewey Beach permit, and provide you instructions for payment to Dewey Beach.

Residential Permit Application Requirements

For Flood Zones VE, AE, AO

New Construction of Dwellings, Decks, Sheds or Other Structures

1. Completed Building Permit Application - with applicable drawings, plans and contracts.

2. Preliminary Site Plan - prepared & sealed by licensed professional (per §185-76 Dewey Code)

- drawn to scale, showing the nature, location, dimensions, existing and proposed topography
- portion of the site that was previously filled
- location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.

3. Elevation Certificate - prepared and sealed by licensed professional:

- an elevation certificate that shows the ground elevation and proposed building elevations (identified in Section C of the elevation certificate as "Construction Drawings").

4. Drawing / Plans (minimum of TWO hardcopy sets; digital also may be requested) -- to be prepared and sealed by a licensed professional showing:

- Sussex County Tax District, Map, and Parcel number and assigned 911 street address.
- Elevation of the lowest floor, including basement, or elevation of the bottom of the lowest horizontal structural members of all proposed structures.
- Drawings, diagrams, or descriptions of the proposed foundation.
- Locations of all service equipment and utilities.
- Plans shall meet the minimal requirements by Sussex County:
<https://sussexcountype.gov/single-family-projects>

5. Proposed Placement of Fill - prepared & sealed by licensed professional:

- Specify the amount, type, and source of fill material.
- Compaction specifications.
- Description of intended purpose of the area to be filled.
- Evidence the proposed fill is the minimum necessary for the intended purpose.

6. DNREC letter / approval (if applicable) - to construct within the regulated area / landward of the Building Line (Atlantic Ocean).

7. Driveway plan - Location of all existing (if applicable) & proposed site accesses and entrance driveways; driveway location(s) on parcel and proposed off-street parking.

8. Landscaping - A landscape plan, prepared by a landscape architect licensed in the State of Delaware and shall show the location, species (common and botanical names), size and condition of all proposed plantings.

9. Grading plans. All proposals for development/construction shall be accompanied by a grading plan per - §185-89 A & B.

10. Other requirements - any / all papers, drawings, explanations, etc., that may be requested by the Town to assure conformance with all applicable codes and regulations.

11. Contractors / Subcontractors – A contractor & subcontractor list identifying all companies to be working on the job site and their current Town of Dewey

Beach business license.

All coastal high-hazard areas (Zone VE) must meet the specific requirements of §101-31 through §101-33.

The applicant shall include in the building permit application a certification prepared by a licensed professional engineer or a licensed professional architect that the design and methods of construction to be used meet the applicable criteria of the Town of Dewey Beach Code.

§ 71-3D Building permits.

When the above requirements and all other requirements have been met, a building permit may be issued; provided, however, that no construction activity of any kind shall be commenced until the building permit is posted in a conspicuous place on the property which is the subject of the building permit.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not obtained prior to the beginning of construction.
§93-1 K.

Renovations to Existing Dwellings & Structures

Renovations include any improvement, addition, repairs, alterations, rehabilitation, or reconstruction (§101-13).

1. Building Permit Application with applicable drawings, plans and contracts.
2. MAY REQUIRE market Value of the structure before improvement is started or before damage occurred.
3. MAY REQUIRE actual cash value of all proposed work to improve the property OR restore the property before damage occurred.

All coastal high-hazard areas (Zone VE) must meet the specific requirements of §101-31 through §101-33.

The applicant shall include in the building permit application a certification prepared by a licensed professional engineer or a licensed professional architect that the design and methods of construction to be used meet the applicable criteria of the Town of Dewey Beach Code.

§ 71-3D Building permits.

When the above requirements and all other requirements have been met, a building permit may be issued; provided, however, that no construction activity of any kind shall be commenced until the building permit is posted in a conspicuous place on the property which is the subject of the building permit.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not obtained prior to the beginning of construction.
§93-1 K.

Residential Permit Application Requirements

For Flood Zone X

New Construction & Renovations

1. **Building Permit Application** with all applicable drawings, plans and contracts.
2. Preliminary Site Plan - prepared & sealed by licensed professional: (per §185-76 Dewey Code)
 - drawn to scale, showing the nature, location, dimensions, existing and proposed topography
 - portion of the site that was previously filled
 - location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
3. All drawings / plans (minimum of TWO hardcopy sets; digital may also be requested) specifications and accompanying data:
 - shall bear the name and address of the designer.
 - Sussex County Tax District, Map, and Parcel number and assigned 911 street address.
 - buildings or structures of 5,000 square feet or more in area, the designer shall be an architect or engineer legally registered under the laws of any state in the United States regulating the practice of architecture and/or engineering and shall affix his official seal to said drawings, specifications and accompanying data.
4. Plans shall meet the minimal requirements by Sussex County:
<https://sussexcountyde.gov/single-family-projects>
5. (If applicable) DNREC letter / approval - to construct within the regulated area / landward of the Building Line (Atlantic Ocean).
6. Driveway plan - Location of all existing (if applicable) & proposed site accesses and entrance driveways; driveway location(s) on parcel and proposed off-street parking.
7. Landscaping - A landscape plan, prepared by a landscape architect licensed in the State of Delaware and shall show the location, species (common and botanical names), size and condition of all proposed plantings.

8. Grading plans. All proposals for development/construction shall be accompanied by a grading plan per - §185-89 A & B.

9, Contractors / Subcontractors – A contractor & subcontractor list identifying all companies to be working on the job site and their current Town of Dewey Beach business license.

10. Other requirements - any / all papers, drawings, explanations, etc., that may be requested by the Town **to assure conformance with all applicable codes and regulations**

§ 71-3D Building permits.

When the above requirements and all other requirements have been met, a building permit may be issued; provided, however, that no construction activity of any kind shall be commenced until the building permit is posted in a conspicuous place on the property which is the subject of the building permit.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not obtained prior to the beginning of construction.
§93-1 K.

Commercial Permit Applications

For Flood Zones VE, AE, AO

Application Process

1. **Apply for a building permit.** Review the application requirements to ensure you are submitting all necessary documents. You may apply for the building permit **online**, or in person at Town Hall. The turn-around time can not be speculated, since this depends on multiple factors - if your permit application was submitted correctly and in full, the scope of work, and the volume of applications ahead of your submission. **The review process** and time is based on the complexity of each project.
2. **One we review the plans in accordance with the Town's building and zoning codes, we will give you paperwork for you to take to the county office along with your approved sets of sealed plans.** There will need to be a county commercial plan review. Ultimately, the county will do inspections.
3. While the county is doing their plan review, another set of sealed plans will need to be given to the State Fire Marshal Office for their plan review. The county will not issue a building permit without the Fire Marshal approval of the plans, or paperwork stating they have no objection to your project, and they will not be doing any inspections.
4. Once you have received the county's paperwork/permit:
 - Bring ALL of the county paperwork/permit including your stamped plans. Drop these off with the receptionist at the Town Hall service window. This

paperwork will be returned to you upon completion of the Dewey Beach building permit.

- After receiving all county paperwork, the Building Official can begin processing your Town permit. You will be provided payment instructions once your permit is ready.

Application Requirements for New Construction & Renovations to Existing Structures

1. Building Permit Application with all applicable drawings, plans and contracts.

2. Preliminary Site Plan - prepared & sealed by licensed professional: (per §185-76 Dewey Code)

- drawn to scale, showing the nature, location, dimensions, existing and proposed topography
- portion of the site that was previously filled
- location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.

3. Elevation Certificate - prepared and sealed by licensed professional:

- an elevation certificate that shows the ground elevation and proposed building elevations (identified in Section C of the elevation certificate as "Construction Drawings").

4. Drawing / Plans (minimum of four hardcopy sets, plus a digital set) -- to be prepared and sealed by a licensed professional showing:

- Elevation of the lowest floor, including basement, or elevation of the bottom of the lowest horizontal structural members of all proposed structures.
- Drawings, diagrams, or descriptions of the proposed foundation.
- Locations of all service equipment and utilities.
- Plans shall meet the minimal requirements by Sussex County:
<https://sussexcountyde.gov/commercial-projects>

5. Proposed Placement of Fill - prepared & sealed by licensed professional:

- Specify the amount, type, and source of fill material.
- Compaction specifications.
- Description of intended purpose of the area to be filled.
- Evidence the proposed fill is the minimum necessary for the intended purpose.

6. Driveway plan - Location of all existing (if applicable) & proposed site accesses and entrance driveways; driveway location(s) on parcel and proposed off-street parking.

7. Landscaping - A landscape plan, prepared by a landscape architect licensed in the State of Delaware and shall show the location, species (common and botanical names), size and condition of all proposed plantings.

8. Grading plans. All proposals for development/construction shall be accompanied by a grading plan per - §185-89 A & B.

9. Other requirements - any / all papers, drawings, explanations, etc., that may be requested by the Town to assure conformance with all applicable codes and regulations.

10. Contractors / Subcontractors – A contractor & subcontractor list identifying all companies to be working on the job site and their current Town of Dewey Beach business license.

11. Applications may also be required to include:

- Market Value of the structure before improvement is started or before damage occurred.
- Actual cash value of all proposed work to improve the property OR restore the property before damage occurred
- Dry Floodproofing Certificate prepared and sealed by a licensed professional.
- V-Zone Certificate prepared and sealed by a licensed professional.
- Other agency approvals, such as DelDOT, Sussex County Utility, Sussex County Conservation District, DNREC letter of approval (regulated area construction, air quality, asbestos, etc).

§ 71-3D Building permits.

When the above requirements and all other requirements have been met, a building permit may be issued; provided, however, that no construction activity of any kind shall be commenced until the building permit is posted in a conspicuous place on the property which is the subject of the building permit.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not obtained prior to the beginning of construction.
§93-1 K.

Business Licensing

[Do I need to have a business license?](#)

Zoning

[Where can I find information on zoning?](#)

Contact Info

Town of Dewey Beach
103 E. 2nd St., 4th Fl.
Dewey Beach, DE 19842

1-302-227-6563
1000 E. 10th St.
Newark, DE 19702

www.townofdebeach.gov



Building & Zoning Department

[Home](#) > [Groups](#) > [Building & Zoning Department](#)

ABOUT

Welcome to the Dewey Beach Building Department! We're here to assist you with construction and maintenance questions, zoning, code enforcement, flood risk and mitigation.

DO I NEED A PERMIT?

It's always a great idea to check if your project requires a permit prior to starting any work. Some maintenance projects may not require any notice to our department, while others can potentially require a Notification of Work, or a Building Permit, depending on the scope and project cost. [Click here](#) to find out if your project requires any notification or permits from us.

CODE ENFORCEMENT

Dewey Beach Code Enforcement will conduct routine patrols throughout town to ensure that all ongoing work complies with applicable regulations. This includes verifying that required permits have been properly obtained and that any work being performed remains within the scope of the approved permit. In addition, officers will check that businesses operating within town limits maintain valid and current business licenses.

The Town's approach emphasizes education first, with staff working to inform property owners and contractors of applicable requirements and encourage voluntary compliance. Enforcement measures will be used when necessary to address violations that remain uncorrected. These efforts are intended to promote fairness, accountability, and consistency, ensuring that all residents and business owners adhere to the same standards and operate on a level playing field.

Dewey Beach remains committed to proactive flood mitigation efforts to protect both property owners and the surrounding coastal environment. The Town is comprised of multiple flood zones, each with specific requirements that govern what can be constructed and how structures must be built to withstand potential flooding and coastal storm impacts. These regulations are designed to reduce risk, enhance resilience, and ensure long-term sustainability.

To further support these goals, Dewey Beach continuously evaluates and improves its building code regulations, adapting to evolving best practices and environmental challenges. Property owners are encouraged to understand the requirements applicable to their specific location to ensure compliance and maximize protection. Assistant Town Manager Jim Dedes and Certified Floodplain Manager Dave Naples are available to answer questions and provide guidance tailored to individual properties and project needs.

Assistant Town Manager/Building Department Supervisor

Jim Dedes

jdedes@townofdeweybeach.com

Do I Need A Permit?

Applications ▶

Zoning ▶

More Info ▶

Location

105 Rodney Avenue
Dewey Beach, DE 19971

[Get Directions](#)

Contact Info

EXHIBIT 6

EXHIBIT 6A



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363

REFERRAL LETTER

DATE Dec 30, 2025

EXPIRATION March 30, 2026

Your project will require two (2) permits. Town of Dewey Beach **AND** Sussex County
This form is the REFERRAL LETTER. Take this form along with your other paperwork & plans to the Sussex County Building Permit Office Georgetown, Delaware
(This form is NOT a Dewey Beach Building Permit)

101 Carolina LLC has applied to the Town of Dewey Beach for a **PERMIT A CHANGE ORDER, or PERMIT RENEWAL** to build on the property identified by the Sussex County

Tax Maps District 334 Map 20.10 Parcel 89.01 (unit _____)

Site Address 101 Carolina St

THE PROPERTY IS ZONED AS

- Resort Business _____
- Resort Residential _____
- Neighborhood Residential
- Other _____

SETBACKS (feet) PER DISTRICT

Front	Rear	Side
Front 22	Rear 10	Side 8
Front 18	Rear 12	Side 8
Front _____	Rear _____	Side _____

The property is **NOT** in a FEMA designated Special Flood Hazard Area FLOOD ZONE X

The maximum building height is 25 feet from grade (center point of driveway / entry) 32 feet from BFE (plus 1 foot freeboard)

- I have referred the application to your office to obtain the necessary Sussex County permit(s) as stated on the Sussex County Building Requirements with the Municipality

RESIDENTIAL

Scope of Work

COMMERCIAL

Swimming Pool

James D. Deles
Town Clerk

Dewey ID # 9915

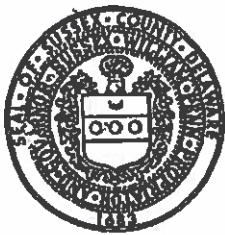
SUSSEX COUNTY PERMIT DEPARTMENT
PLEASE INSERT THE COUNTY PERMIT APPLICATION NUMBER HERE

APPLICANT INSTRUCTIONS

Once you or permit applicant to the Sussex County Building Inspection Office is approved, return ALL THE SUSSEX COUNTY PAPERWORK AND (if applicable) your building plans back to the Town of Dewey Beach. You will be notified when the Town Clerk. You will be notified when the Town of Dewey Beach Building Department has posted.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not prior to the beginning of construction 693.1.K.

EXHIBIT 6B



**Sussex County
Building Permit**
P.O. Box 589
Georgetown, DE 19947
302-855-7720

Application Number
202600030
Issue Date: 01/05/2026
Expire Date: 01/05/2027

Permit Type: **MISC. IN TOWN**

Parcel ID	Address	Zone Code
334-20.10-89.01	CAROLINA ST	

Owner Information	Applicant Information
Name: REHOBOTH BY THE SEA REALTY CO Phone: 3016391339	Name: COASTAL POOLS Phone:

Contractor Information	
Name: REHOBOTH BY THE SEA REALTY CO CID: 643163 Phone:	License Number: License Exp. Date: Insurance Exp. Date:

Building Information
Proposed Use: SWIMMING POOL Construction Type: Estimated Cost of Construction: \$ 81,365 Cannot Occupy More than _____ of Total Lot Area Distance from any Dwelling of other Ownership: _____ Distance from any other Mobile Home or Accessory Structure: _____

Property Information
Measurements taken from Property Lines Front Setback: _____ /PER _____ Rear Setback: _____ /OF _____ Side Setback: _____ /TOWN _____ Corner Setback: _____ /DEWEY BEACH _____ Maximum Building Height: TOWN _____ Location Description: _____ FLOOD ZONE LOT 1 BLK 28 REHOBOTH BY THE SEA Flood Zone: DEWEY BEACH _____ If Initialed, See Attached Flood Plan Construction Review Coastal and Flood-Prone Area Building Requirements.

Project Description: SWIMMING POOL TOWN
Scope of Work:
12 X 24 INGROUND POOL W/216 SQ FT PAVER PATIO

Permit Details:

[Signature]
Signature of Approving Official

[Signature]
Signature of Owner/Contractor

I fully understand the Zoning Requirements of this permit.

Building Permit Acknowledgement:

I/we the undersigned, acknowledge I/we have read and accept the terms of this Building Permit and shall comply with the rules and restrictions related to this building activity. This permit shall expire one (1) year from the date of issue. This permit may be renewed prior to its expiration date if construction has begun and continued in a normal manner and not discontinued for reasons other than those beyond the permit-holder's control. Grading or surface-shaping of the site shall not be considered as actual construction.

I/we further acknowledge, ASSESSORS AND INSPECTORS HAVE A RIGHT TO ENTER AND ACCESS THE PREMISES TO ASSESS AND INSPECT PROPERTY. The owner or owners of these premises do hereby consent to Sussex County Officials' right to enter upon said premises during the construction of which this permit is granted, or within a reasonable time thereafter, for the purposes of assessing and inspecting said property.

THE APPROVAL OF THIS PERMIT APPLICATION PERTAINS ONLY TO COMPLIANCE WITH SUSSEX COUNTY ZONING ORDINANCES. IT IS NOT TO BE CONSTRUED AS AN APPROVAL FOR THE REQUIREMENTS OF ANY OTHER GOVERNMENTAL AGENCY, WHICH MAY PERTAIN TO THIS SITE. AND FURTHER, IT IS ACKNOWLEDGED AND UNDERSTOOD THAT THIS PERMIT MAY BE REVOKED BY SUSSEX COUNTY FOR ANY VIOLATION OF THE TERMS OF THIS PERMIT OR OF ANY COUNTY, STATE OR FEDERAL LAW APPLICABLE TO THIS PERMIT.

Permit Number	BP-270508	TOTAL FEES:	\$ 370.41
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EXHIBIT 6C

PLEASE POST

A BUILDING PERMIT

Has Been Issued

To Erect Improvements ON THESE PREMISES

IN ACCORDANCE WITH CONDITIONS OF PERMIT

In all cases where operation or work is being performed under a new building permit, this poster or sign shall be conspicuously displayed upon that part of the site of such operation or work which is closest to a street or public highway, so that such poster or sign shall be visible to the general public at all times.

A FINAL INSPECTION MUST BE MADE AND
A CERTIFICATE OF OCCUPANCY ISSUED BY
BUILDING CODE OFFICE PRIOR TO ANY
OCCUPANCY OR INTENDED USE OF BUILDING.

202600030

BUILDING PERMITS DIVISION

EXHIBIT 6D

101 CAROLINA LLC
19606 COASTAL HWY. UNIT 103
REHOBOTH BEACH, DE 19971-8576

60-142
313

63

\$ 370.41

106

DATE

1-4-26

PAY TO
THE ORDER OF

Sussex County

\$ 370.41^(R)

Three hundred seventy and 41/100

DOLLARS



Search Feature
Included
Only on Bank

Fulton Bank

101 Carolina

LISTENING IS JUST THE BEGINNING.®

MEMO

pool permit

MP

SPECIALTY DUES

© 2012C delaware.com/cheat

ENDORSE HERE

PAY TO THE ORDER OF

M&T BANK

031302955

FOR DEPOSIT ONLY

CHECK DEPOSIT
SUSSEX COUNTY COUNCIL

DATE OPERATING

9849367744

DO NOT WRITE BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

ISN# 701502358304

Date 1/6/2026

WorkType:26 Batch#: 1

582

The security features listed below are those
recommended by the FBI Laboratory guidelines.

- Security Features:
 - Number of document alterations: 0
 - Security line or line appears: 0
 - Characteristics of Security Features that may appear with: 0
 - Security Features: 0
 - Number of Original Document: 0

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EXHIBIT 7

4/19/26, 6:00 AM

Gmail - call this morning



Marcia Schleck <mischleck@gmail.com>

call this morning

1 message

Marcia Schleck <mischleck@gmail.com>

To: Town Manager <townmanager@townofdeweybeach.com>, Jim Dedes <jdedes@townofdeweybeach.com>

Cc: "Faust, Veronica O." <VFaust@morrtsjames.com>

Wed, Jan 14, 2026 at 4:10 PM

Bill, Needless to say, I am more than concerned about the call I received from you this morning, especially after all our meetings on this matter, considerable document submissions and a personal meeting with me, Rich, Jim and yourself in December. Given the situation, I think it's best to memorialize this call.

Rich and I met in Town Hall with you and Jim on Thursday December 18, 2025 to discuss the permit approval. You called me on Tuesday December 22, 2025 reporting that the Town has fully approved my pool permit with the pool safety fence in the permit location, 10 feet from the front property line. You said the Town would issue the referral letter the following week since you were busy and Town Hall was closed Wed to Friday.. That referral letter was issued Dec, 30, 2025. Based on that and your verbal commitment of the approval and the referral letter issued, we paid for and received the County permit on January 5, 2026 and that permit was dropped off at the Town office that same day.

Weeks after you approved my pool permit application you phoned me this morning and reported the following:

That the Town has received complaints from neighbors that don't like what you are doing with your pool and the fence location (at 101 Carolina) – that neighbors are not happy about where your fence will be located. I don't even understand how any neighbors would be privy to my building permits or application or my plans as I have not shared them with any neighbors.

You said that because of those complaints, we decided you will need to go to the Board of Adjustment to resolve it and we will be reversing our approval of your pool/fence permit.

It is more than disheartening and inconceivable that you articulated the sole reason for this revocation and reversal of your approval was based solely on a/or several property owner complaints saying "they don't like what you are doing or where you are locating the fence in the front yard." That was the sole reason you articulated to me for reversing your approval. I have detrimentally relied on your approval.

Given the velocity of this situation and the fact that we have moved forward with contracts, scheduling, etc based on assurance and reliance from the Town that the pool and fence were fully approved I asked that you reconsider your position and respond back to us by the end of the day so we know what direction we need to go. I find it extremely concerning that a neighbor contacting the Town saying that they did not like what I was building, after I received approval from the Town, would cause you to reverse a permit approval. That is the sole reason you reported that you were reversing your decision.

I am certainly open to any further discussion, but based on these events I need it to involve Veronica.

Thank you,

Marcia

EXHIBIT 8

Morris James ^{L L P}

Veronica O. Faust
302.260.7280
vfaust@morrisjames.com

January 16, 2026

VIA EMAIL

Fred Townsend, Esq.
ftownsend@delawarelaw.com

Jim Dedes
jdedes@townofdeweybeach.com

Re: 101 Carolina Avenue, Dewey Beach, DE - Permit for Pool

Dear Fred and Jim:

I am writing to you in connection with the recent communication that Marcia Schieck has received from the Town Manager regarding the Town's refusal to issue a Dewey permit for her proposed pool at 101 Carolina Avenue. A copy of the permit application is enclosed for your convenience. Apparently, public complaints about the pool have generated what seems to be a knee jerk reaction from the Town. The Town Manager now advises Marcia that she will have to take the issue of the pool fence before the Town's BOA. The problem with this position is that the Town has already decided on the pool's compliance with the Town's zoning code and Marcia has relied to her detriment thereon. Specifically, the Town gave Marcia a referral to Sussex County for her pool application and in reliance thereon Marcia applied for a Sussex County building permit, paid her non-refundable application fee and was issued a Sussex County permit. A copy of the referral letter, canceled check and permit is enclosed.

The referral letter clearly states that "We have referred the applicant to your office to obtain the necessary Sussex County permit(s) as stated in the Sussex County document, 'Permitting Requirements with Municipalities'." The permit process outlined on the Town's website clearly states, "Once we review the plans in accordance with the Town's building and zoning codes, we will give you paperwork for you to take to the county office along with your approved set of sealed plans." [emphasis added].

The bottom line is that the Town has already approved the zoning compliance of Marcia's pool plans and the issuance of the Dewey permit is perfunctory now that she has received the Sussex permit. Marcia has paid a non-refundable permit fee to Sussex County in detrimental reliance upon the referral letter. The Town cannot now deny Marcia's building permit based upon zoning compliance. If Town residents object to the Town's decision, then they will need to take appropriate action to challenge the permit's issuance assuming there is an avenue for challenge, and they have standing to do so.

19339 Coastal Hwy, Suite 300 | Rehoboth Beach, DE 19971 T 302.260.7290 F 302.727.5886
www.morrisjames.com

January 16, 2026
Page 2

Morris James

Marcia has contracted with a builder who is poised to deliver a finished home on 101 Carolina on June 6, 2026. Marcia will suffer significant financial loss if the home cannot be delivered in time for the 2026 rental season due to an illegitimate delay of the permit issuance. The Town cannot administer its zoning laws based upon public outcry. The Town Code does not, under the law of statutory interpretation, preclude the pool or the pool fence at issue. Marcia spent significant time and lawyer fees addressing this issue with the Town administration and counsel in connection with her pool application. The Town's letter referring the pool permit to Sussex County was only issued after significant wrangling between the Town and Marcia's attorneys concerning the statute's interpretation. The result of that debate was the issuance of the referral letter clearly indicating the Town has already determined the zoning compliance of the pool and fence location and Dewey must now issue permit.

Sincerely,



Veronica O. Faust



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

9915

12/3 P.M.

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

APPLICATION FOR A PERMIT

Answer all blank spaces accurately & thoroughly. Incomplete, inaccurate, & illegible applications will be returned.

PROPERTY OWNER(S) NAME(S): 101 Carolina LLC

MAILING ADDRESS: 19606 Coastal Hwy 103 Rehoboth DE 19971

PHONE #: 3028530935 EMAIL: mischieck@gmail.com

A PERMIT IS REQUESTED FOR PROPERTY LOCATION listed below:

911 ADDRESS: 101 Carolina street Dewey Beach DE

PERMIT REQUEST INFORMATION

PROVIDE A DETAILED DESCRIPTION OF THE WORK TO BE DONE:

Intall inground pool 11'6" wide x 24 long located 18'1" from the front yard set back, approx 12 feet from the east corner set back (10 feet required) and 10 feet from the west side yard set back.

There will be a 3 foot walkway around the pool.

Install pool safety fence positioned 10 feet from the front property line. Fence construction will be wood and height will meet requirement of 4'6".

The safety fence will run along the front of the pool as depicted at 4.5 high and along the east and west side as depicted at 4.5 high. The fence on east and west sides will be constructed at a height of 7 feet at the point measured 18'1" from the front property line and continue to the rear of the lot and along the back lot property line.

see attached site plan, contract and Pool construction plan

81,365.68 pool
7,900 fence

PROVIDE THE TOTAL COST OF THE WORK: (including all LABOR AND MATERIALS): \$
All costs >=\$15,000 require a \$150.00 application fee payable with this application.

BUILDER / CONTRACTOR

NAME: Coastal Pools PHONE: 443 926 6945 DEWEY BUSINESS LICENSE #: on file

ALL CONTRACTORS, SUBCONTRACTORS and TRADES ARE REQUIRED TO HAVE A CURRENT TOWN BUSINESS LICENSE
Copies of signed contract(s) between the property owner(s) & ALL contractor(s) must be included with this application.

(if applicable):

SIGNATURE OF ASSOCIATION (CONDO/HOA) REPRESENTATIVE

FREET NAME OF ASSOCIATION (CONDO/HOA) REPRESENTATIVE:

CONTACT PHONE #: DATE SIGNED:

I certify that I am the owner of record for this property, OR I have been authorized by the owner of record to make this application. This information is true and correct to the best of my knowledge.

SIGNATURE OF APPLICANT: Marcia Schieck DATE SIGNED 12.3.25

PRINT NAME Marcia Schieck

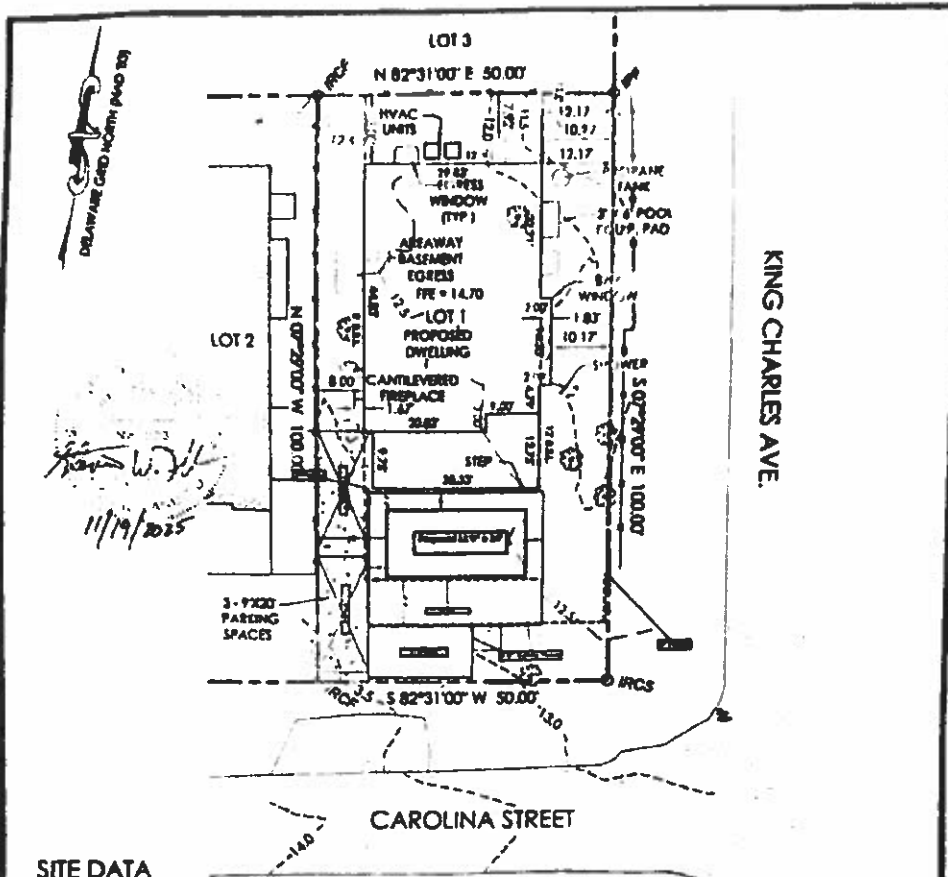
APPLICANT EMAIL: mschieck@gmail.com CONTACT PHONE #: 302.252-0555

TAX DISTRICT: 334 MAP: 20.10 PARCEL: 89.01 UNIT:

BUILDING PERMIT # FEE: \$ 2677.97 FLOOD ZONE: + 2 FOOT FREEBOARD MANDATORY OR OPTIONAL 3 FOOT FREEBOARD

Final building permit fee analysis upon completion of project. Rev. 07/2025

DIGITAL APPLICATION SUBMISSION: building@townofdeweybeach.com OR drop off to TOWN HALL



SITE DATA

1. CURRENT OWNERS: REHOBOTH BY THE SEA REALTY CO
2400 COASTAL HIGHWAY
DEWEY BEACH, DE 19971
2. SURVEYOR: SOLUTIONS IPM LLC
303 N. BEDFORD ST.
GEORGETOWN, DE 19947
410-573-8833
TAX: 334-20.10-89.01
DB 348/994
2632/99
3. TAX PARCEL: NR - NEIGHBORHOOD RESIDENTIAL
4. DEED REFERENCE: 10,000 ± SQ. FT.
5. PLAT REFERENCE: NR - NEIGHBORHOOD RESIDENTIAL
6. ZONED: NR - NEIGHBORHOOD RESIDENTIAL
7. AREA OF LOT: 10,000 ± SQ. FT.
8. BASED UPON F.E.A.M.A FLOOD INSURANCE RATE MAP 10050C0254K, PANEL 254 OF 460, WITH AN EFFECTIVE DATE OF MARCH 16, 2015, THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X, AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN.
9. HORIZONTAL DATUM SHOWN HEREON IS REFERENCED TO NAD 83 (DE STATE PLANE)
10. OFFSET DISTANCES MEASURED TO BUILDING, DECK, AND PORCH FOUNDATIONS WITHOUT STONE VENEER OR SIDING.
11. GREEN SPACE = 2,592 ± S.F. (25.9%)
IMPERVIOUS SPACE = 2,401 ± S.F. (24.0%)
12. FLOOR AREA RATIO (FAR): MAXIMUM FAR ALLOWED = 4.000 S.F.
PROPOSED FIRST FLOOR = 1,339 S.F.
PROPOSED FIRST FLOOR PORCH = 303 S.F.
PROPOSED SECOND FLOOR = 1,310 S.F.
PROPOSED FAR = 2.992 S.F.
13. MAXIMUM BUILDING HEIGHT ALLOWED = 35' ABOVE GRADE = 47.85'
PROPOSED BUILDING HEIGHT = 48.05'

LEGEND

DECIDUOUS TREE	
MAJOR CONTOUR	---
MINOR CONTOUR	- - -
IRON ROD & CAP FOUND	○ IRCF
IRON ROD & CAP SET	● IRCS
IRON PIPE FOUND	○ IFF



3003 Marsh MB Road
Salisbury, MD 21804
T 410 573 8833
www.solutionsipm.com

Copyright © 2025

Drawn by: RAM

Job No: 576140

SITE PLAN

LOT 1, BLOCK 28

REHOBOTH BY THE SEA

LEWES AND REHOBOTH HUNDRED

DEWEY BEACH, SUSSEX COUNTY, DELAWARE

Scale 1" = 20'

Date: 09/03/25
Revised: 09/29/25

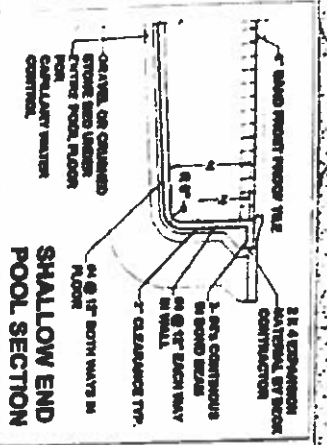
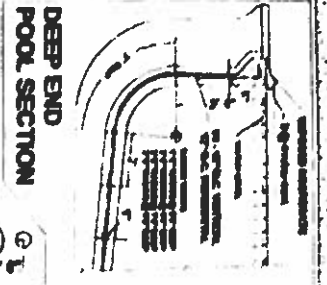
Sheet 1 of 1

89,265.68

PLAN

WARRIOR BY HALLMARK

Professional Designer: I hereby certify that I am a duly licensed professional engineer in the State of Maryland, License Number 12, 2025, and that I have prepared and approved the design of the State of Maryland. License Number 12, 2025, dated October 12, 2025.

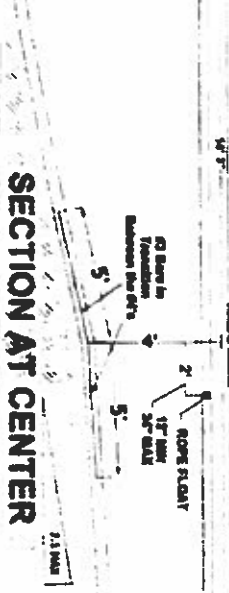
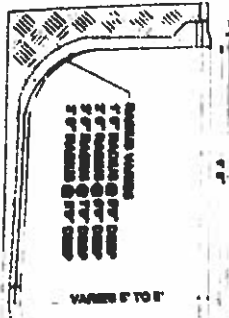
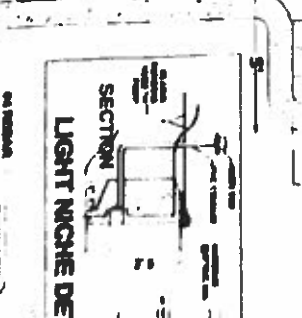
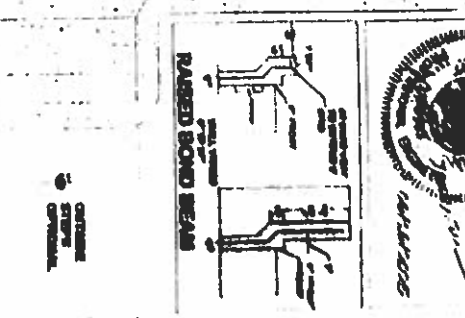
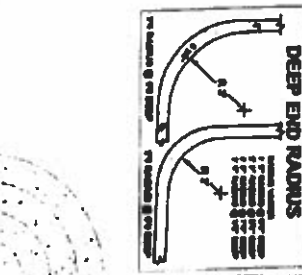
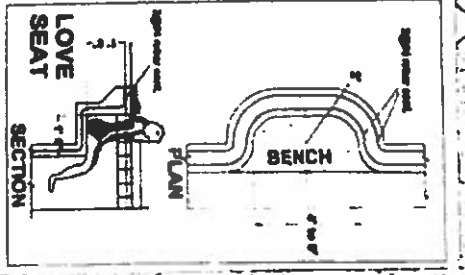
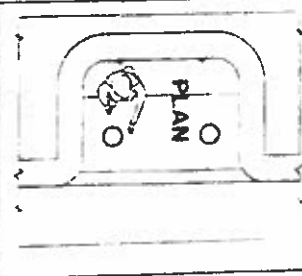
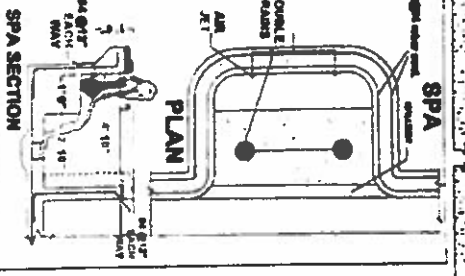


SWIMMING POOL SPECIFICATIONS

Contract shall be for 2000 GAL. capacity @ 25 sq ft. Swimming pool shall be A.S.T.M. A475, 8 x 80 L.F.L. and having capacity of 2000 GAL. The contractor shall be notified if groundwater, organic hydrocarbons and/or not to be constructed during construction. Any equipment, if required, shall be placed in each layer of construction and shall be 100% completed @ system completion.

The design and the quality of the construction are based on and subject to compliance with and implementation of applicable codes, regulations, and specifications of any local, state, and federal, and any other applicable regulatory agency, and any other applicable codes, regulations, and specifications of any local, state, and federal, and any other applicable regulatory agency, and any other applicable codes, regulations, and specifications of any local, state, and federal, and any other applicable regulatory agency.

Clear deck shall adequate for use and shall be approved by local building department. Pool construction shall comply with 2024 ICC code provisions including 2024 IRC code, 2024 ISPS code.



COASTAL POOLS

DATE: JUNE 11, 2025
NOT TO ANY SCALE



PREPARED BY

Chris Conley
 Coastal Pools
 (410) 310-2447
 chris.conley@coastalpoolbuilders.net
 500 Saddler Rd, Grasonville, MD 21638, USA

PREPARED FOR

Marcia Schleck
 Marcia Schleck
 (302) 853-0935
 marcia@luxuryvillasbythesea.com
 Carolina St, Rehoboth Beach, DE 19971, USA

NEW CONSTRUCTION PROPOSAL FORM DETAILS

101 Carolina Street
 Carolina St, Rehoboth Beach, DE 19971, USA

Welcome Message

Welcome to the Coastal Pool family! Here at Coastal Pools, we are looking forward to beginning your project as much as you are. This proposal is designed to help you better understand all the details of your specific project as well as provide you with contact information for each of your partners for each step of the process. We will guide you from the beginning; design phase, to the very end; relaxation.

Once your project is completed, you will receive another packet from us regarding Warranty Information, Care instructions, as well as a complete and detailed list of all your specific selections so you may reference them for future.

By signing below you agree to the design, work description, features, options upgrades and construction selections for your project as included in this Proposal and you agree that you have read and agree to the terms of the Coastal Pools Construction Agreement attached hereto and made a part hereof (Exhibit A). Your entire agreement with Coastal Pools regarding this project consists of this Proposal, the Exhibits to this Proposal and the Construction Plans agreed to between the parties.

DESCRIPTION	QTY	UNIT PRICE	TOTAL
Permitting			\$1,785.71
Delaware Permitting Permitting and Design Fee's associated with your County, City or Township. Jobs requiring a professional stake out may incur additional charges. Stake out prices range from \$750-\$2,000. Some municipalities and or properties may require additional time, fees or phases to obtain your permit. These can be, but are not limited to planning and zoning review, variances, buffer management plans, grading plans, site containment (silt fence), Storm water management plans, and additional fees sometimes associated with building a new home in conjunction with a new pool. While we try to predict as many of these as possible we cannot always know when these will occur. When they do we will work with you as best we can to keep the process smooth, but additional fees associated with these issues will be passed onto the homeowner.			\$1,785.71
Base Pool Shell 11.5' x 24', 5' Deep with Full Width Steps Pool Excavation Includes excavation of pool with one load of stone placed on floor of pool. Additional dig charges will apply for more complex digs and digs that take more than one day. Over dig situations will typically exceed one day, your project manager will discuss this with you further during your pre-construction meeting.			\$43,102.47

Forming And Short Plumb

During the forming and short plumbing phase of your project a Coastal Pools Team will be on site for 1-2 days depending on the complexity of your project. During this time, we will level and form the shape of your pool and install the internal plumbing of the pool. Over digs, pools elevated more than 2', or more complex digs in general may require additional time, materials, and charges to complete. Your Project Manager, or Designer will discuss these with you if necessary.

Steel

Standard pool steel application covers the engineer spec'd placement of rebar in your pool to reinforce the structure. This is calculated based on square footage and features. If additional steel is needed on your project it will be discussed with you by your designer, and or project manager.

Concrete Application For Pool Shell

Standard pool shell concrete will be either Gunite or Shotcrete. Both options are concrete applications and pneumatically applied to achieve a minimum of 4,000 PSI cure strength. Property must have water source for concrete application.

*Shell must be watered twice per day for first 10 days.

Miracote XL Waterproofing

Given the rise in cases of ASR (concrete Cancer) across the country Coastal Pools has decided to take the extra step of waterproofing every pool shell to help protect the concrete against ASR. In addition to this process Coastal Pools always uses a concrete product containing Fly Ash, or Slag to help prevent the start of ASR in our concrete. We urge any of our customers that are considering buying a new pool to educate themselves on what ASR is and make sure that no matter who you use to build your pool that they are taking all of the necessary precautions to insure your pool will stand the test of time and not fail prematurely.

276 Square Feet

Tile And Coping Installation

Labor charges for the installation of your tile and coping. Certain materials or features may require additional installation charges. Final pricing will be confirmed at your design and selections meeting.

Electric For Base Pool

Includes a 50 Amp feed up to 25ft from house panel to pool equipment panel, wiring of pool pump and mounting pool equipment panel to house or treated post. Additional equipment and or longer runs will be priced separately. * Your pool panel must be within 6' of pool equipment or additional charges will apply.

Electrical Bonding For Pool And Patio
 Proper equipotential bonding of the pool, pool equipment, and patio surrounding the pool is required by code. Coastal Pools will provide the necessary items to satisfy this code, except for if your local code requires a deck bonding grid. If this is required, we will provide at an additional charge.

*If Coastal Pools is not installing the patio it is the homeowners responsibility to ensure we can get the bonding installed and inspected prior to patio.

Plaster Prep

Installation of all wall fittings and cleaning of the pool shell in preparation of plaster.

Pool School/Start Up

Each new pool includes a startup and pool school. We strongly suggest customers be present for startup and receive pool school at the same time. Coastal Pools provides pool school only once.

Each new pool will include the following tools: net, brush, telescopic pole, vacuum hose, test strips and vacuum head.

Each new pool will include the following chemicals: Alkalinity Up, Chlorine Tabs, Calcium Chloride, Stabilizer and Muriatic Acid.

\$1,340.76

Pool Coping

Standard Coping

There are many options when it comes to coping. We have included some of our most popular options in your standard allowance. Other options are available at an additional cost. Standard options included are:

Tumbled Irregular bluestone- A great natural stone option for coping. When bluestone gets tumbled it creates a smooth surface with rounded edges perfect for around a pool.

Available in full color, or true blue. Full color will provide colors ranging in the blues and greys with some hints of browns and tans. True blue will eliminate the tans and browns and be just the blues and greys. This is a natural stone as such color variation and imperfections are normal and a part of the character of the material.

Clay Brick- Available in Plantation Red, Chino, or Autumn Leaves. This is a good durable option that comes with a full bullnose. The smooth texture of the brick and the full bullnose make this material comfortable on the hands and legs when grabbing the coping, or sitting on the side of the pool.

NicoLock Bullnose Paver Brick- Available in 17 colors included in the standard allowance (more colors available for an additional charge). Bullnose paver brick is a great option to install around your pool especially if you are looking to match a paver patio installed around your pool.

71 Linear Feet

\$18.88

\$1,340.76



Pool Tile

\$609.13

Porcelain Waterline Tile

40 Square Feet

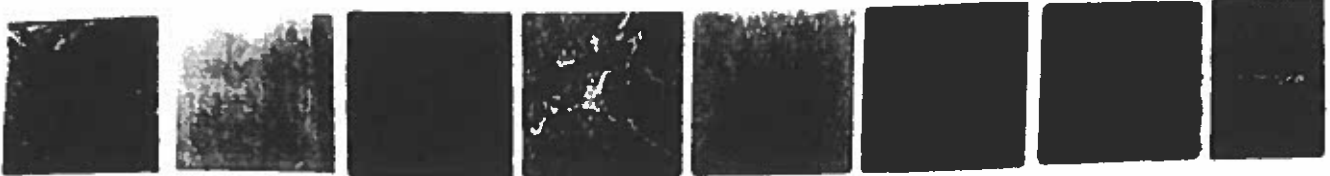
\$15.23

\$609.13

There are many options for tile included in the standard budget. Attached are pictures of the most popular options when choosing from the standard allowance. There are many more available. The material allowance is \$10.71 per S.F. Most standard 6"x6" stone look tiles from NPT are included. Please feel free to view more options at the link below.

<https://www.nptpool.com/tile/>

If you feel like these tile options or similar will suit your project, please select this group. Otherwise please view some of the additional Porcelain and Glass tile options.



Dirt Removal

4 Each

\$285.72

\$1,142.86

Dirt Removal

4 Each

\$285.71

\$1,142.86

Dirt Removal is based on a per load rate and is an estimate until the day of excavation. We estimate this number as close as possible. Price assumes we can find a free dump site. If we are unable to secure a free dump site in close proximity of your project a change order will be delivered for the dump fees.

Equipment/Plumbing Options

All pool equipment packages are for installation within 50' of the pool. The pool equipment pad will be a poured in place concrete pad, and location will need to be confirmed with your Designer or Project Manager. There are areas where code will require the equipment to be installed on an elevated deck. If so additional fees will apply. See the groups below to select the equipment package you prefer for your pool project.

\$7,889.18

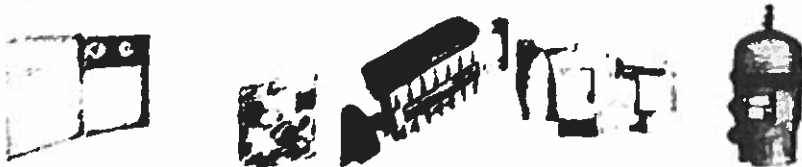
Standard Pool Equipment/Plumbing

1 Each

\$7,889.18

\$7,889.18

Package With Salt Chlorine System
 Equipment package includes a 1 hp Pentair Whisperflo pump, Pentair Clean and Clear 420 Cartridge filter, Pentair IC40 salt chlorine system, and an Intermatic dual timedock with load center. Plumbing includes up to 50' of plumbing trench, water bonding and associated valves.



Pool Cleaner

\$586.17

Polaris Skimbot Solar Cleaner

1 Each

\$586.17

\$586.17

The solar powered Polaris® Skimbot® surface cleaner removes floating debris from the pool's surface before it can sink to the floor or reach your filtration system.
Say So Long to Surface Debris
Complete Pool Surface Coverage
Powered by the Sun
Single-Button Operation
2L of Debris Collection



\$5,610.41

Heaters

Pentair MasterTemp High Performance Gas Heater 400K BTU

1 Each

\$5,610.41

\$5,610.41

The compact design and quiet operation of the Pentair MasterTemp 400 gas pool heater won't intrude on your swimming and poolside enjoyment, but will heat more efficiently than other units twice as big and loud. Price includes the heater, plumbing into the pool equipment with a valved bypass, and electrical connections.

**All gas supply and venting connections will need to be performed by others. Your contractor will need to pull the gas permit for this part of the project. Coastal pools recommends contacting your gas supplier to handle these connections, and we will be happy to coordinate these phases with the installer of your choice.

Home Owner's responsibility to confirm with Natural Gas or Propane Provider to verify their current meter/tank is sufficient for this 400k BTU Unit**



Pool Lighting

\$1,971.41

12Watt LED Light Package

2 Each

\$985.71

\$1,971.41

Light package includes Jandy Hydrocool LED Light with up to 100' of cord, 100-Watt transformer for up to 6 lights and up to 50' of conduit per light. Transformer must be upgraded to 300 Watt when utilizing more than 6 lights.

*Additional charges will apply for lights longer than 100' and conduit runs over 50'.



Grading

\$3,492.89

\$3,492.89

Grading

Includes rough grade around pool prior to patio, trench backfill and final grade of disturbed area with contractor seed and straw. Price includes up to one load of topsoil for final grading. Any fill dirt needed will be priced separately.

**If access is excessively long (100' or more) additional grading charges may apply.

**If additional areas of disturbance beyond 20' around immediate pool/patio area are created additional charges may apply to restore these areas

*Soil options available at an additional cost.

\$0.00

Patio

\$0.00

Patio Options

Dry Laid Paver Patio

1 Each

\$0.00

\$0.00

No Patio or Expansion Joint is currently Quoted, Coastal Pools provides both services and can handle if needed for additional costs.



\$13,018.80

Plaster Finishes

Choose your preferred pool finish below.



Pebble Sheen Tier 1

276 Square Feet

\$47.17

\$13,018.80

Our most popular pool finish features a blend of slightly smaller pebbles for a more refined texture, while still retaining the natural beauty and inherent qualities of a PebbleTec® pool finish. Tier one finishes include White Diamond, Desert Gold and French Grey.

10yr Manufacturer Warranty

<https://pebbletec.com/>



Microglass

276 Square Feet

\$0.89

\$244.46

Microglass SetNcure

MicroSetNcure is a plaster enhancing admixture that reduces color loss, craze-cracking, efflorescence, etching and cloudy water from new plaster dust.

<https://www.microglass.com/>

\$244.46

SotNi



Winter Covers

\$0.00

[Faint, illegible text, possibly a list of options or a table for winter covers.]

Not Applicable

\$0.00



Select this line item if you don't want anything from this selection group.

Water

~~\$571.43~~

Water Delivery

1 Each

\$571.43

\$571.43

Pricing is an estimate for each 6,000 gallon load of water. With fuel surcharges always fluctuating and each area varying in price based on distance the water has to be trucked we have estimated this price as best we can, but it is possible there could be additional charges for water once the final bill is received. Please note, not all properties are accessible via a water tanker. Your property may be evaluated at any point during construction and deemed not suitable for a water tanker to access. If this is the case we will try to coordinate smaller trucks, (which do cost extra) if none are available you may need to fill the pool from your hose.

Disclaimer

\$0.00

Excavation/Utility Mitigation

\$0.00

Prior to construction of your pool Coastal Pools and or its sub contractors will contact Ms Utility to have all public utilities marked. Public utilities are typically defined as a utility line coming from public easements to your home. Any utilities not marked by Ms Utility are not the responsibility of Coastal Pools or its sub contractors. These utilities may be, but are not limited to underground septic systems, well lines, pier electric/water supply garage electric, irrigation etc. If you have known private utilities and would like to have them located this can be done for an additional fee. If any utilities or obstructions are found during construction a Coastal Pools employee will communicate the cost to mitigate or re-route these and also let you know how this may effect your schedule if at all.

Over Dig

Included in your proposal is Coastal Pools standard excavation process. Occasionally due to our region we encounter ground water or unstable soil conditions. Unfortunately, we cannot determine for sure if we will find these conditions until we start excavating your pool. In the event we do find an unsatisfactory condition, your Project Manager will present options as well as additional costs.

Over Dig Price Ranges:

Day of Dig - Over Dig Prices can range between \$6,500 and \$11,500

Additional Days - All standard excavations are scheduled for one day. If your Over Dig encompasses multiple days of work, it will be the above price plus \$3,000 per additional Day

Additional Stone- Each standard excavation includes one 20 ton load of S7 stone for stabilization of the pool floor. Often times an overdig situation will require additional stone. Stone prices can vary, but if needed will likely range between \$1,350 and \$1,850 per 20 ton load depending on location and accessibility of the material.

Additional Forming/Labor- Standards pools include 2 days of forming/shell plumbing labor. Also included is a lumber package to form the pool up to 2' out of the ground. Overdig situations require additional forming material as well as labor.

\$0.00

Patio Drainage

If Coastal Pools is contracted to build a patio additional drainage may be required. It can be difficult to make this determination early on in the project. Once the pool is constructed and the patio is laid out your Project Manager may suggest additional drainage. Additional drainage can mean drainage in the patio to divert water away from the pool and prevent puddling on the patio. It could also mean diverting water shed from the pool area away from your house. It could lastly mean diversion of down spouts to keep storm water from discharging directly onto your patio.

\$0.00

Standard Waterline Tile

Coastal Pools has many tile selection possibilities for your pool on display in our design showrooms. While many upgrades are available there are literally dozens of beautiful tile selections that fall within our standard allowance. Our standard selections encompass many stone look, and solid color 6"x6" tiles for your waterline. In addition to picking a waterline tile you may also elect to accent your steps and benches with trim tiles. For an additional fee you can add either diamond trim tiles, or a hardline of trim tile to your steps and benches. These options will be discussed further with you at your design meeting.

\$0.00

Standard Coping Material Allowance
When it comes to pool coping the possibilities are endless. Our standard allowance covers you for two options. One is tumbled irregular bluestone, the other is bullnose clay brick available in multiple colors. These options will be shown to you during your selections meeting in our showroom. You will also be able to see many upgrade options such as travertine, marble, and even granite options with finished edges such as bullnose, eased edge or rock chiseled. If you choose an upgraded option, pricing will be provided for you at the time of selection or shortly after. Please note that when choosing a natural stone product there are tolerances for acceptable color and finish of the stone. While Coastal Pools will stand behind anything deemed outside of acceptable, natural stone can be subject to discoloration, reaction to water with poor chemistry, and leaching of minerals. In the event a material is deemed unacceptable by Coastal Pools within a period of 1 year after installation, Coastal Pools will warranty and replace the material, and charge labor at cost to replace the stone in question.

\$0.00

Standard Plumbing

Your standard pool plumbing allowance allows for your pool equipment to be 50 feet away from the closest edge of your pool. Pool equipment location will be discussed during your design meeting, and confirmed at your pre-construction meeting. In the event your pool plumbing needs to be extended there will be a charge per pipe per foot to extend it. Basic pool plumbing packages have 5 lines and each line would need to be extended. Some pools have additional lines, and some features require larger pipes all of these things can effect the price per foot to extend your lines. again this will be discussed throughout the project, and confirmed at your pre-construction meeting.

\$0.00

Standard Electrical

Your pool comes with a standard electrical budget built in to the base pool price. This price covers you for your standard pool equipment wiring, and an electrical feed line that comes from your home electrical panel. This feed line allowance is for 25 feet of 50 amp feed. If your pool equipment is more than 25 feet away from your home electrical panel additional charges will apply. Lights have an allowance of up to 50' of conduit. Junction box and outlet have a combined allowance of up to 50' of conduit. Autocovers have an allowance of up to 100' of conduit. Some features and equipment will require an upgrade to your electrical feed up to 100, or 125 amps. Upgraded electrical cost will be discussed with you throughout the process. Once the electrician arrives on the job final electrical cost will be delivered at that time

\$0.00

TOTAL

\$61,363.68

We thank you for choosing Coastal Pools, as a possible Pool Builder for your future back yard project. If you have any questions on the proposal attached to this email, please let us know and we will get your answers addressed as soon as possible.

Payment Schedule

5% - Day of Contract Signing

5% - Day of Permit Approval
20% - Day of Excavation
35% - Day of Pool Shell
30% - Day of Tile and Coping
5% - Day of Plaster

Maryland Home Improvement Commission Notice:

"Notice of Cancellation: You the buyer, may cancel this transaction at any time prior to midnight of the fifth business day, or seventh business day if you are 65 years of age or older, after the date of this transaction. See the attached notice of cancellation for an explanation of this right."

The above specifications, costs, and terms are hereby accepted.



DANIELLE MARENCO

September 23, 2025 at 2:03 PM EDT

DATE



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
302-227-6363

REFERRAL LETTER

DATE DEC 30 2018

EXPIRATION March 31 2019

This project will require two (2) permits: Town of Dewey Beach AND Sussex County. This form is the REFERRAL LETTER. Take this form along with your other paperwork & plans to the Sussex County Building Permit Office Georgetown, Delaware.

101 Carolina LLC has applied to the Town of Dewey Beach for a PERMIT, A CHANGE ORDER, or PERMIT RENEWAL on the property identified by the Sussex County

Map District 334 Map 20.10 Parcel 891.01 (unit _____)

Address 101 Carolina St

- THE PROPERTY IS ZONED AS
- Resort Business
 - Resort Residential
 - Single-Family Residential

STACKED FEET PER DISTRICT

Front	Side	Side	Side
Front: 23	Side: 10	Side: 8	Side: 8
Front: 19	Side: 12	Side: 8	Side: 8
Front: 24	Side: 10	Side: 8	Side: 8

FLOODZONE

RESIDENTIAL

Scope of Work

COMMERCIAL

Swimming Pool

[Handwritten signature]

DATE 9/15

SUSSEX COUNTY PERMIT DEPARTMENT
PLEASE INSERT THE COUNTY PERMIT APPLICATION NUMBER HERE

All plans submitted to the Building Inspection Office, approved and stamped by the Building Inspection Office, shall be returned to the applicant. The applicant shall be responsible for the return of all plans and documents to the Building Inspection Office.

The Town of Dewey Beach building permit fee shall be doubled if a Town of Dewey Beach permit is not obtained prior to the beginning of construction. §91.1 b



Sussex County
Building Permit
 P.O. Box 589
 Georgetown, DE 19947
 302-855-7720

Application Number
202600030
Issue Date: 01/05/2026
Expire Date: 01/05/2027

Permit Type: **MISC. IN TOWN**

Parcel ID	Address	Zone Code
334-20.10-89.01	CAROLINA ST	

Owner Information	Applicant Information
Name: REHOBOTH BY THE SEA REALTY CO Phone: 3016391339	Name: COASTAL POOLS Phone:

Contractor Information	
Name: REHOBOTH BY THE SEA REALTY CO CID: 643163 Phone:	License Number: License Exp. Date: Insurance Exp. Date:

Building Information
Proposed Use: SWIMMING POOL Construction Type: Estimated Cost of Construction: \$ 81,365 Cannot Occupy More than _____ of Total Lot Area Distance from any Dwelling of other Ownership: _____ Distance from any other Mobile Home or Accessory Structure: _____

Property Information
Measurements taken from Property Lines Front Setback: _____ /PER _____ Side Setback: _____ /TOWN _____ Maximum Building Height: TOWN _____ Rear Setback: _____ /OF _____ Corner Setback: _____ /DEWEY BEACH _____ Location Description: FLOOD ZONE LOT 1 BLK 28 REHOBOTH BY THE SEA Flood Zone: DEWEY BEACH _____ If Initialed, See Attached Flood Plan Construction Review Coastal and Flood-Prone Area Building Requirements.

Project Description: SWIMMING POOL TOWN
Scope of Work:
 12 X 24 INGROUND POOL W/216 SQ FT PAVER PATIO

Permit Details:

[Signature]
 Signature of Approving Official

[Signature]
 Signature of Owner/Contractor

I fully understand the Zoning Requirements of this permit.

Building Permit Acknowledgement:

I/we the undersigned, acknowledge I/we have read and accept the terms of this Building Permit and shall comply with the rules and restrictions related to this building activity. This permit shall expire one (1) year from the date of issue. This permit may be renewed prior to its expiration date if construction has begun and continued in a normal manner and not discontinued for reasons other than those beyond the permit-holder's control. Grading or surface-shaping of the site shall not be considered as actual construction. I/we further acknowledge, ASSESSORS AND INSPECTORS HAVE A RIGHT TO ENTER AND ACCESS THE PREMISES TO ASSESS AND INSPECT PROPERTY. The owner or owners of these premises do hereby consent to Sussex County Officials' right to enter upon said premises during the construction of which this permit is granted, or within a reasonable time thereafter, for the purposes of assessing and inspecting said property. THE APPROVAL OF THIS PERMIT APPLICATION PERTAINS ONLY TO COMPLIANCE WITH SUSSEX COUNTY ZONING ORDINANCES. IT IS NOT TO BE CONSTRUED AS AN APPROVAL FOR THE REQUIREMENTS OF ANY OTHER GOVERNMENTAL AGENCY, WHICH MAY PERTAIN TO THIS SITE AND FURTHER, IT IS ACKNOWLEDGED AND UNDERSTOOD THAT THIS PERMIT MAY BE REVOKED BY SUSSEX COUNTY FOR ANY VIOLATION OF THE TERMS OF THIS PERMIT OR OF ANY COUNTY, STATE OR FEDERAL LAW APPLICABLE TO THIS PERMIT.

Permit Number	BP-270508	TOTAL FEES:	\$ 370.41
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PLEASE POST

A BUILDING PERMIT

Has Been Issued

To Erect Improvements ON THESE PREMISES

IN ACCORDANCE WITH CONDITIONS OF PERMIT

In all cases where operation or work is being performed under a new building permit, this poster or sign shall be conspicuously displayed upon that part of the site of such operation or work which is closest to a street or public highway, so that such poster or sign shall be visible to the general public at all times.

A FINAL INSPECTION MUST BE MADE AND
A CERTIFICATE OF OCCUPANCY ISSUED BY
BUILDING CODE OFFICE PRIOR TO ANY
OCCUPANCY OR INTENDED USE OF BUILDING.

202600030

BUILDING PERMITS DIVISION

101 CAROLINA LLC
19606 COASTAL HWY. UNIT 103
REHOBOTH BEACH, DE 19971-8576

60-142
313 63

\$ 370.41

106

DATE 1-4-26

PAY TO
THE ORDER OF

Sussex County \$ 370.40 ^{Re}
Three hundred seventy and 41/100 DOLLARS

Fulton Bank NA 101 Carolina
LISTENING IS JUST THE BEGINNING.®

MEMO

paid pursuant

[Signature]

SPECIALTY DUES

© 2015CZ debrve.com/che113

ENDORSE HERE

PAY TO THE ORDER OF
M&T BANK
031302955
FOR DEPOSIT ONLY

CHECK MADE CERTAIN BY E.O. 12858 DEPOSIT
SUSSEX COUNTY COUNCIL

DATE OPERATING

DO NOT WRITE BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

9849367744

ISN# 701502358304

Date 1/6/2026

WorkType:26 Batch#: 1

The security features listed below are those that meet the current industry guidelines.

- Security Features:
 - Microprint
 - Security thread
 - Security fibers
- Warnings of document alteration:
 - The word "VOID" appears
 - The word "VOID" appears when photocopied
 - The word "VOID" appears when scanned with a digital imager
 - The word "VOID" appears when scanned with a digital imager

EXHIBIT 9

TOWN OF DEWEY BEACH
TOWN COUNCIL MEETING

TOWN OF DEWEY BEACH)
)
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DATE: January 16, 2026

PROCEEDINGS

MAYOR STEVENS: Good afternoon everybody. I apologize for the slight delay. This is the town of Dewey Beach monthly Town Council Meeting, and as well as a public hearing executive session to follow.

This is being held on January 16th, 2026 at 3 o'clock here at the Life Saving Station as well via Zoom. With that, I would like to convene the meeting and open up with the Pledge of Allegiance. Please stand for the pledge.

(PLEDGE OF ALLEGIANCE.)

Thank you. Next item is roll call.

Commissioner Bauer.

MR. BAUER: Present.

MAYOR STEVENS: Commissioner Persinger.

MR. PERSINGER: Here.

MAYOR STEVENS: Commissioner Gibbings.

MS. GIBBINGS: Here.

MAYOR STEVENS: Commissioner Jasinski.

MR. JASINSKI: Here remotely.

MAYOR STEVENS: Wonderful. Thank you.

And Mayor Stevens here, so we have a quorum. Next thing, can I have a Motion to Adopt the Agenda?

MAYOR STEVENS: Okay.

MR. THOMAS: Good afternoon. Happy New Year. David Thomas, I Read Avenue. I'm sorry I missed Dawn Hinks retirement party. I'm hoping that when a replacement is found for her, a consideration will be given to the importance of having a town floodplain manager. Frequently, the building official is the primacy, and then floodplain management is tacked on almost as an afterthought.

Here in Dewey, because of our unique circumstances, really the inverse, you could make a pretty good case for. The more important, the more significant, is the floodplain management and that the building code nearly incidental. Thanks.

MAYOR STEVENS: Thank you, sir.

MR. BAUER: Thanks.

MAYOR STEVENS: Anyone else here in town hall? Not hearing any. We'll move to Zoom. Kate, just let in.

MS. BANASZAK: Cindy, you can go ahead.

CINDY: Hi there. Thank you. And I appreciate being able to log in via Zoom. I'm doing wedding planning with my son, so if you hear hotel business in the background, that's what's happening.

MAYOR STEVENS: Congratulations.

MR. PERSINGER: Motion.

MS. GIBBINGS: Second.

MAYOR STEVENS: All in favor?

COUNCIL MEMBERS: Aye.

MAYOR STEVENS: That's a unanimous. Can I have a Motion for Approval of the Minutes?

MR. PERSINGER: So moved.

MR. BAUER: Second.

MAYOR STEVENS: All in favor?

COUNCIL MEMBERS: Aye.

MAYOR STEVENS: Aye. It's also unanimous. Is there anyone here that would like to have comment, for public comment for non-agenda items? I'll pop it up.

MR. JASINSKI: Well --

CINDY: I would.

MAYOR STEVENS: Let me -- we'll go through who's here in town first and then we'll -- we'll pop up the zoom, okay?

MR. THOMAS: Sure.

CINDY: =Okay.

MAYOR STEVENS: Same rules apply. Three minute timer, you'll see me do this, which is huddle up.

MR. THOMAS: Okay.

CINDY: Thank you. I wanted just to speak out because, and I've sent you all an email earlier this week, that I understand that there is an application to build a home and a pool down on Carolina Street. And it really bothers me that there was even a consideration for building 10 feet into the right of way and to allow an extra high fence that would -- that's required for pools, but higher than what the norm is to be placed in the front yard.

And I just want to say that I hope that we can go forward by paying attention to the -- the -- the code and the requirements that we currently have in place. They're there for a reason, and I hope that we can follow them. Thank you.

MR. BAUER: Thank you, Cindy.

MAYOR STEVENS: Just to reiterate, you know, we are having -- going to have a public hearing concerning this topic. Is there anyone here that has this topic other than this?

LISA: I -- I -- am I --

MAYOR STEVENS: If you want to talk about swimming pools, it's going to come up right after this.

LISA: Okay. What about trees?

1 MAYOR STEVENS: The trees are on -- go
 2 ahead. We don't want to talk about trees today.
 3 LISA: We're not talking about trees
 4 today?
 5 MAYOR STEVENS: No. You can.
 6 LISA: Okay. Well, in -- in -- in regards
 7 to what Cindy just said about the applicant on
 8 Carolina Street 101 who's building a new house, in
 9 researching, there shows there is no -- there are
 10 two permits pulled to build this house neither of
 11 which makes any sense for why the lot was decimated
 12 from the trees.
 13 If you look at the notice on the front
 14 tree, the permit was pulled for two or three trees
 15 to be taken down and, I don't know, seven or eight
 16 or nine trees were taken down. The entire lot is
 17 decimated. And there seems to be no reason for it
 18 because there's not even a permit to build the house
 19 yet. And the tree seemed to be such a sacred issue
 20 down here in Dewey.
 21 I live at the very north end of Dewey on
 22 Carolina Street also. I live amongst these high
 23 hundred foot pines and some of them are dangerous
 24 and some of them have come down. One of them came
 25 down on my house. My point being is there was no

1 reason to take down the seven or eight extra trees
 2 to build this house since there is no permit yet to
 3 build this house and the pool.
 4 And why would the trees have been taken
 5 down if there's no permit yet to build this house?
 6 I love trees and I love -- I would love to keep my
 7 trees, but sometimes they are dangerous. And the
 8 north end of Dewey is very different from the south
 9 end of Dewey. And the fact that this lot was just
 10 cleared is very disturbing. And like Cindy said,
 11 let's just follow the rules. Let's follow the codes
 12 that the town has already laid out. It's not that
 13 hard.
 14 We all have rebuilt houses and we have all
 15 done it correctly. So I don't understand why the
 16 town can't figure this out. And I know we don't
 17 have a building official anymore, so I guess things
 18 are going to slow down quite a bit, but this is very
 19 concerning.
 20 I've been on this street for more than 60
 21 years, and this is changing the look and the feel of
 22 this community from nice beach town it used to be,
 23 to something that looks like, I don't know, Silver
 24 Spring, Maryland or anywhere USA, because these
 25 houses don't conform and don't look like beach

1 houses. But the trees are very concerning to me, as
 2 are the other things that Cindy talked about, so I
 3 won't reiterate those, but thank you for your time.
 4 MAYOR STEVENS: Thank you very much.
 5 Better not be about pool, if you come up.
 6 MS. SCHIECK: Trees.
 7 MAYOR STEVENS: All right. Come on up.
 8 Name, rank.
 9 MS. SCHIECK: Yes. Thank you. Marcia
 10 Schieck. I am the applicant at 101 Carolina Street.
 11 Thank you, Lisa, because I think this gives me the
 12 opportunity to clear up some misinformation around
 13 this project, and I really appreciate you all giving
 14 me that opportunity. Number one, the permit for the
 15 construction of the house was approved by Dewey
 16 Beach.
 17 It is coming through county permitting and
 18 should be out by the end of this week today. The
 19 trees were approved separately for removal. I am
 20 probably, having been here for 20 years and having
 21 built, renovated, or remodeled 35 homes between
 22 Saulsbury Street and the north end, 20 something on
 23 the north end, all of which I have maintained the
 24 character of those homes outside of a couple new
 25 builds.

1 Four of those new builds were built to 28
 2 feet high and maintained the character. I'm
 3 probably the biggest advocate of preserving trees.
 4 In fact, all four of my homes I built on on Jersey
 5 Street, I exceed the limit for replenishing trees.
 6 All four of those homes, I replenished eight trees
 7 on every home. I took out two and I replenished
 8 eight.
 9 I did the same on Saulsbury Street, Swedes
 10 Street, Chesapeake, Carolina, every place. The
 11 trees that were taken out were four large trees,
 12 three lob lollies that were required to be removed
 13 by the town per the code, and one beautiful and
 14 sadly beautiful tree in the backyard that was a
 15 magnolia that I tried to save.
 16 I also asked the town to have some
 17 leverage to move my parking space in the front one
 18 foot so we could save the =one, 70, 80 year old
 19 loblolly. And the town denied that request to save
 20 the tree over the parking space because the town is
 21 not given any leverage by the Council to have any
 22 leverage to move from the code at all.
 23 So what I can tell you was, for me, it was
 24 really sad to realize that two of the trees were
 25 required by the town to come down because of my

1 parking requirements, despite the fact I had made a
2 request to have some leverage to move 12 inches so I
3 could save those trees. So while I really do
4 appreciate the opportunity, it's really
5 disconcerting to me that I have been a steward of
6 this town.

7 I have renovated, gutted, and restored
8 20-some houses in the north end to their original
9 character, making them your own homes. So I think I
10 am probably one of the only persons in town that
11 have done that. So with all due respect, Lisa, and
12 you have been my neighbor for a long time, you know
13 that, and so I don't really enjoy being made the
14 villain.

15 And so I would really like it if we can be
16 more neighborly about things, and you know where I
17 live? Everyone knows where I live. Come see me. I
18 just made a phone call today to a woman that's been
19 circulating letters anonymously, to talk to her
20 about what her concerns were.

21 She didn't want to talk about them.
22 That's the way we should behave in a town of two
23 blocks by 20 blocks. I've been here for 20 years on
24 the north end. These trees were the saddest thing
25 for me to see taken out because I can't replace

1 them, but I can tell you I will exceed the
2 replacement for that lot.

3 MAYOR STEVENS: Thank you.

4 MS. SCHIECK: Thank you.

5 MS. BANASZAK: Christine, you can go
6 ahead.

7 MS. CAROLINE: Hello. Marcia, I would
8 like to follow up on that remark. I was not
9 anonymous in my letter. I signed the letter, so it
10 was not anonymous. I do agree with Lisa and Cindy,
11 I just would like our neighborhood to maintain the
12 character that it's had. We've had our home for 20
13 years. I'm at 9 Carolina Street. So -- and I --
14 unfortunately, when you called me -- and happy to
15 speak with you as I said after this meeting. I was
16 on my way to a meeting, so I was not available. So
17 I just want to follow up on that, and please feel
18 free to call me.

19 Another concern I have that's not related
20 to the pool situation or your development of this --
21 your aggressive development of this lot is the
22 permits that are allowed on Carolina Street. The
23 past couple seasons have been extremely difficult.
24 We've had construction for a variety of reasons.
25 The house has burned down and that had to be

1 replaced. Our neighbor who has two lots built a
2 house, which took pretty much three seasons, and
3 then addition to the additional lots that are
4 getting renovated.

5 And as much as I appreciate, and I
6 appreciate the renovations, and I appreciate the
7 changes that are happening in our community, it's a
8 huge inconvenience, and it's a -- even more of a
9 inconvenience when it's during season.

10 There's no parking. I'm one that does not
11 call the police very often, but 4th of July was out
12 of control and no parking -- people were trying to
13 get around construction vehicles. They had a -- a
14 lift next door that was blocking the entire street.
15 And this is 4th of July. So my question, my reason
16 -- my outside of the pool situation is, can we limit
17 the permits that are done on each street? I mean,
18 is there a way to limit that?

19 There's the house, the churchman's across
20 the street from us, which is burned down, so that'll
21 obviously be under renovation. And I know there's
22 another one that's been given its permits and will
23 be renovated, which is a couple doors down.

24 And I would assume that which down dogs or
25 dirty dogs, or what, will be working on their house

1 too, which is -- so I just want to make sure this
2 one project that Marcia is considering -- that's
3 under consideration, that -- that doesn't get
4 granted and certainly not anytime soon while all
5 this other construction's going on.

6 It's an inconvenience to us. We're
7 full-time in the summer and it's in -- it's a
8 horrible inconvenience to the renters who save their
9 money all year round to rent a house for two weeks
10 and then it's constant construction. So noise, no
11 parking, and that's something I would like to have
12 considered.

13 MAYOR STEVENS: Thank you for your
14 comments.

15 MR. BAUER: Thank you.

16 MAYOR STEVENS: Anyone else? All right.
17 Let's move on. Reports. Committee reports.
18 Commissioner Gibbings.

19 MS. GIBBINGS: No reports.

20 MAYOR STEVENS: Commissioner Persinger.

21 MR. PERSINGER: Yeah. The Resiliency and
22 Sustainability Committee's next meeting is on
23 February 5th at at 5:00 p.m. And if you'll recall,
24 based in -- at our last meeting, we had a discussion
25 from two prudential vendors to conduct a resiliency

1 study. Based on that discussion, I'm going to go
 2 back to the committee with a revised scope of work
 3 and include some more background about the state's
 4 recent Climate Action Plan, particularly the
 5 emphasis on resiliency that's -- that's a part of
 6 that plan.

7 And talk to them also about the the
 8 relationship here to the new comprehensive require
 9 -- plan requirements that are also -- that also
 10 focus on resiliency. It's -- it's required for --
 11 for large municipalities that have 2,000 or more
 12 people but we have tended in developing our comp
 13 plan to -- and tended to focus more comprehensively
 14 and -- and focus on those more comprehensive
 15 standards.

16 So I -- I will then take that back and ask
 17 the committee to consider and potentially approve
 18 that advice for the scope of work. And also there
 19 has been some discussion about how the two
 20 researchers, even though they're with different
 21 firms, they have some interest in working together
 22 on this project, so we want to fine-tune that a bit.
 23 And once we've had a -- a chance to talk with the --
 24 the committee, then I'll come back to the Council
 25 with revised proposal.

1 volunteers to be a part of this committee. I think
 2 we will at least seek broad representation from all
 3 of our of all our committees that we have here in
 4 town. But if you -- if you want to be a part of
 5 this -- this effort, if you want to be -- have some
 6 influence over what the 10 year vision is for Dewey
 7 Beach, please send your name in -- into town hall.
 8 I'm sure Kate would be glad to take the -- take your
 9 name and -- and contact information. We really
 10 would like to get this moving as quickly as
 11 possible. That's it.

12 MAYOR STEVENS: Thank you, sir.
 13 Commissioner Bauer.

14 MR. BAUER: Marketing just had a meeting.
 15 There's been a -- a push to help us get the bricks
 16 for the walkway around the building. So that --
 17 that -- that's the main outcome of our last meeting
 18 and our next meeting is scheduled for February 3rd
 19 at 5:00 p.m.

20 MAYOR STEVENS: Great.
 21 Commissioner Jasinski.

22 MR. JASINSKI: No updates for
 23 infrastructure.

24 MAYOR STEVENS: Thank you.
 25 Town manager.

1 The other thing I want to mention, this is
 2 not so much a committee plan or a committee report
 3 rather, but it's a committee -- hopefully in
 4 development. We are required to prepare and submit
 5 to the state revised and updated 10 year
 6 comprehensive development plan. All Delaware
 7 municipalities have to prepare and submit these
 8 plans to the state every 10 years. And it's
 9 basically a -- a 10 year vision for where we believe
 10 the town of Dewey Beach is -- is -- is -- is headed
 11 and -- and really should be headed.

12 The last plan that we did in 2018, we
 13 actually began work in 2016, so it's really time to
 14 -- to get this activity going. Because it
 15 represents a 10-year vision for the town, we also
 16 want to make sure that it provides a broad
 17 representation of all stakeholder views. So we want
 18 to include -- want to begin to develop a committee
 19 that includes not only residential property owners,
 20 but also businesses. And at least in the last
 21 comprehensive plan, we -- we actually try to get
 22 some feedback from visitors in terms of what they
 23 find good about Dewey Beach, what they would like to
 24 see improve.

25 So the basic call here is we need

1 MR. ZOLPER: Yeah. Thank you, Mr. Mayor.
 2 Good afternoon, everybody.

3 Kate, if you could bring those folks up --
 4 photos up.

5 We continue to work on the new Town Hall.
 6 You can see some of them. This would be one of the
 7 cells that -- out of the three that we have back
 8 there. If you go to the next one, this is where our
 9 new administration lobby will be.

10 Go to the next one, please. This is just
 11 that -- some of the drywall's already being hung on
 12 the first floor. Please go to the next one. This
 13 will be the police work. There'll be 12
 14 workstations in that room for the Police Department.
 15 This is some of the other areas as we walk through
 16 the building. This will be the law lobby. So on
 17 the left there would be the police department and on
 18 the right would be parking.

19 So when we do have folks come in from
 20 parking that are a little upset and sometimes get a
 21 little loud, we do have the Police Department right
 22 there. Both of those will be -- also all the glass
 23 on the first floor, including the windows, is all
 24 bulletproof. This will be the lobby as you come
 25 into the building. There'll be fountains right

1 there. This is looking from the second floor lobby
 2 out towards route 1. That'll all be glass across
 3 there, and you can see the drywall's been moved in.
 4 This is as you go through. This will be
 5 the new courtroom, the Aldermen courtroom. This
 6 will be the multipurpose room. That's the new heat
 7 and air unit that they just put on the second deck
 8 for the second floor. That was a pretty big task
 9 getting that up there. Electrical is starting to go
 10 in as you can see. And this is the third floor.
 11 That -- there'll be two windows there on the third
 12 floor to let some light in.
 13 If we go to the next one, please, Kate.
 14 There was one more picture of the third
 15 floor. We have a lot of storage space on the third
 16 floor, which is a really good thing. What I've got
 17 next is a beach shack. And why do I have a beach
 18 shack? We're building that beach shack for about
 19 \$1,500.
 20 It'll go down here on Dagsworthy Street
 21 next to David Lynam's beach shack. And what we're
 22 going to put into that beach shack is all the stuff
 23 that the chamber uses for the bonfires and for the
 24 movies. Right now, all that's kept behind here.
 25 They put that stuff sometimes on our handicap

1 wheelchairs and use that as like a wagon to pull the
 2 stuff down onto the beach.
 3 We're going to have on the left side of
 4 that beach shack, all the stuff for the chamber so
 5 they no longer have to do it. And then on the right
 6 side where we're going to have some of the handicap
 7 wheelchairs. So instead of running them back and
 8 forth from up here behind the lifeguard station --
 9 MAYOR STEVENS: Uh-huh.
 10 MR. ZOLPER: -- we'll already have those
 11 on the beach. Then on the outside of this, we're
 12 going to have some racks where the lifeguards can
 13 secure some of their boards during the day. So I --
 14 I think it'll -- it's a -- it's a good --
 15 MAYOR STEVENS: A success.
 16 MR. ZOLPER: -- investment. The other
 17 thing about the beach shacks, I was contacted by
 18 DNREC this year. DNREC is requiring us to get their
 19 permission to put the shacks, including David Lynam
 20 shacks on the beach. And of course, you know, those
 21 shacks have been on the beach since the late 70s or
 22 early 80s, but that's a requirement.
 23 It took about two-and-a-half, three months
 24 going back and forth with DNREC. I worked with
 25 Jenna -- Jennifer Pongratz, who was very good to

1 work with. It was a slow process, but we have
 2 approval for the beach shacks on the beach this
 3 summer. We may have to renew that every year.
 4 If we go to the next one real quick, Kate.
 5 So what we have here are the kayak racks
 6 down on Van Dyke Street.
 7 So you see the initial kayak rack there on
 8 the -- on the left. When we -- when we put that out
 9 that we had spots open. Six. We had the six filled
 10 within a day and we had people on a waiting list.
 11 So we put the second kayak rack up, that'll bring it
 12 to a total of 12.
 13 The kayak rack right there cost about \$140
 14 to build. We charge \$100 for each one of those
 15 spots. So we'll make the money back and then some
 16 on -- on the rack. That'll run from April 1st to
 17 March 30th and it'll be \$100 for the season. So
 18 those are two projects that are going along down
 19 there.
 20 We have posted for a new building
 21 official. The starting pay on that is \$68,000 plus
 22 benefits. We are looking for a -- we are looking
 23 for a preferred certified flood manager, as was
 24 suggested. But I -- I've talked to Rehoboth and I
 25 talked to Lewis. Neither one of those have a

1 certified flood manager on their staff.
 2 Bethany does have one, and the pay is
 3 higher than what we're looking for, but we are
 4 looking for it. And my thoughts on that are, we
 5 hire somebody with the agreement that it's
 6 conditional higher if they take the flood management
 7 test within 15 months, and then maybe we could get
 8 them certified to help us with our CRS and our NFIP.
 9 So that's -- that's pending. As I said
 10 earlier, we've raised our pay jobs and those are the
 11 jobs for the 5Ks, and for the certain restaurants in
 12 town. They've gone from \$90 an hour to \$105 an hour
 13 for those. And that's to cover gasoline, vehicles
 14 that continue to run during those times, and also
 15 the taxes that we -- that we pay on those.
 16 The Read Avenue project, as you know, is
 17 the million dollars is on hold. I have been on --
 18 with Senator Coons' office twice, and they say they
 19 are engaging with the Army Corps to try to get that
 20 money freed up. We have put two temporary sub pumps
 21 into the catch at the end of the street. When
 22 they're on, they do about 5,000 gallons an hour,
 23 when they're both running full-time. About 5,000
 24 gallons an hour to help alleviate the flooding there
 25 at the end of the street.

1 Dickinson Street, our project down there
 2 to -- to mitigate the flooding, it's going out to
 3 bid next week, and I am going to apply for CTF
 4 funding to help pay for that -- for that -- that
 5 project. It has been approved by the infrastructure
 6 committee and has been approved by the
 7 commissioners. ServPro was in here the other day.
 8 They cleaned out all our vents through this.
 9 They -- it -- they hadn't been cleaned
 10 since the building had been here, so we did have all
 11 the vents cleared, had new filters put in. That was
 12 all done this week. I've had some questions about
 13 trimming trees around power lines. That cannot be
 14 done. The power lines are owned by DP&L. The lower
 15 lines are owned by Comcast and Xfinity.
 16 Anything that's going to be done around any
 17 of those power lines must be done by DP&L and a
 18 certified contractor by one of those folks at O*NET.
 19 Please do not go out and try to cut those tree limbs
 20 around the power lines yourself.
 21 I would like to thank the Civic League for
 22 their donation to the new Town Hall, Rehoboth by the
 23 Sea. I would also like to thank Dewey Beach in
 24 Bloom -- Dewey in Bloom for continuing with the
 25 flowers around town. Thanks, Sheena and the Mayor,

1 and -- and Iris for all the budget work -- for the
 2 budget workshop.
 3 New Year's Eve went very well this year.
 4 I'll let the Chief, if she wants to expand on that,
 5 but I thought it was -- there was no major events
 6 that I'm aware of and -- and again, the Chief can --
 7 can discuss that.
 8 The -- the drop there on New Orleans
 9 Street went fine and the fireworks went fine. Thank
 10 you to both Dewey Beach Business Partnerships and
 11 Highway 1. I think you'll see the analysis that
 12 we'll have later today on the Police Department
 13 reflects the good job that the Chief -- the Chief
 14 has done over the last couple years.
 15 We are recruiting right now and we have
 16 job postings for lifeguards, our summer police
 17 officers, our parking ambassadors, and our dog
 18 ambassadors. If you're interested, please go to our
 19 Town webpage. And then St. Patty's Day is only 58
 20 days west --
 21 MS. GIBBINGS: Huh?
 22 MR. ZOLPER: -- 58 days away for -- for
 23 when they -- they have the St. Patty's Day --
 24 MAYOR STEVENS: Opening.
 25 MR. ZOLPER: -- opening, right? So it's

1 coming sooner -- sooner than everybody realizes --
 2 MAYOR STEVENS: Because everyone looks at
 3 the beach opening at St. Patty's Day.
 4 MS. GIBBINGS: Yeah.
 5 MR. ZOLPER: Yes. And pending any
 6 questions, that -- that's all I have, Mr. Mayor.
 7 MAYOR STEVENS: I just have one question.
 8 I -- I -- I like the kayak launch. I like what
 9 you've done there. How -- how deep was the waiting
 10 list? I saw that you had 6, you built another 6.
 11 Is there another 10 or 20 people that are looking
 12 for --
 13 MR. ZOLPER: So there was at least five
 14 that were waiting.
 15 MAYOR STEVENS: Okay.
 16 MR. ZOLPER: Yeah.
 17 MAYOR STEVENS: All right. Any other
 18 questions for the Town Manager? All right. Chief?
 19 CHIEF SPEAKE: Hello, everyone. Happy New
 20 Year. I've been doing seasonal interviews since the
 21 day before Christmas. We already have eight
 22 conditional office. I have three interviews next
 23 Friday. Our goal is to get 14 this year, so
 24 hopefully that happens. Our New Year's Eve went
 25 very well. It was -- I won't say quiet, but it was

1 a lot lighter than the year before or the prior
 2 year, so it went very well. Everybody had a great
 3 time.
 4 We have our accreditation assessment
 5 scheduled for February 4th, and that's the state
 6 mandated accreditation that we've been working
 7 towards. That's a state law that we have to do.
 8 The assessors will be at our site on February 4th
 9 doing the assessment, making any recommendations if
 10 we need to fix anything, and then April will be the
 11 review board will -- that will approve us in April.
 12 So the goal was to get accredited by 2028, so we're
 13 doing great if we do that.
 14 So our yearly report is out, so if you
 15 want to get a lot of information on what we've done
 16 for the year, it's all going to be on our site, and
 17 the prior reports for '23 and '24 are also on there.
 18 I just want to cover a few things. So I'm going to
 19 start off with grants. So for this year we were
 20 awarded \$287,701.50.
 21 Over the last three years that I've been
 22 here, we've been awarded \$909,410.30. This year, we
 23 focused a lot of our grant funding on technology for
 24 replacement of town cameras, radio equipment, mics,
 25 surface pro tablets. We also get a lot of grant

1 funding for the extra office of highway safety for
2 speed enforcement, DUI enforcement. That's all
3 covered by the state and additional funding for
4 extra officers. That's also through grant funding.

5 Over the years, we've been able to
6 purchase a lot of our needed equipment all through
7 grants such as weapons, bulletproof vests for
8 ourselves and for our seasonals. Just most of our
9 equipment has been purchased through grants and
10 we've also gotten vehicles through grants, so it's
11 been a very successful grant funding for us.

12 Our achievements for the year, just to
13 cover a few of them. We launched our Drone Unit.
14 We added two drones and we trained two drone pilots.
15 Those drones were purchased with donations. We
16 relaunched a Motorcycle Unit while by adding the two
17 zero motorcycles, which are electric, and we trained
18 two motorcycle operators.

19 Those were also -- those were actually
20 funded through donations and grant money, and
21 they've been very successful. They were out this
22 summer and they were be able -- we were able to get
23 it in and around traffic smoothly when everything
24 was backed up.

25 We had our second annual Public Safety

1 Day, which we partnered with the Dewey Beach Lions
2 Club that went very well. We completed our updated
3 agency analysis with Dr. Warren, who's going
4 todiscuss that later, which included inspection of
5 our building, policies, procedures, employee
6 surveys, and community interviews. We held our
7 second annual award ceremony. We got our new camera
8 server and software for our cameras. We updated
9 several outdated town cameras who created and
10 deployed a new ticketing system for our seasonals.

11 We implemented our new radio dispatch
12 system. Our 13th officer graduated from the Dover
13 Police Academy and joined us in March when he was
14 fully trained, and we hired and trained 14 seasonal
15 officers. So training for the year, our officers
16 completed 1,832 hours of training, which did not
17 include firearms, canine training, or academy
18 recruit training.

19 Our academy recruit hours were 868.50.
20 That's how many hours it takes to get through a
21 police academy. Our two k-9 handlers attended 16
22 hours of k-9 training a month, totaling 192 hours,
23 and our officers completed firearms three times this
24 year. And all the type of training and additional
25 training we've completed, the majority of it is on

1 this annual report that you can see. I'm going
2 tocover the stats.

3 Kate, do you have the stat chart?

4 Mr. Mayor, did you want me to cover all
5 the months or just the year to date totals on this
6 year?

7 MAYOR STEVENS: I -- I -- if you want,
8 just the prior month. I think people could see
9 this, but I think --

10 CHIEF SPEAKE: Okay.

11 MAYOR STEVENS: -- the prior month, the
12 kind of how things are trending --

13 CHIEF SPEAKE: Okay.

14 MAYOR STEVENS: -- compared to last year,
15 but the -- I think the totals are pretty indicative
16 of the amount of work that you guys do.

17 CHIEF SPEAKE: Yeah.

18
19 So for calls for service, for the month of December,
20 we had 367. The month before was 368, and in
21 October was 542. And if you look at December of
22 2024, for the month of December, it was 366. So the
23 calls for service year to date for the --
24 correction, that should not be year to date -- total
25 amount. For the year of 2025, we handled 6,506

1 calls for service, and in the year 2024, we handled
2 6,467.

3 So for as far as criminal arrests, in
4 December of 2025, we had 20, in November 2025, we
5 had 7. October, we had 8. In December of '24, we
6 had 14. Our total arrests for this year were 275.
7 And for 2024, it was 302. As far as traffic
8 citations written, in December of this year, it was
9 233. It was 187 in November, and 160 in October.
10 In 2024, in December, it was 158. Our total traffic
11 citations for this year are 3,320. In 2024, it was
12 2,112.

13 Our traffic enforcement hours, that means
14 -- that's when the officers were out there just
15 doing their traffic enforcement, speed enforcement,
16 radar, DUI enforcement. So in December 2025, it was
17 363.5 hours. In November, it was 303 hours. In
18 October it was 336 hours. In December of 2024, we
19 ran 336 hours of traffic enforcement. For the year
20 total, it's 4,182.5 hours, and in 2024, it was 3,269
21 hours of traffic enforcement.

22 As far as accidents go, we did not have an
23 accident in December of this year. In November, we
24 had 2. In October, we had 5. December of '24, we
25 had 3. We had a total accident count of 94 this

1 year, and in 2024, we had 92.
 2 As far as parking, we had 17 in December,
 3 21 in November, 12 in October, and in 2024 it was 8.
 4 Total parking citations for '25 was 495, and '24 was
 5 602. Civil citations. As you can see, there were 0
 6 December, 0 November, 3 in October. In December of
 7 '24, we also had 0. Total civil citations for the
 8 year were 295, and in 2024, it was 239.
 9 DUI arrests. So for the month of
 10 December, we had 0. November, we had 1. October,
 11 we had 1. December, we had -- of '24, we had 2. In
 12 2025, we would -- over than -- more than doubled our
 13 DUI enforcement. We had 37 DUI arrests this year.
 14 And in 2024, we had 15 arrests.
 15 MR. PERSINGER: (Indiscernible.)
 16 CHIEF SPEAKE: And that's pretty much all
 17 I have.
 18 MR. PERSINGER: We were busy this year.
 19 CHIEF SPEAKE: We were busy this year.
 20 MAYOR STEVENS: So let me get this
 21 straight. The 400 residents had 6,500 calls --
 22 CHIEF SPEAKE: Yep. That's right.
 23 MAYOR STEVENS: -- for service?
 24 CHIEF SPEAKE: Yeah.
 25 MR. ZOPLER: Thank you. So who do they

1 arrest in December? Who -- out -- who's -- do you
 2 have a general? I can't -- what is it? 20 arrests.
 3 There's no one here. I mean, were they all one day?
 4 CHIEF SPEAKE: Actually, sure, sir,
 5 there's a lot of people here out on the weekends, on
 6 the holidays. There's a lot of things going on in
 7 the off months. And during the summer, there's up
 8 to 20,000 people here.
 9 MR. ZOPLER: Oh, I agree with you here,
 10 but I --
 11 CHIEF SPEAKE: There are a lot of people
 12 here in -- from October through now. Now it -- this
 13 is slower period now.
 14 MAYOR STEVENS: And what we've seen, as
 15 everyone has over the last 15, 20 years, there's --
 16 there -- there's more and more people here on the
 17 weekends.
 18 CHIEF SPEAKE: Yes.
 19 MAYOR STEVENS: There's more and more
 20 people --
 21 CHIEF SPEAKE: There's more events going
 22 on.
 23 MAYOR STEVENS: More events going on.
 24 MR. ZOPLER: Businesses wouldn't be open
 25 if the people weren't here.

1 CHIEF SPEAKE: That's right.
 2 MR. ZOPLER: I mean, we have more
 3 businesses open between Thursday and Sunday than
 4 ever before.
 5 CHIEF SPEAKE: Yes.
 6 MAYOR STEVENS: All right. Thank you,
 7 Chief.
 8 Any questions to Chief?
 9 MR. ZOPLER: Yeah. Thanks, Chief.
 10 MAYOR STEVENS: All right. Move on. We
 11 do not have anyone here from the chamber, so we'll
 12 pass on D. With that, we're going to open up for a
 13 public hearing. It's a public hearing regarding a
 14 resolution proposing that a referral to the planning
 15 commission for a recommendation and an associated
 16 public hearing to be held on a subject of amending
 17 the Dewey Beach Town Code section 185-51 related to
 18 the required yard, accessory, swimming pool, and
 19 pool fences.
 20 With that, I would like it open up to the
 21 first those that are here in town hall who made the
 22 trip out in this cold weather. So raise your hand
 23 if you would like to go to the podium.
 24 Mr. Deegan, first.
 25 MR. DEEGAN: Jim Deegan, I would like to

1 defend the town for following code. The owner could
 2 have adjusted there. There was a parking lot before
 3 that house that worked, and so I'm sure they -- she
 4 builds beautiful houses on (indiscernible.) I -- I
 5 have no problem with that. But again, do not blame
 6 town code for the loss of trees.
 7 MAYOR STEVENS: Thank you, Mr. Deegan.
 8 Ms. Schick, I think your hand was up next.
 9 MS. SCHIECK: Oh, yeah. Thank you. So I
 10 have a pack of hearing aid mostly that you can take
 11 with you, just so it's kind of clear what I'm
 12 (indiscernible.)
 13 MAYOR STEVENS: Here, I -- I'm good.
 14 MR. PERSINGER: All right.
 15 MAYOR STEVENS: Here.
 16 MR. PERSINGER: Thanks.
 17 MS. SCHIECK: Okay. So, yes, again, 101
 18 Carolina, 1430 Bayard. I live down the street. I
 19 lived at 103 Carolina for several years, and I
 20 personally took a lot that was decimated with no
 21 grass and irrigated it and planted all those trees
 22 myself, except for the big ones so that that could
 23 be a beautiful lot for all the time that it sat
 24 empty. I just want to talk about the pool -- front
 25 yard pool and the pool fence. Just so everybody

1 understands, for clarity's sake, because I think
 2 there's a lot of confusion.
 3 My pool that I applied for is approved.
 4 It is within the buildable footprint of the house,
 5 meaning where my pool sits, I can build a 35-foot
 6 wall with nothing behind it. I can have 20 foot
 7 statues. I can build whatever I want as long as it
 8 doesn't exceed the setbacks or the height limit.
 9 So my pool is fully within the buildable
 10 footprint. The issue at hand, which seems to be
 11 before the town is whether you want to allow pools
 12 within the front yard setback, which is not my pool,
 13 and whether fences at 4.5 feet could be in the front
 14 yard setback. I think my contention is there's a --
 15 the -- almost 100 percent of applications today for
 16 new construction are applications within ground
 17 pools.
 18 That is the number one benefit that people
 19 want in a beach house, that's their own house and
 20 also in a rental house. So people building for
 21 themselves are building 100 percent within ground
 22 pools. A lot of people are building pools in the
 23 front yard -- in front of their house for two
 24 reasons. It's open more to the air, it faces the
 25 street, and it's the least destructive in terms of

1 neighbors for noise.
 2 When you put a pool in the backyard, you
 3 have five houses around you that the pool noise
 4 emanates to. When you put a pool in the front yard,
 5 it emanates to the street and this way -- and there
 6 are no houses bordering you or the pool where it
 7 emanates.
 8 So my position on selecting the front yard
 9 for pools, which I did one at 114 Chesapeake, which
 10 was fully approved, is based on open air to the sky
 11 and the least destructive noise to neighbors. We
 12 all know pool -- pools have kids with noise. So I
 13 have less complaints if my pool was in the front
 14 yard and not echoing noise all around five houses
 15 that it surrounds to.
 16 So I'm hoping that we don't have a knee
 17 jerk reaction of, "Oh my goodness, pools are in the
 18 front yard." There is very logical reason I place
 19 them in the front yard, and that's so that the noise
 20 is the least to neighbors.
 21 The other thing about the 4.5 foot fence,
 22 the Sussex County Building Code and the ICC and the
 23 National Code requires a four-foot safety fence
 24 around a pool. We require 4.5. I would suggest
 25 that we look at raising the front fence to something

1 in between, we go from 35, 36 inches to 42 inches.
 2 42 inches will satisfy the pool safety
 3 fence, and it's this much higher -- this much higher
 4 than the fence we now require. I can't imagine any
 5 circumstances where that would impede the character
 6 of the town. Some of the things I want to tell you
 7 is there are three other sections in the code that
 8 allow and permit things higher than three and a half
 9 feet in the front yard.
 10 One is porches on enclosed decks can be
 11 protruded five feet from the front of your building
 12 line. They can protrude up to four feet high and
 13 within six feet of the front property line. So our
 14 current code already allows an unenclosed porch or
 15 deck to be six foot from the front property line up
 16 to four feet high.
 17 The unintended consequence of that is if
 18 you have a four-foot high fence, the building code
 19 requires you to have a three-foot high rail. So now
 20 you have a permitted seven-foot structure, six feet
 21 back from the property line, and that is permitted
 22 in our code. The other -- the other section of the
 23 code that allows higher structures or impediments is
 24 HVAC units can be to any height in the front yard
 25 setback and only three feet from the front property

1 line.
 2 So most of those, once they get onto a
 3 platform, they're about five feet off the ground.
 4 Someone could have three of those in the front yard.
 5 So what -- what I want people to think about is,
 6 let's not just have a reaction that a four foot
 7 fence versus a three and a half at six inches is
 8 going to be any noticeable difference to anyone.
 9 But if you build your pool in the front within your
 10 buildable footprint, the only issue is the safety
 11 fence.
 12 And so I think it seems more balanced and
 13 reasonable to -- well, not allow, the code allows,
 14 the code will always allow pools within the
 15 buildable footprint in the front of the house. But
 16 to look at allowing people to enjoy their front yard
 17 and not disturb their back rear neighbors of five
 18 houses so much by just reducing our fence to four
 19 feet and allowing an ornamental fence of three and a
 20 half feet to four feet. And it seems that we were
 21 -- we will calm all these issues and it's -- it's
 22 not now contradicting three other sections of the
 23 code that allow higher structures or impediments in
 24 the front yard.
 25 MAYOR STEVENS: Thank you, Marcia.

1 MS. SCHIECK: And this is just, if you
 2 would take it away, I included the code sections, I
 3 included examples of it. But just if I could have
 4 30 seconds, I want everyone to know that on a quick
 5 drive by today, there were 42 houses in the first
 6 two blocks of Chesapeake to Jersey that already
 7 violate the three and a half feet with fences,
 8 hedges, which aren't permitted in the front over
 9 three and a half feet or other obstructions.

10 So we included the addresses, some photos,
 11 but we are already in a -- in a situation where over
 12 50 percent of the North End already have structures
 13 that if you're going to go on a safety issue, really
 14 should be removed then.

15 MAYOR STEVENS: Thank you.

16 MS. SCHIECK: Thank you.

17 LISA: And Mr. Mayor, for the record, I
 18 did photos to Commissioner Jasinski, so he's also
 19 will be reviewing the material.

20 MAYOR STEVENS: Okay. Thank you. Anyone
 21 else? On 185-51,.

22 Kate?

23 MS. BANASZAK: Yep. David, you can go
 24 ahead.

25 MR. MOSCOWITZ: Yeah. David Moskowitz, 25

1 Read Avenue, full-time resident. So one -- one
 2 question I have is the potential unintended impact
 3 of the ordinance on HOA common area pools. And I
 4 want to raise a concern how the ordinance applies to
 5 HOA common area swimming pools. In many Dewey Beach
 6 HOAs, pools are shared amenities, and as a result,
 7 they could be in front of certain homes without
 8 occupying a required front yard in the zoning sense.

9 And in my HOA, for example, the common
 10 area pool serving units on McKinley Avenue is
 11 located in front of those homes. So as written, the
 12 ordinance could unintentionally prohibit new HOA
 13 pools or place existing lawful shared amenities in
 14 non-conforming status, which is not -- I understand
 15 the subject of what you want to do. So I
 16 respectfully ask the town to clarify how this
 17 ordinance applies to HOA common area pools,
 18 including whether there should be some sort of
 19 exemption for shared amenities as appropriate.

20 So the code that looks to do one thing and
 21 preserve -- which is preserve the town's objective,
 22 whatever that may be, but not unintended
 23 consequences. Separately, just to a mention of
 24 unrelated subject which Ms. Schieck broke up, the
 25 front yard heights -- fence height limitations

1 should be maintained as to reflect Dewey Beach
 2 identity as an open and welcoming beach town, and we
 3 don't need walled off houses. Thank you.

4 MS. BANASZAK: If anyone else wanted to
 5 make a comment on Zoom, if you can just unmute
 6 yourself.

7 MAYOR STEVENS: Is that it?

8 MS. BANASZAK: Not seeing anybody.

9 MAYOR STEVENS: All right. So not hearing
 10 anyone on Zoom, not anyone else in here for public
 11 comment?

12 MS. SCHIECK: Your Honor, can I -- can I
 13 make one 10-second clarification comment just based
 14 on --

15 MAYOR STEVENS: Go ahead.

16 MS. SCHIECK: Thank you.

17 MAYOR STEVENS: You have 30 seconds.

18 MS. SCHIECK: Okay. Thank you.

19 MAYOR STEVENS: 29.

20 MS. SCHIECK: I do just want to clarify
 21 that our current code does permit poles in the front
 22 yard, required yard setback and the safety fence.
 23 And so that was established in 2013 by a hearing and
 24 it is continued in that way since then. So I
 25 understand you're looking to disallow that, but I'm

1 asking that you look at the fence issue more
 2 heavily.

3 MAYOR STEVENS: So clarification, we're
 4 not looking to --

5 MR. MOSCOWITZ: So --

6 MAYOR STEVENS: -- to disallow anything.

7 We're opening public comment --

8 MR. MOSCOWITZ: Uh-huh.

9 MAYOR STEVENS: -- on a current section of
 10 our code. So not -- we're not trying to disallow
 11 anything. We're just having comment on it, okay?

12 MS. BANASZAK: You have an -- you have
 13 another comment on Zoom.

14 MAYOR STEVENS: Yeah.

15 MS. BANASZAK: Christine?

16 MS. CAROLINE: Hi. Thank you. I just
 17 wanted to -- Marcia brought up all these violations
 18 that are occurring with the safety on the corner
 19 lots having hedges and fences. So again, I -- I
 20 don't agree that she should have a pool on the
 21 corner. And then if there are people in violation,
 22 if possible, they're -- they're -- if it's hedges,
 23 they should be removed and maybe we -- I don't know
 24 if there's any way to ask these neighbors to make
 25 the corrections so that they are within code. I

1 don't know if that's possible. That's my comment.

2 MAYOR STEVENS: Thank you.

3 Anyone else? I thought Ellen was raising
4 her hand.

5 MS. WINKLER: No.

6 MAYOR STEVENS: All right.

7 MR. MOSCOWITZ: Would you like to weigh in
8 on that?

9 MAYOR STEVENS: All right. We're going to
10 therefore close public comment and move on to the --
11 the agenda items. Agenda A. This is the discussion
12 and possible action regarding resolution proposing
13 that a referral to the Planning Commission and
14 Recommendation and associate -- associated public
15 hearing be held on the subject of amending the duely
16 town code relating to required yards, accessory
17 swimming pools and pool fences. And -- and if I
18 could just expand a little bit on what -- what's
19 been said so far.

20 MR. ZOPLER: Yes.

21 MAYOR STEVENS: And -- and that is that
22 this is not meant to be a substantive or represent a
23 substantive change to the code. What -- what you
24 have before you is a reference or an attempt to
25 clarify the code. In two places, we have

1 prohibitions against fence heights in a required
2 front yard, which is the restricted area, the
3 setback area, in excess of three and a half feet,
4 that applies to walls and hedges as well.

5 In -- in another instance in the code at
6 185-51B regarding the location of swimming pools,
7 there's a restriction that a swimming pool may not
8 be located nearer than 10 feet to a side yard
9 boundary line or nearer than six feet to a rear yard
10 boundary line. This provision is meant to clarify
11 that a pool itself cannot be located in the
12 restricted front yard, which is again, in the North
13 End anyway, an 18 foot setback area.

14 So current law does not prohibit, as Ms.
15 Schieck indicated, a pool from being located in the
16 front yard, but the code does prohibit, in my
17 estimation, based on 185-51 and 185-92, fences,
18 hedges and walls in excess of three and a half feet
19 in the front yard setback area.

20 And this is clarifying that that
21 restriction would apply to swimming pool fences as
22 well. So if you -- if this ordinance is adopted, it
23 -- it won't outlaw or prohibit swimming pools from
24 being located in the front yard. It will just mean
25 that they've got to be adjusted -- they've got to be

1 located far -- far enough back from the setback area
2 for the location of a fence because that fence
3 necessarily by law has to be four and a half feet in
4 height. So I don't know if that clarifies. I hope
5 that clarifies that.

6 So the question is not necessarily, can
7 you have a pool in the front yard?

8 MR. FRED: Yeah.

9 MAYOR STEVENS: The question is whether or
10 not --

11 MR. FRED: That -- that could -- that
12 could be a question, but that's never been -- that's
13 -- that's our code --

14 MAYOR STEVENS: Okay.

15 MR. FRED: -- its not currently
16 prohibited. Our building official has not denied
17 applications to locate pools in the front yard.

18 MAYOR STEVENS: But as long as they were
19 at the required setback from front requirement. So
20 is there two fences then that would occur in that
21 situation? You'd have a front --

22 MR. FRED: Well, the -- an ornamental
23 fence in the front is an optional thing. You don't
24 have to have that.

25 MAYOR STEVENS: You don't need to have

1 that?

2 MR. FRED: Right. But you are required to
3 have a safety fence.

4 MAYOR STEVENS: Around the pool, correct.

5 MR. FRED: And our code in two places says
6 you can't have any fence in excess of three and a
7 half feet in the restricted area of the front yard.
8 And -- and this ordinance is intended to clarify
9 that that applies to swimming pool fences as well.

10 MAYOR STEVENS: Fred, before I open up to
11 council, is there -- are -- are -- are any of these
12 adoption of Sussex County? For example, does Sussex
13 County require four and a half foot fence around
14 pools?

15 FRED: I believe Sussex County requires a
16 four foot safety fence, not four and a half feet.
17 And I think that -- that's what Ms. Schieck said,
18 and I -- I think that is accurate. I think that Jim
19 has -- and Dawn maybe have confirmed that -- that we
20 have an extra six inch --

21 MAYOR STEVENS: All right.

22 FRED: -- requirement on those -- on pool
23 fences.

24 MR. PERSINGER: Is there -- is there a
25 state requirement?

1 FRED: I don't think there's a requirement
 2 that a -- a fence that surrounds a pool be higher
 3 than four feet anywhere. I'm not -- I can't recall
 4 off the top of my head whether it's a -- I'm not
 5 sure where the four foot -- I think four feet is the
 6 -- is generally the case everywhere. Ours is four
 7 and a half. I don't -- I don't know if it's a state
 8 requirement, but if there is a state requirement on
 9 safety fences, I don't believe it's higher than four
 10 feet.

11 MAYOR STEVENS: Counsel, questions,
 12 comments?

13 LISA: So the restricted area is 18 feet
 14 from the property line back?

15 FRED: The front yard, yes.

16 LISA: Okay.

17 FRED: In this case. Uh-huh.

18 LISA: So you could go back 18 feet and
 19 you could do the pool.

20 FRED: So pools are also required to have
 21 a three-foot surround, and we also have a green
 22 space requirement. So the surround, if it's
 23 impervious, can't be located --

24 LISA: Can't be (indiscernible.)

25 FRED: -- in the 18-foot area either. So

1 minimally, you're looking at a -- a fence, a
 2 three-foot surround and then a swimming pool in the
 3 front yard. I think that's what the current law
 4 calls for. There's some dispute. That's what I
 5 believe the current law calls for, and that's what
 6 this --

7 MAYOR STEVENS: Can you restate that for a
 8 -- so property line, 18 feet, pool fence, 3 feet
 9 pool.

10 FRED: Yeah.

11 LISA: Yes.

12 FRED: Yes. Uh-huh. Three feet minimal.
 13 I mean, you could have a bigger surround than that
 14 if you wanted.

15 MAYOR STEVENS: And how would that affect
 16 the -- the green space requirement?

17 FRED: Well, that would be --

18 MAYOR STEVENS: Or that would --

19 FRED: What -- you just -- what you just
 20 described would be compliant --

21 MAYOR STEVENS: Okay.

22 FRED: -- with the green space
 23 requirement, but no part of the -- logically, no
 24 part of the surround can be in the front yard
 25 setback if that surround itself has to be enclosed

1 by a fence higher than three and a half feet.

2 MAYOR STEVENS: I just got to ask what I
 3 -- again, the things I never thought it would be
 4 discussing when I decided to take on this role. So
 5 if there was not a requirement on the fence, if the
 6 fence was four feet, if there was -- if you could
 7 have the front fence be four feet, it was four feet
 8 from the pool, where could you put the pool?

9 LISA: It still has to --

10 MAYOR STEVENS: Is this a fence issue or
 11 is this a pool issue? I guess is what I'm
 12 (indiscernible).

13 LISA: It still has to be 18 feet back
 14 from the front yard.

15 MAYOR STEVENS: It still has to be 18 feet
 16 back.

17 FRED: Well, the -- the pool -- I think
 18 the -- the pool's going to need to be --

19 LISA: 18 plus 3.

20 FRED: -- 21 feet back --

21 LISA: 18 plus 3.

22 FRED: -- back, right? From a safety
 23 fence. If --

24 MAYOR STEVENS: Right.

25 FRED: -- because the safety fence by

1 definition is taller than three --

2 MAYOR STEVENS: I'm not trying to lead
 3 this conversation anyway. I'm just trying to get
 4 the full --

5 FRED: Uh-huh.

6 MAYOR STEVENS: If -- if -- if our front
 7 yard fence was four feet, which will make -- if the
 8 front of the --

9 FRED: Four feet tall?

10 MAYOR STEVENS: Four feet tall -- four
 11 feet tall. Yeah.

12 FRED: Uh-huh.

13 MAYOR STEVENS: If our -- but if it's --
 14 if it was --

15 FRED: It says --

16 MAYOR STEVENS: I'm just saying if it was.
 17 Right. Instead of three and a half, if it was four
 18 feet, which is consistent with what Sussex County
 19 requires of its pools, then how far back would a
 20 pool -- could -- you'll need another fence?

21 MR. PERSINGER: I think you'll need a
 22 second there.

23 MAYOR STEVENS: Right?

24 FRED: You've got green space -- the green
 25 space or --

1 MAYOR STEVENS: Then it becomes a green
 2 space though.
 3 FRED: -- would dictate that -- that the
 4 pool surround couldn't be in the 18-foot setback
 5 area either.
 6 MAYOR STEVENS: Okay.
 7 MR. PERSINGER: But -- okay. So if you --
 8 if you move the pool back into what's described --
 9 MAYOR STEVENS: (Indiscernible.)
 10 MR. PERSINGER: -- as the buildable area.
 11 MAYOR STEVENS: Right.
 12 FRED: Uh-huh.
 13 MR. PERSINGER: -- the entire walkway and
 14 fence or in the -- in the buildable area, you would
 15 have to have a fence potentially, depending how
 16 close it is to the structure. I can't imagine going
 17 to pool all the way up to the front door.
 18 MAYOR STEVENS: Right.
 19 MR. PERSINGER: But --
 20 MAYOR STEVENS: Maybe.
 21 LISA: But you got to have the three feet
 22 around.
 23 MR. PERSINGER: It's not, you got to have
 24 the three feet all the way around as well as the --
 25 the safety fence. I -- I what I think is important

1 in this discussion, assuming that we refer this to
 2 planning and zoning, is everybody understands what
 3 front yard really means, and I don't think there's
 4 common understanding of that. As -- as was earlier
 5 pointed out, you -- you can have a pool that's not
 6 in the front yard, but is in front of your house.
 7 If you -- if you move it back outside of the 18-foot
 8 setback level --
 9 MAYOR STEVENS: Uh-huh.
 10 MR. PERSINGER: -- restriction area. Is
 11 that --
 12 MAYOR STEVENS: No.
 13 MR. PERSINGER: We're just saying -- no,
 14 we're just saying from -- you -- you -- you move
 15 from the property line to 18 feet, that's the
 16 setback area. Your -- your pool would then have to
 17 be located further back than that.
 18 FRED: It could still be in front of the
 19 house.
 20 MR. PERSINGER: But -- but you could still
 21 be inside the -- in front of the house, but it would
 22 be in the buildable area. Entirely within the
 23 buildable area. Otherwise, at least in the -- in
 24 the -- in our district, it would violate the green
 25 space requirements.

1 FRED: I think what you're saying is
 2 accurate, yes.
 3 MR. PERSINGER: Okay. Well, I -- I -- I
 4 would like to give Marcia an opportunity to -- to --
 5 MS. SCHIECK: Thank you.
 6 MR. PERSINGER: -- respond.
 7 MS. SCHIECK: I don't think that's
 8 correct. And I think -- I'm sorry. Marcia Schieck
 9 speaking on behalf of 101 Carolina. I think that's
 10 the issue that people don't understand. A required
 11 yard -- the word required yard in the code means any
 12 yard that is -- the code requires to be open and
 13 unenclosed. So there are certain things that are
 14 permitted in those yards. You cannot -- you are not
 15 permitted to build a house in a required yard.
 16 So the required yard in the NR would be
 17 the 18-foot front setback, the 8 -- the 8, and the
 18 12. However, currently, the code permits a swimming
 19 pool anywhere in the required front yard, meaning
 20 within 0 property line to 18, and it also permits
 21 the pool safety fence because it's a requirement of
 22 the pool. So that was decided in 2013 here in Dewey
 23 Beach at a hearing that pool safety fences in the
 24 required front yard at 4.5 feet are not a violation
 25 of the code.

1 It was reinforced again in 2021 by Mayor
 2 Cooke in a public hearing, that pool fences in the
 3 front yard at four and a half feet are permitted
 4 currently. So I think what the town is trying to do
 5 is say, "Do we still permit pools in the required
 6 front yard and do we -- if we do, do we set an
 7 articulated setback for pools?"
 8 Like as an example, will we permit a pool
 9 at 15 feet, then you can have your 3-foot walkway
 10 and your 4-foot fence. I think what you're trying
 11 to look at is, are you going to change the code and
 12 require pools to only be in the buildable footprint?
 13 So I think if people understand what the
 14 required front yard -- so what it says is an
 15 accessory swimming pool open and an enclosed may
 16 occupy a required yard. So that is any required
 17 yard. The code already permits that. So I think
 18 it's a matter of are you looking to change that or
 19 set some dimensional limits? I -- I -- I think what
 20 -- I hope everybody has a lot of conversations about
 21 as we go through this is, you know, what is the --
 22 the safety, health and welfare issue, if someone has
 23 a pool, it's protected by the appropriate required
 24 international building code fence at four feet, and
 25 all three counties in Sussex County require four

1 feet, not four and a half.
 2 And I just like us to have open
 3 conversation about why I put pools in the front
 4 yard, and that is I'm not -- there's not
 5 disturbances from noise to five houses versus street
 6 front. So I -- I really hope we have a lot of, you
 7 know, deep and thoughtful discussion on it.

8 MR. PERSINGER: Okay. Well, I -- I -- I
 9 have a different interpretation, but I'm not the
 10 person who decides. You know, I -- I think in the
 11 NR district, putting a pool in the front yard
 12 setback within the -- between the property line and
 13 the -- the 18-foot setback would violate the green
 14 space requirements. There -- there's nothing --
 15 that -- that came after, I believe, some of the
 16 hearings that you -- that you referenced.

17 But there's -- there's nothing in the
 18 green space requirements that -- that allows the
 19 pool that I see. That's -- that's my
 20 interpretation. That may be wrong; it's for someone
 21 else to -- to decide. I -- I -- I just think in
 22 terms of the language that we have already, there's
 23 a suggested addition here so that it would say
 24 accessory swimming pools open and unenclosed may
 25 occupy a required rear yard or side yard. Logically

1 have as well.
 2 MAYOR STEVENS: So it's -- obviously, we
 3 wouldn't be discussing this at length if there was
 4 not ambiguity in terms of how we are to interpret
 5 these various elements of the code in the building.
 6 And I think the intent would be that if we do vote
 7 to send this down, that there's clarity on all of
 8 this in terms of how the green space, height fence,
 9 where the pool could be, et cetera, so that we don't
 10 have these issues coming forward for future
 11 development issues.

12 FRED: Well, I -- I -- I would --
 13 MR. MOSCOWITZ: May I -- may I make a
 14 comment?

15 MAYOR STEVENS: Of course. Hey -- hey,
 16 David, how are you?

17 MR. JASINSKI: Yeah. I'm -- well. So I
 18 would like to make comment on a couple things.
 19 First of all, the -- the calculation of the 18 plus
 20 3 as being the minim distance from the front
 21 property line, of course, that's correct. And
 22 that's just a minimum. The, you know, there is his
 23 impact on the -- on the front neighborhood as a
 24 whole, based on the pool distance. So there's a --
 25 a lifestyle kind of impact in terms of the whole

1 to me, I think there was a typo when this was
 2 originally developed.
 3 Otherwise, there would be no reason -- if
 4 you wanted just say it can -- has to be in -- it can
 5 occupy any required yard, there's no reason to
 6 distinguish side yard. There's no reason to even
 7 mention side yard at that point.

8 MAYOR STEVENS: Uh-huh.
 9 MR. PERSINGER: I think there was a it was
 10 a clear typo. So, you know, you've already had an
 11 interpretation that the current language allows a
 12 pool in the front yard -- the required front yard,
 13 you know, that's for others to decide.

14 But I just want to make sure that it's
 15 planning and zoning takes a look at this so that
 16 there are clear -- there's clear information for how
 17 the town should -- should act when they're faced
 18 with a proposal for a pool in the -- in the front
 19 yard. And for -- for the public in making comments
 20 about this, to understand exactly what constitutes
 21 the required front yard versus what constitutes the
 22 buildable area in front of the house.

23 And I just think that's important
 24 information for everyone to have and for the -- for
 25 the public to have and for planning and zoning to

1 neighborhood, and that's, you know, the -- the
 2 feedback that I'm hearing from residents. And
 3 they've always felt that the front -- front yard
 4 fence limitations is what protects us in the code
 5 from having pools too close, you know, from their
 6 opinion, to the street.

7 It's that limitation on the fence, which
 8 basically effectively denies pools being in the
 9 front yard. I do disagree with some of what Ms.
 10 Schieck said as far as history. I don't -- I don't
 11 believe that what is -- she is saying is really
 12 fully accurate. The issue of whether it's a
 13 four-foot fence or a four-and-a-half-foot safety
 14 fence, you know, the -- the -- either one is still
 15 over our height limitation on fences in the front
 16 yard, so, you know, I don't know how big a
 17 difference all of that makes.

18 My overall approach on this ordinance is I
 19 view it as more of an abundance of caution type of
 20 thing. I think our code already prohibits
 21 effectively through the limitation on fencing, you
 22 basically can't do a pull in the front yard as well
 23 as the green space issue is another complication,
 24 why you can't do it in that first 18 feet, and you
 25 have to set it back far enough so your fence is not

1 in those 18 feet as well. I view this as an
 2 abundance of caution just to make it a little bit
 3 more clear in the code, but I already think it's in
 4 the code to begin with.
 5 MAYOR STEVENS: Thank you, David.
 6 Commissioner Gibbings?
 7 MS. GIBBINGS: I've had my questions
 8 answered. Thank you, sir.
 9 MR. BAUER: Me too.
 10 MAYOR STEVENS: So, Gary, how would you
 11 like to -- could -- could I just --
 12 MR. PERSINGER: No. Go ahead.
 13 MAYOR STEVENS: Yeah. I'm -- I'm reminded
 14 that it is the building code where the -- where the
 15 four foot fence pipe comes from, so that was -- that
 16 was answered by Ms. Schieck to your question. I
 17 think that's -- that's the origin of that.
 18 And I do agree with your reading of
 19 185-51B which is that -- there's some wording here
 20 that doesn't make any sense if it's to be
 21 interpreted the way --
 22 MR. PERSINGER: Uh-huh.
 23 MAYOR STEVENS: -- some would like it
 24 interpreted. I think the only way to -- to -- to
 25 read it sensibly is to conclude that you can't have

1 a -- a swimming pool in the front yard. You can
 2 have it in the rear yard to the extent that it's not
 3 nearer than 6 feet to the rear boundary line, and
 4 you can have it no closer than 10 feet to the side
 5 yard boundary line. What occurred years ago, I
 6 would characterize differently than was
 7 characterized. We'll --
 8 MR. PERSINGER: Uh-huh.
 9 MAYOR STEVENS: -- we'll talk about that a
 10 lot more later, I suppose, but it was -- was not an
 11 expression of the Board of Adjustment, this is --
 12 that's authorized to interpret the code. It was in
 13 the context of a different matter altogether that
 14 resulted in that swimming pool on Chesapeake being
 15 allowed to remain in its current location.
 16 MR. PERSINGER: Okay. Well, I -- the
 17 question to me is, if we refer this to planning and
 18 zoning, what do we want them to do?
 19 MAYOR STEVENS: Uh-huh.
 20 MR. PERSINGER: Normally, if we send
 21 something to planning and zoning, we send them --
 22 the -- the -- the best course is to send them a
 23 draft ordinance, which really reflects what the
 24 sense of the council is, and then have them take a
 25 look at it, hold public hearings, get public input,

1 and then come back to the council and, you know, we
 2 may have another public hearing. I'm not sure if a
 3 second one is -- is required, but --
 4 MAYOR STEVENS: Yeah. You would.
 5 MR. PERSINGER: -- you know, there --
 6 there is plenty of opportunity for public input.
 7 The question is, are we -- would we be sending in --
 8 the ordinance in this form will be sending something
 9 to planning and zoning that's not specifically or
 10 sufficiently specific in terms of what we believe
 11 the sense of this council is.
 12 MAYOR STEVENS: Well, I also want to -- to
 13 -- to reiterate, you know, not that it's -- it's my
 14 opinion, but David Jasinski's opinion that it is --
 15 it is addressed in terms of pools in the front yard.
 16 That's what I heard him say. Do -- is that correct,
 17 David?
 18 MR. JASINSKI: Let -- sorry, I just had to
 19 unmute. What I was saying is that in effect, the --
 20 the prohibition on fences over a certain height,
 21 effectively makes the whole issue mute, because you
 22 just -- the code is quite clear, that you can't put
 23 a fence over a certain height.
 24 I do agree with the people who are saying
 25 that the wording is odd. Saying a required yard

1 versus any yard is two very different things, and
 2 the code does not say any yard. The code just says
 3 yard, and then goes on to talk about side and rear
 4 yards. Because of the fence limitation, there's
 5 really no point to even discuss, you know, from the
 6 code perspective front yards, because of the fence
 7 limitation, you simply can't do it.
 8 FEMALE SPEAKER ...: Good evening --
 9 CAPTAIN WARREN: Cocktail hours.
 10 MAYOR STEVENS: It's cocktail hour, cruise
 11 ship. It's cocktail hour here too.
 12 MS. GIBBINGS: So, excuse me. The -- what
 13 we have here has -- matches what Commissioner
 14 Jasinski was saying. What we have here, and I'm
 15 referencing the attachments for today's meeting --
 16 MAYOR STEVENS: Uh-huh.
 17 MS. GIBBINGS: -- does not have that 18
 18 feet plus three feet in it. Is that kind of the
 19 question that we're sending to planning? Is --
 20 which is it, or --
 21 MAYOR STEVENS: I -- I think it's -- I
 22 think we need to be very clear in terms of which one
 23 is it.
 24 MS. GIBBINGS: Uh-huh.
 25 MAYOR STEVENS: I would like to have a

1 conversation and maybe this is -- you can tell me if
2 we can't do this part of it, you know, which one is
3 it, the definition of a yard, side yard, et cetera,
4 and also about the fence issue, because I'll -- I'll
5 take myself out of the mayor position, I'll put
6 myself in a personal position.

7 If I had a property that faced south, I
8 would want my pool in the front yard so that I get
9 maximum amount of sunshine. That's just -- I've
10 seen it in north shores, you know, that just --
11 versus the backyard that shaded the whole time.

12 MS. GIBBINGS: Uh-huh.

13 MAYOR STEVENS: So I understand from a
14 enjoyment perspective what -- where -- where the
15 pool goes. You're not going to put it in a place
16 that somebody's not going to enjoy. But from the
17 other side, the safety side is why I think we went
18 to four and a half feet versus four feet. Joking,
19 everyone knows I joke. Three and a half feet is
20 sufficient for me, and may not be for Gary, okay, in
21 terms of the safety of it.

22 MR. PERSINGER: What do you -- what do you
23 mean?

24 MAYOR STEVENS: Do you want to stand up?
25 So I -- I just would -- I -- the -- the intent here

1 is how do we -- you know, a -- a good friend of ours
2 (indiscernible) said, "Don't let code get in -- in
3 the way of common sense." Why do we have these rules
4 in place? What are they meant to do? It's meant to
5 -- to allow each of us to build what we want to be
6 able to build without taking away from our neighbor,
7 and to have that enjoyment of -- of that.

8 So I think there's multiple things. We
9 want to keep the trees, we want to keep the green
10 space, we want to protect our residents and our
11 visitors, and how do we make it so that that's what
12 we're -- the intent, that's what we're actually
13 accomplishing --

14 MS. GIBBINGS: Uh-huh.

15 MAYOR STEVENS: -- versus mandating what
16 you do, if that makes sense.

17 MR. PERSINGER: Well, I -- you know, we've
18 gotten some -- I've got a number of emails --

19 MAYOR STEVENS: Uh-huh.

20 MR. PERSINGER: -- or had some emails
21 shared with me, and I would say the tenor of most
22 of those emails is they don't want to see swimming
23 pools in the front yard.

24 MAYOR STEVENS: Uh-huh.

25 MR. PERSINGER: So I think -- I guess I

1 think that's a question that we have to raise for --
2 for debate -- public input, and, you know, the --
3 the draft ordinance that is here would not allow a
4 swimming pool in a required front yard.

5 MAYOR STEVENS: But it would allow a
6 swimming pool to be located in front of the house?

7 MR. PERSINGER: Within -- fully within the
8 buildable footprint, yes.

9 MAYOR STEVENS: Right.

10 MR. PERSINGER: Yes. That -- that --
11 that's my interpretation.

12 MAYOR STEVENS: Which most of us interpret
13 it as the front yard.

14 MR. PERSINGER: Well, that's why I said it
15 has to be -- if you're going to raise this issue --

16 MS. GIBBINGS: 18 plus 3.

17 MR. PERSINGER: -- or discussion about it,
18 people have to know what the required front yard is
19 versus the area that's in front of the house, that's
20 not part of the required front building. So, you
21 know, maybe this ordinance is specific enough that,
22 you know, we could send it to planning and zoning.
23 Again, it gives plenty of opportunity for public
24 input.

25 MAYOR STEVENS: Okay.

1 MR. PERSINGER: That's not to say that,
2 you know, we're in favor of it or, you know, we're
3 approving it in any sense, but, you know, it seems
4 to be -- I think that it seems to reflect, I think,
5 the tenor of input that we've gotten from the
6 public.

7 MAYOR STEVENS: With the intent of fraud
8 and clarity on three different areas of our code
9 that are conflicting?

10 MR. PERSINGER: Right.

11 MS. GIBBINGS: Uh-huh.

12 MR. PERSINGER: Yeah.

13 MAYOR STEVENS: Yeah.

14 MS. SCHIECK: Okay. I think there was
15 something that was incorrectly said. I'd like to
16 make a clarification because I think it's important.
17 There's two distinctions between fences and our code
18 in the front yard. Ornamental fences, which are
19 three and a half feet meant to be decorative fences,
20 and pull safety fences that are required in our code
21 to be four and a half feet.

22 So that's the two -- that's the
23 convergent, you know, distinctions here. Ornamental
24 fence, three and a half feet, safety fence, four and
25 a half feet. Despite, with all due respect, David,

1 the code does permit currently pools anywhere in the
2 front yard as long as you -- and four and a half
3 foot fences.

4 But I think if what the mayor is saying,
5 which I really appreciate your -- your
6 thoughtfulness on this, let's think about how people
7 want to use their house, and everybody's building
8 with pools and that maybe they want it in the sunny
9 side.

10 But our ordinance says, we're asking
11 planning and zoning to look at restricting pools in
12 the front required yard. I -- I would really feel
13 like if it was more open to say, "Examine the issue
14 of pools in the front yard," whether we -- we want
15 to require them within the building footprint, and
16 it -- it begs the question of, if it's in my
17 building footprint at 18 feet or 21 feet, and it's
18 16 feet from the -- property line, I -- I'm not sure
19 what the --

20 MAYOR STEVENS: Well, Marcia, this is --

21 MS. SCHIECK: The issue is --

22 MAYOR STEVENS: -- a lot of -- lot of, you
23 know, ability to talk on this in terms of the topic
24 of this. Again, if there's one clear answer --

25 MS. SCHIECK: Right.

1 MAYOR STEVENS: -- we would already had
2 it. So I think setting this to planning and zoning
3 and ask them to evaluate placement.

4 MS. SCHIECK: Okay. I would like to send
5 it with the record of the July 2013 hearing, where
6 the Board was sworn in as a quasi judicial board.
7 And the only question they were asked to answer in
8 that hearing was, is a four and a half foot pool
9 safety thing permitted in the front yard or is it a
10 violation of the code?

11 And the transcript which I've provided to
12 the town was that the four and a half foot safety
13 fence in the required front yard was not a violation
14 of the code, and it was fully permitted. So I --
15 I'm just asking if you send it, could you please
16 send it with that material?

17 MAYOR STEVENS: Sure.

18 Commissioner Persinger.

19 MR. PERSINGER: Well, I would -- I'd move
20 that we refer to this draft ordinance to planning
21 and zoning for their consideration and
22 recommendation and include with that the material
23 that was just suggested from the July 13, not sure
24 know what year. I'm sorry, what year was that?

25 MS. GIBBINGS: 2013.

1 MAYOR STEVENS: 2013.

2 MR. PERSINGER: Okay. 2013.

3 MAYOR STEVENS: And looking at placement
4 of pools come up (Indiscernible) would come up, -- I
5 think there was a third -- is the green space. With
6 those in mind.

7 MR. PERSINGER: Can we add them now?

8 MAYOR STEVENS: Yes.

9 MR. PERSINGER: They only have green
10 space.

11 MAYOR STEVENS: Okay.

12 MR. PERSINGER: Okay. I'm not sure the
13 green space you require.

14 MAYOR STEVENS: Uh-huh.

15 MR. PERSINGER: Yes.

16 MAYOR STEVENS: That's right.

17 MR. PERSINGER: So here -- here we're
18 talking about hedges and -- and (indiscernible.)

19 MAYOR STEVENS: Correct. Yeah.

20 MR. BAUER: I'll second that.

21 MR. PERSINGER: Right.

22 MR. DEDES: I do have one comment, if I
23 could make it, please.

24 MAYOR STEVENS: Yes, Mr. Diddis.

25 MR. DEDES: Can we just have something to

1 -- just to make it very clear what people considered
2 the front yard to be. To make a distinguish between
3 the setback and the front yard, just something to
4 that end, because it does cause confusion. Thank
5 you.

6 MAYOR STEVENS: The buildable area.

7 MR. PERSINGER: Right.

8 MAYOR STEVENS: Okay. To include that as
9 part of the motion, okay?

10 MR. DEDES: Right.

11 MAYOR STEVENS: All right. All in favor?

12 COUNCIL MEMBERS: Aye.

13 MAYOR STEVENS: Aye. Okay. All right.

14 Next up, presentation discussion in 2025 Dewey Beach
15 Police Department organization analysis.
16 (Indiscernible.)

17 MR. ZOLPER: Mr. Mayor, can I make some
18 comments as he comes up, so --

19 MAYOR STEVENS: Yes, sir.

20 MR. ZOLPER: In 2019, the town council
21 decided to have analysis done by -- on the
22 department by retired state police Captain Warren of
23 American law enforcement training and solving
24 analysis discovered several items that needed to be
25 addressed. When I arrived here in 2021, my -- one

1 of my priorities was addressing and correcting the
 2 findings that were found in the 2019 analysis.
 3 Some of those findings were directly
 4 related to low funding for the police department.
 5 With the support of the commissioners and the
 6 public, a majority of the budget items have been
 7 addressed. However, there were still other areas
 8 that needed to be improved.
 9 In 2025, we brought Captain Warren back to
 10 complete an updated analysis of the police
 11 department. The 2025 analysis that you're going to
 12 hear has revealed the department has made major
 13 improvements and, you know, most of that's because
 14 of the hard work of the police department and the
 15 chief.
 16 And there's always room for improvement,
 17 but I -- I -- I really think it's important to show
 18 where we were in 2019, and where we are now in 2025.
 19 And with that, sir, I'll turn it over to Captain
 20 Warren.
 21 MAYOR STEVENS: Welcome, Captain.
 22 CAPTAIN WARREN: Okay. Good afternoon,
 23 Mayor. Thank you. Thank you, Bill. In short,
 24 Mayor, I would -- I would like to just read into the
 25 record, I think it'll take probably six or seven

1 minutes, my comments rather than in lieu of time
 2 looking at the hour of the day. It's a 28-page
 3 report, I think you all would rather me just simply
 4 --
 5 MAYOR STEVENS: Yes, you would.
 6 CAPTAIN WARREN: -- get to the point.
 7 MR. PERSINGER: Yes.
 8 CAPTAIN WARREN: If that -- if that's okay
 9 with you.
 10 MAYOR STEVENS: Yeah. Perfect.
 11 CAPTAIN WARREN: Great. Thank you so
 12 much. I'd like to thank each and every one of you
 13 for inviting me here today to share some of the
 14 highlights of the 2025 Police Department review. It
 15 has been a pleasure working with the town manager,
 16 chief, and each of you during these last few months.
 17 I'd like to start out with a short introduction,
 18 address some of this study's highlights, and end
 19 with providing you with a short set of new
 20 recommendations for both the short and long-term
 21 future of the department.
 22 Introduction and background of this 2025
 23 review, slash, study. As requested, writer
 24 initiated a follow-up organizational review and
 25 analysis of the Dewey Beach Police Department this

1 past fall. The study you have in front of you is
 2 the compilation of the data and information I
 3 retrieved during this review. The following
 4 observations, conclusions, and comments are based
 5 upon my 40 years of public safety and law
 6 enforcement experience and expertise. These are not
 7 intended to be all inclusive or completely
 8 exhaustive, but to provide the reader with an
 9 overview of how the Dewey Beach Police Department is
 10 currently operating both administratively and
 11 operationally.
 12 In an effort to stay within our identified
 13 budget and still provide the town with a high
 14 quality and comprehensive review of the department,
 15 we agreed to the following format. To take each of
 16 the original 2019 studies 37 recommendations and
 17 simply measure and reassess what progress had been
 18 made if -- if any, in each of those areas.
 19 With this in mind, I chose to include in
 20 this study's written report the original
 21 recommendations with my new observations and
 22 findings provided directly under each of those.
 23 This was to keep the results of this study as
 24 user-friendly and succinct as possible for the
 25 reader and for the reader to not have to flip back

1 and forth 37 times to find the original
 2 recommendation and then compare it to the new
 3 comments made during this study.
 4 I did, however, also provide a short
 5 executive summary on page 4 for those interested in
 6 a brief overview of the results of this study. To
 7 the study and review itself. In the interest of
 8 time, I would like to pick out just specific items
 9 which I believe will provide you with an accurate
 10 picture of how the Police Department is currently
 11 operating. At the conclusion of my comments, I'll
 12 be more than happy to answer any questions anyone
 13 might have of the study.
 14 With that, Mayor, can I proceed?
 15 MAYOR STEVENS: Please do.
 16 CAPTAIN WARREN: Okay, certainly. Page 5,
 17 scope of work. As you can see, the study was very
 18 inclusive and comprehensive in nature. Page 6,
 19 methodologies used. The goal in any type of review,
 20 analysis, or study is to corroborate every
 21 observation or finding you identify.
 22 In fact, as you can see by using multiple
 23 methods and sources of data and information,
 24 including over 20 personal interviews of PAC
 25 members, town council members, mayors, town

1 managers, citizens, business leaders, outside law
2 enforcement executives, and of course the police
3 chief and five of her officers and two of her
4 civilian personnel, we were able to accomplish much
5 more than just simple corroborations, but many times
6 triangulate or even find complete consensus on
7 multiple items.

8 Page 7, starting with the recommendation
9 1. Recommendation number 1 and number 2. The PD
10 should hire additional personnel. This has, of
11 course happened, along with a reorganization so that
12 there are more opportunities for the officers to
13 advance their careers, but more importantly, to
14 better serve the citizens, visitors, and business
15 community of Dewey Beach.

16 Page 8, recommendation number 3. The
17 chief of police should provide additional training
18 to personnel. This has in fact happened. The
19 additional training range from basic training at the
20 Delaware State Police Academy to required post
21 in-service training, advanced training of various
22 types, for example, crisis intervention to
23 specialized type trainings such as drone
24 certifications, to finally leadership development
25 training using the nationally recognized FBI leader

1 cetera. Several special events, as the Chief had
2 mentioned, have also taken place.

3 Page 15, recommendation number 15. The
4 evidence room, storage, and the evidence collection
5 and processing procedures have all been audited,
6 purged, and updated. Page 15, recommendation number
7 16. The salary packages for Dewey Beach police
8 officers need to be increased significantly. This
9 has in fact been accomplished via the current police
10 contract, which is slated for revisiting in 2027, as
11 you mentioned earlier.

12 Page 17, recommendation number 21. The
13 department needs to initiate a comprehensive calls
14 for service and crime data collection process. This
15 has been accomplished through the use of instituting
16 a full-time dispatch center with an actual CAD
17 system in place. This allows for accurate
18 collection of various types of very useful calls for
19 service and crime data analysis information.

20 Page 18, recommendation is number 23. The
21 department should revisit its mutual aid agreements
22 and MOUs with outside agency -- agencies. The
23 department is working very well with a multitude of
24 outside agencies, including Rehoboth PT -- PD,
25 Delaware Alcohol Tobacco Enforcement, the Delaware

1 program.

2 Page 10, recommendation number 7,
3 redevelop the department's policy and procedures
4 manual. This has in fact been done and the
5 department should be receiving State accreditation
6 as early as this spring, as you heard the chief
7 mention earlier.

8 Page 12, recommendation number 10,
9 increased sworn officer recruitment efforts. This
10 has been accomplished as seen in the amount and type
11 of the hiring the department has accomplished
12 recently. Dewey Beach Police Department is also
13 using their seasonal police officer program to
14 effectively recruit new sworn personnel. The
15 department is also participating in the new Delaware
16 Police Chief's Council, a single point of contact
17 online recruitment site.

18 Page 13, recommendation number 13. The
19 chief of police should engage with more external
20 entities and form better partnerships within the
21 community. The Chief has certainly accomplished
22 this by solidifying a number of very successful and
23 worthwhile relationships with a number of community
24 groups such as the Lions Club, Dewey Beach Business
25 Partnership, the Police Accountability Committee, et

1 Fire Marcial's Office, Delaware State Police, and a
2 variety of other Sussex County Municipal Police
3 Departments.

4 Page 18, recommendation number 24. The
5 police department administration should work special
6 events and weekends. The Chief, Lieutenant Dempsey,
7 and Sergeant Schmidt are certainly doing this and
8 have made themselves available continually to
9 respond to calls for service and or respond to
10 scenes as a backup unit, et cetera. Sergeant
11 Schmidt, in fact also worked shift work along with
12 his other duties.

13 Page 20, recommendation number 27, clean
14 up the Lisa program. In short, no further comment
15 required, that's done.

16 MAYOR STEVENS: Uh-huh.

17 MS. BANASZAK: Okay.

18 CAPTAIN WARREN: Page 20, recommendation
19 number 29, the town and Police Department need to
20 study the feasibility of building a new station.
21 Much to the town's credit, you are moving forward
22 with this with a new state-of-the-art joint town
23 services and public safety facility.

24 Page 21, recommendation number 31. The
25 police chief should compile and publish a

1 comprehensive annual report for the Police
2 Department. The Chief has in fact done this and the
3 results of these were quite helpful during the use
4 of this study and you heard the Chief mention,
5 they're all available online anyhow.

6 Page 26, appendix A, community input,
7 feedback, and comments. The comments I received
8 both verbally and in writing from a wide variety of
9 people representing a number of different audiences
10 was outstanding. The comments were very positive
11 and supportive of the police department's recent
12 past progress and the changes and of course its
13 current operations. The comments ranged from, you
14 would never know it's the same department, two, it
15 is a pleasure to work with them now.

16 Lastly and finally, the new 2025
17 recommendations. Page 24 are the study's new
18 recommendations. In short and in lieu of time, I'm
19 going to summarise these. Recommendation number 1,
20 level off and find a long-term sustainable baseline
21 for funding. With the increased cost of the
22 building and a new contract being negotiated in
23 2027, this will definitely need to be addressed very
24 soon, as you all well know and you've mentioned.

25 Recommendation number 2, find tune in some

1 internal operations to ensure the current workload,
2 whether it be operationally or administratively in
3 nature, is evenly distributed.

4 Recommendation number three, the
5 department should engage in the formal development
6 of an actual strategic plan. This will, in fact,
7 and in and of itself help with recommendation number
8 1 becoming a reality by formally identifying the
9 current and future direction and priorities of the
10 department along with the approximate and associated
11 cost.

12 Recommendation number 4. The police
13 department and town will have to reconcile the
14 police department's salaries with the town's ability
15 to meet and sustain those needs.

16 And lastly, recommendation number 5, the
17 police department should institute an annual
18 workplace climate survey. These surveys are very
19 useful in the strategic planning process and help
20 the police administration to stay in touch with any
21 internal concerns that might arise during the year.

22 And as you can already tell, I only have
23 five recommendations versus the 37 in 2019. So you
24 have to take that as a -- as a -- as a major
25 positive step in the right direction. So my final

1 comments and summary are this.

2 Your new town manager and new chief of
3 police have worked tirelessly along with each of you
4 as Dewey Beach's elected officials and business
5 community to build a strong police department with
6 even stronger ties to the community it serves.

7 The increased number of personnel, the
8 better salaries, the new station, better patrol
9 vehicles, better equipment, better policies and
10 processes, revised table of organization and better
11 training, are all helping to build a police
12 department with higher morale and incentives towards
13 higher performance, which ultimately results in
14 better services to the community for which they are
15 sworn to protect.

16 At this time, I would be more than happy
17 to answer any questions anybody might have or give
18 any clarification I can provide.

19 MAYOR STEVENS: So you're saying we're
20 doing better?

21 CAPTAIN WARREN: That would be the
22 understatement of a lifetime. Yes.

23 MAYOR STEVENS: Council. Of course,
24 Gibbings.

25 MS. GIBBINGS: I appreciate, I would be

1 not participating in that. Thank you.

2 CAPTAIN WARREN: Oh, certainly. Thank
3 you.

4 MR. PERSINGER: I -- I don't have any
5 questions. I would just say that I would have been
6 shocked had your -- your recommendations and your
7 conclusions been any different.

8 CAPTAIN WARREN: Okay. Yes.

9 MAYOR STEVENS: Yeah, it was a -- I had
10 the -- the benefit of reading the annual report from
11 the police department and then your report. I think
12 I read yours first and then your second, and it's --
13 they saved, which was perfect. All the things that
14 we've done, collectively.

15 CAPTAIN WARREN: Yeah.

16 MAYOR STEVENS: Good.

17 MR. BAUER: And I mentioned when we talked
18 over the phone was when -- when we had that report
19 in 2019, and Garrett, I remember when we all looked
20 at that, we said, "Oh my God, there's going to be no
21 way in heck that this is ever going to get
22 accomplished."

23 CAPTAIN WARREN: Uh-huh.

24 MR. BAUER: So, great to see that -- that
25 we made progress and Chief and -- and you guys have

1 done a phenomenal job.
 2 CAPTAIN WARREN: Thank you, sir.
 3 MR. BAUER: Cliff too.
 4 CAPTAIN WARREN: Certainly. Yeah. Cliff
 5 has been an invaluable resource over the years.
 6 I've worked with the department before and he is a
 7 wealth of knowledge, that's for sure. And very
 8 helpful.
 9 MS. GIBBINGS: Yes. He is.
 10 MAYOR STEVENS: Did he pay you for that?
 11 CAPTAIN WARREN: He did help me get some
 12 water out of the waterfront.
 13 MAYOR STEVENS: Okay.
 14 MR. ZOLPER: Who doesn't buy tonight?
 15 MAYOR STEVENS: Commissioner Jasinski, do
 16 you have any questions or comments?
 17 MR. JASINSKI: I do not have any comments.
 18 I appreciated the quality of the report and the work
 19 he did in following up from the work you did six
 20 years ago.
 21 CAPTAIN WARREN: Thank you so much.
 22 MAYOR STEVENS: Thank you.
 23 MR. ZOLPER: Mr. Mayor, this report had to
 24 -- we had to do this based on what we saw in 2019.
 25 And there was that open-ended part of 2019, did the

1 town really address this analysis after they -- they
 2 did the analysis? And this kind of -- it -- it puts
 3 to bed some of those, and we still have some things
 4 we need to work on, because we're always going to
 5 improve, but it -- it really addressed what took
 6 place in 2019.
 7 MAYOR STEVENS: It -- it kind of
 8 reiterates, we can never stop looking forward.
 9 MR. ZOLPER: Yes.
 10 CAPTAIN WARREN: Certainly. The -- the
 11 progress is more than admirable, but I'm amazed at
 12 how quickly you were able to pull this off,
 13 particularly with a limited budget. So the question
 14 now is, you know, can you move just a little bit
 15 more forward with the last five recommendations? If
 16 you can do that, it would be amazing. Thank you.
 17 MR. ZOLPER: Thank you, sir.
 18 MAYOR STEVENS: Thank you, Captain.
 19 MS. GIBBINGS: Thank you, sir.
 20 CAPTAIN WARREN: Thank you, Chief.
 21 MR. BAUER: Thank you, sir.
 22 CAPTAIN WARREN: Thank you for your time.
 23 MAYOR STEVENS: Thank you.
 24 Item C, review of the December financial
 25 reports. Where am I? Sir, all of Council has

1 reviewed them. We're looking at what's online as
 2 the version 2, comment or so.
 3 Sheena, do you have any comments before we
 4 open up the Council for -- questions to Council?
 5 MS. HALL: Real quick. Good afternoon,
 6 commissioners, and thank you for still being here
 7 today. We're entering the final quarter of the year
 8 for Dewey Beach. The majority of our revenue
 9 streams have been fulfilled and our revenues have,
 10 for the most part, met budget, with building permits
 11 being the only area that will not meet budget.
 12 Through constant efforts of the department
 13 heads, the fiscal efficiency of the town has
 14 improved over the past couple of years. As the town
 15 continues to grow and change, new policies and
 16 technologies are introduced to make our -- for
 17 improved efficiency, transparency, and
 18 responsibility.
 19 This year, the commissioners approved a
 20 new timekeeping system, which allowed us for the
 21 first time to be able to have our beach patrol staff
 22 clock in and out for the most part -- for more
 23 accurate timekeeping. As with all new systems,
 24 there were some unforeseen results of the charge --
 25 of the change.

1 Most obvious was the increase in seasonal
 2 beach patrol wages. Some of this has -- was because
 3 every minute counts now and if someone clocks in at
 4 8:45, then those 15 minutes, that they were not paid
 5 for in prior years due count.
 6 All guards, with the exception of
 7 lieutenants that are scheduled in early to get the
 8 day prepped, are required to be ready at 9:00 for
 9 roll call. Trying to have 50 guards all clock in
 10 simultaneously is impossible. So for this upcoming
 11 year, we are able to set the clock that if they
 12 clock in prior to the start of the shift, no matter
 13 what time they clock in, their time will start at
 14 nine o'clock. This will cut down on those early
 15 extra hours.
 16 The commissioners also approve the
 17 implementation of Edmunds financial module. This
 18 has -- will eliminate the need for duplicate work
 19 and manual report generation that is done now.
 20 Edmunds was originally set to -- our live date at
 21 the end of May of 26, it has now been up to April.
 22 This means that for fifth school year '27, the
 23 reports will not require me to manually enter data
 24 into multiple spreadsheets. Everything will be able
 25 to be pulled straight from the data.

1 Since the data storage with Edmunds is
2 cloud-based, this also means that our outside
3 accountants will be able to access and review
4 everything much easier, and this will make the audit
5 process smoother and quicker. I personally look
6 forward to April.

7 Does anyone have any questions about the
8 financials?

9 MAYOR STEVENS: Council?

10 MR. PERSINGER: Well, excuse me, my
11 question is really related to the -- the budget
12 amendment. So I would kind of like to -- to move
13 toward that because I -- my basic problem is, the
14 numbers that are in the -- that are -- are listed in
15 the budget, in the draft budget that we have, were
16 very different in -- in many respects than the
17 numbers that we have in the financials for the FY26
18 budget.

19 Not the least of which was the FY26 budget
20 as approved, showed a \$601 surplus. What's in the
21 draft budget has a deficit of -- just lost it again,
22 but shows a deficit of -- I'm in the entirely long
23 spreadsheet here. It has a -- it has a deficit,
24 something like -- she can't remember that -- what
25 that was.

1 MS. HALL: That would -- just give me -- I
2 can --

3 MR. BAUER: Yeah. You don't have to
4 answer that right now. I mean, that's just -- just
5 so we can prepare that for next year's budget. We
6 would like to try to mirror where we're at this
7 year, thinking that next year is going to be similar
8 to this year.

9 MS. HALL: For the final three months of
10 last year for building permits --

11 MAYOR STEVENS: Should be 601.

12 MS. HALL: -- we brought in a total of
13 \$83,000.

14 MR. BAUER: For January, February and
15 March.

16 MS. HALL: Yes, sir.

17 MR. BRAUER: 83,000. And how far off are
18 we from hitting building permits this year?

19 MS. HALL: Right now we're at 443,000, so
20 that puts us at 526,000 if we mirrored last year.

21 MR. BRAUER: And what -- what -- what did
22 we do for backyard? I don't know.

23 MS. HALL: We budgeted 600.

24 MR. BRAUER: 600? So we're going to be
25

1 MAYOR STEVENS: It is -- you're -- you're
2 -- you deal with -- so the budget amendment, the
3 next item are (indiscernible.)

4 MR. PERSINGER: It -- it -- it does.

5 MAYOR STEVENS: Okay.

6 MR. PERSINGER: But -- but, you know, it
7 relates to having consistency between the financials
8 that we see on a monthly basis versus what we're
9 seeing in the -- in the amendment, and what's in the
10 draft budget. I have no idea what this is.

11 MAYOR STEVENS: Commissioner Jasinski,
12 commission Bauer, Commissioner Gibbings, anything
13 about the December financials?

14 MR. BAUER: Yeah. Just a question for
15 you, Sheena --

16 MS. HALL: Uh-huh.

17 MR. BAUER: -- on building permits. So
18 what did we -- we still have three months left to
19 collect building permits. What did -- what revenue
20 did we bring in last year for those three months? I
21 mean, you don't have to answer now, I mean, but that
22 would -- I think that's good for us to know. But if
23 we did exactly what we did last year, how much would
24 we miss budget? Would we go over, would it be
25 under? I don't know.

1 about 75 grand short? Okay.

2 MS. HALL: Yes, sir.

3 MR. BRAUER: Okay. Iris, that's good
4 number. It's a good number.

5 MAYOR STEVENS: Any -- any other comments
6 on the December financials?

7 MR. JASINSKI: No.

8 MAYOR STEVENS: All right.

9 MS. BANASZAK: Mayor, you have comment on
10 Zoom.

11 MAYOR STEVENS: Really?

12 MS. BANASZAK: Got a comment, yes.

13 MAYOR STEVENS: Bring whoever it is in.

14 MS. GIBBINGS: David, go ahead.

15 MR. MOSKOWITZ: Yeah. David Moskowitz,
16 Dewey Beach, and I want to raise a wage in our
17 concern. I worked on a U.S. Supreme Court case
18 where an employer was required to pay damages for
19 failing to compensate employees for small increments
20 of times work.

21 So if I heard it right, this employee
22 could clock in earlier, but then then the system
23 just changes it to 9:00. If lifeguards are required
24 or permitted to clock in before the scheduled shift,
25 that time could be compensatable. So I -- I don't

1 know if that's a good idea to do that. I -- I would
2 strongly recommend not doing something like that.

3 And then secondly, in the past, if it
4 rained that day, lifeguards would automatically get
5 paid for half a day, but it was never put in code.
6 I don't know if that practice is still happening or
7 not, but definitely the first does not sound very
8 legal. Thank you.

9 MR. PERSINGER: So moving forward, they --
10 they will not be required to clock in until 9
11 o'clock. They will not be allowed to clock in and
12 they are required to be here at 9:00, not -- not
13 8:45, but at 9 o'clock. And when it comes to half
14 days, if they all come in and it starts raining,
15 they will clock out. The ones that Captain
16 Fritchman sends home, and their time will stop
17 there.

18 MS. HALL: We did -- the time clock policy
19 was -- worked with Diane Campanelli. She helped us
20 approve it, so -- to make sure it is --

21 MAYOR STEVENS: Any other public comment?
22 Okay. All right. Regarding the December
23 financials, I think they look great. You know, in
24 terms of -- you know, and we just continue to get
25 better. I think when we get the admins --

1 MS. HALL: Yes.

2 MAYOR STEVENS: -- platform, there's less
3 manual -- information's going to get better. And --
4 but I do -- just to talk about this lifeguard time
5 clock thing, I do want us to quantify --

6 MS. HALL: Yes, sir.

7 MAYOR STEVENS: -- the -- to the dollar,
8 what that really meant as close as we possibly can.
9 I have worked in numerous manufacturing facilities
10 where people had to clock in. System always was --
11 I don't care, but -- well, you want to come in at
12 7:30, we don't start until 8:30, that's fine. The
13 clock doesn't stop. Start until that point. It's
14 not -- we're asking people to work. A lot of times
15 people come in. They want to have a cup of coffee.
16 They want to read the paper. They don't want to
17 worry about traffic. It's not that they're working.

18 MS. HALL: Right.

19 MAYOR STEVENS: It's just they're -- so if
20 --

21 MS. HALL: If -- if they are required --
22 if they come in and work, that is different.

23 MAYOR STEVENS: It's different. But if
24 you just clock in, it's 18 minutes early --

25 MS. HALL: Yes, sir.

1 MAYOR STEVENS: -- because you want to
2 clock in and --

3 MS. HALL: Yes, sir.

4 LISA: We had a similar -- I was clinical
5 director of a psychiatric hospital and we had a
6 similar issue with nurses getting in earlier and
7 clocking in, and then they didn't quite clock out on
8 time. They weren't working during that time. They
9 were just doing whatever they -- and it -- it would
10 ruin my budget.

11 MAYOR STEVENS: It's -- it's -- it's --
12 it's -- every time you put a new time clock system,
13 you're, like, -- you think you're going to figure
14 this out. It's just -- it always happens and with a
15 year later then it's fixed. So (indiscernible) it
16 wasn't too much.

17 LISA: Uh-huh.

18 MAYOR STEVENS: Any other comments on
19 seeing review of the December financial reports?

20 All right. Let's move on. D, discussion
21 of possible action on a resolution to amend the
22 fiscal year 2026 budget.

23 Ms. Hall, before I give the -- open this
24 up to you, I would rather -- I -- I want to talk,
25 you know, this is new for the town of Dewey Beach,

1 first of all. After I think it was last year's
2 order the year before, we were -- it was recommended
3 that we amend the budget to give the general public
4 a more transparent picture of what's going on year
5 to year. It's not a -- as -- as -- say it as an --
6 as an individual. As part of the five here.

7 It's not something I like because I think
8 you try to put the best foot forward on your budget
9 and you -- you move forward with that. I understand
10 from our auditors that this isn't a practice that
11 can be done, especially when you don't budget
12 certain things and there are expenditures that are
13 -- that end up becoming incurred because of those --
14 those grants.

15 For example, if there's a 200,000 grant to
16 purchase X, and we -- then we purchase it, so that
17 they're offsetting. So we're not -- have showing
18 expenditure without the offsetting revenue. So I
19 don't look at this as an opportunity personally, as
20 you go -- we go through this, to match action. I
21 don't think that's what the intention was. It was
22 to basically record as if we had knowledge of these
23 things at the time we did the budget last year.
24 Okay? So open up to you.

25 MS. HALL: The auditors, as the Mayor

1 said, suggested that we do the budget amendment each
2 year to account for the uniqueness of events that
3 cannot be budgeted for. With the town not having a
4 set revenue stream, the town cannot be sure if there
5 will be funds available to purchase or perform items
6 outside of what the basic operational necessities.

7 Under town managers, Zolper, and Chief
8 Speake, the town has been able to use grant funding
9 to purchase replacement items for long outdated
10 equipment, new equipment to help the town function
11 more efficiently, as well as infrastructure projects
12 that the town didn't have to -- to fully pay for.
13 Since grant funding is never guaranteed until funds
14 are received, case in point, the recent change in
15 fund availability for the joint project with the
16 Army Corps of Engineers, we do not budget for
17 grants.

18 Under accounting rules, all expenses
19 incurred need to be recognized and accounted for no
20 matter where the money comes from. So even though
21 the expenses are covered at least 50 percent by
22 grants, we have to show the expenses and recognize
23 the revenue separately. We can't recognize it as a
24 net item --

25 MAYOR STEVENS: Uh-huh.

1 MS. HALL: -- which would make life so
2 much easier. This means that our ending actual
3 expenses will far exceed our budgeted expenses
4 because these items would not have been purchased or
5 done if not for the grant funds, thus the budget
6 amendment. The other day I spoke with our
7 accountants at (indiscernible) Kasten. Matt is on
8 -- was on the Zoom to help answer any questions.
9 They then reached out to auditors to quantify some
10 -- clarify some questions.

11 And according to the account and the
12 auditor, and I'm reading this straight from the
13 email, "While a budget amendment is not mandatory
14 under formal guidance, the budget should be
15 amended." This is because budgetary comparison
16 schedule, general fund for the year ended March
17 31st, X. Page 38, PDF page 44 of the audit report
18 shows large variances when comparing the original
19 budget to the final budget. An amended budget
20 should be prepared in order to decrease these
21 variances.

22 Provide users of the financials with a
23 clearer picture of how the town is earning and
24 spending money, and further demonstrate the town's
25 proficiency in managing their day-to-day financial

1 statements to the -- their day-to-day finances.
2 There is formal guidance on how to present budget
3 amendments on the financial statements if the town
4 should decide to formally approve one.

5 The question that I went them about was,
6 you know, do we include the grant revenue and the
7 grant expenses, or do we just include variations to
8 the basic operations? Because that's what our
9 budget is.

10 And the reason this was brought up is
11 because our final audit is on all revenues and
12 expenses not just the operating. So where -- you
13 know, do -- is the amendment to take us from just
14 operating to the audit results or do we just stay
15 with the basic -- the amendment to the operating?
16 And it just took a little bit of time to get all the
17 answers from everyone. So that's where -- and as I
18 said --

19 Kate, I do believe Matt is still on.

20 MS. BANASZAK: He is.

21 MS. HALL: Okay. If you have --

22 MATT: Yes, I am, Sheena.

23 MS. HALL: Thank you. So if you have any
24 questions --

25 MS. BANASZAK: Uh-huh.

1 MS. HALL: -- he's with (indiscernible)
2 Kasten and is government accounting -- very
3 knowledgeable.

4 MAYOR STEVENS: All right. Well, I'll --
5 I'll start. I'm going to open up. The -- I don't
6 know that -- I don't know if we're going to be able
7 to move forward with the amendment today for a few
8 different reasons. And -- but I'll -- I probably
9 shouldn't say it to start with.

10 When I look at your -- the first line and
11 -- and what's been provided, the collection agency
12 fees never budgeted for these because they -- we
13 didn't know what they were. Collecting past items,
14 parking ticket fines, 35 percent of the collected
15 amount. Where I would assume this when I look at
16 the actual financial statements for that as of
17 December, that's currently going to be included in
18 the bank fees. Is that correct? Like, this --

19 MS. HALL: There's a separate line item
20 for collection agency fees.

21 MAYOR STEVENS: That we didn't anticipate.
22 And before were -- they were netted?

23 MS. HALL: No. We never budget for the
24 collection agency fees because if we do not -- if
25 the collection agency does not collect anything

1 there's no fees. And those are for outstanding
 2 parking citations. So when Ms. Horn does the -- the
 3 -- the citations and then the amendments or the --
 4 MAYOR STEVENS: Appeals.
 5 MS. BANASZAK: Appeals.
 6 MS. HALL: -- appeals, thank you. If the
 7 person does not pay, she has quite a few steps that
 8 she goes through to collect and then she sends it to
 9 a collection agency. And there are some that three
 10 years down the road come in. We have no set idea
 11 when or how much is going to be collected at any
 12 time.
 13 MAYOR STEVENS: But if I look at our --
 14 the financial statements that you sent out, and
 15 maybe I'm -- I'm combining two things in my head.
 16 The bank and credit card fees of account number
 17 6010100, we had budget 11,254, but we actually
 18 incurred 85,280.
 19 MS. HALL: That has to do with, we were
 20 just now able to close out the accounts at Fulton
 21 Bank.
 22 MATT: Fulton Bank. Right.
 23 MS. HALL: So we had been incurring fees
 24 with them that we hadn't budgeted on or planned for.
 25 MAYOR STEVENS: All right. So that's not

1 the part of the 35 percent? Okay.
 2 MS. HALL: No, sir.
 3 MAYOR STEVENS: All right. All right.
 4 Given what you just read concerning your direction
 5 from the auditors, from Matt --
 6 Hi, Matt, how are you?
 7 MATT: Good afternoon.
 8 MAYOR STEVENS: And from there -- there --
 9 is this -- is what you've proposed here as a budget
 10 amendment consistent with what they're -- or -- or
 11 is there something different that you would be
 12 proposing and having that same information?
 13 MS. HALL: It -- that's consistent. I can
 14 -- included the grants and the grant expenses.
 15 MAYOR STEVENS: If you put in here grant
 16 and grant related expenses -- or is there anything
 17 in the amended budget column that represents more of
 18 trying to adjust to actual versus budget?
 19 MS. HALL: There is, of course the -- the
 20 parking ticket revenue and a few of the other
 21 operational expenses. If I did it strictly based on
 22 the grants and the grant revenue -- the grant
 23 expenses and revenues, then it would -- of course,
 24 it would be -- it would look different. You know,
 25 the -- I can do -- go with the guidance of the

1 auditors. I -- but I eventually answer to the
 2 commissioners and follow their guidance.
 3 MAYOR STEVENS: All right. I'll back up.
 4 Commissioners, questions, comments
 5 (indiscernible). Or any public comment, I probably
 6 should do that first. Okay.
 7 MR. BRAUER: Nope?
 8 MAYOR STEVENS: Go.
 9 MR. JASINSKI: I -- I raised questions
 10 about this. I'm -- I'm looking at the spreadsheet
 11 here that is part of the overall draft resolution
 12 for amending the budget. And the problem for me is
 13 that -- is, if I look at those two columns, the
 14 original budget and the amended budget, because
 15 amended budget has -- has grant money in there,
 16 there's two columns of apples and oranges. They
 17 don't tell me anything about how the operating
 18 budget is -- is performing.
 19 I don't know in -- in terms of the
 20 expenditures, what portion of those expenditures are
 21 supported by grant revenues. I mean, we shouldn't
 22 be buying anything -- let's say, we shouldn't be
 23 buying anything that's not in the operating budget
 24 unless we specifically approve something or it's
 25 supported by grant money. You know, it's -- that's

1 fine. If it's fully supported by grant money, fine.
 2 What we need to know is -- is a projection for
 3 what's the unassigned fund going to look like at the
 4 end of the year.
 5 It's not \$296,601. I -- I don't believe.
 6 And that -- and also that last line there, I think
 7 is mislabeled. This can't be net changes in fund
 8 balances. It simply doesn't have all the fund
 9 balance activity going in. There's none of the
 10 construction activity for the Town Hall. There
 11 can't be. These expenditures would be much larger.
 12 So again, I -- I don't know what this represents.
 13 What you have in the draft budget seems to be much
 14 more close to how the operating budget is -- is
 15 performing.
 16 There's still some differences though.
 17 You know, there's a \$35,000 allocation to the -- or
 18 the rainy day fund, which is not included in your
 19 draft budget. There are other totals there that
 20 don't correspond to the totals that we have in the
 21 financial reports that we get on a monthly basis.
 22 So, again, I -- I'm trying to get a -- a picture of
 23 what's going to be left at the end of the year in
 24 terms of an unassigned fund.
 25 That's for me, the really important part

1 of this. And what you have in the draft budget, I
 2 think is somewhere in the 30 something thousand
 3 dollar range. Is that correct? I have to switch
 4 back to that quickly. Yeah. It's \$33,751. You
 5 know, maybe that's a good number, I -- I don't know.
 6 But I -- you know, if you put the \$35,000
 7 contribution to the rainy day fund back in there,
 8 you're actually just to have a small net negative.
 9 So what -- what's the right number? That's what I'm
 10 trying to figure out.

11 MS. HALL: Matt, can you -- you looked at
 12 this amendment a little bit more. Can you weigh in
 13 on a few things, please?

14 MATT: Yeah. Sure. Just wanted to do a
 15 quick mic check. Can everyone hear me okay?

16 MS. HALL: Yes.

17 MR. PERSINGER: Yeah.

18 MAYOR STEVENS: Yes.

19 MATT: Okay. Yeah. So taking a look -- I
 20 believe we're -- just to confirm, we're referring to
 21 the operating draft budget spreadsheet, correct? Or
 22 are you referring to a different attachment?

23 MS. HALL: The amendment -- the budget
 24 amendment.

25 MATT: Okay. The budget amendment.

1 decides or can the -- or are these grants very
 2 specific or used to be -- to be used for very
 3 specific purposes? I think I heard that -- from
 4 earlier that, you know, around 287,000 of the grant
 5 money spent on technology. 900,000 over the last
 6 three years are spent on various things in the
 7 police department. Was that a town decision or was
 8 that decided based off -- is that decided based off
 9 the grants?

10 That was one of the big things that we had
 11 and I think that would very well -- in knowing those
 12 terms exactly, could very -- help match the -- match
 13 the expenditures to the revenue first and foremost.
 14 Any questions on that or can I clarify anything with
 15 that?

16 MS. HALL: Keep going, Matt.

17 MATT: I'm sorry?

18 MS. HALL: Keep going.

19 MATT: Okay. And then just give me one
 20 moment while I pull up that spreadsheet. See, when
 21 I was taking a look at that budget amendment, I
 22 think one of the big things that we did was trying
 23 to make sure what were -- like, what were the exact
 24 changes between the original budget versus the
 25 amendment budget. Just give me one quick second

1 So, Sheena, is that the spreadsheet that
 2 you and I have been talking about over the last
 3 couple days, correct?

4 MS. HALL: Yes. And then you sent back to
 5 me some changes that we would --

6 MATT: Ah, got you -- got you. So, yeah.
 7 Looking through -- I think looking through the
 8 spreadsheet, I think one of the big -- I think one
 9 of the big first questions we had when taking a look
 10 through this, is, yes. We -- we are seeing -- like,
 11 we are seeing a -- like, we are seeing a lot of
 12 grants coming in, you know, throughout the year and
 13 -- and as Sheena mentioned that these grants aren't
 14 -- these grants aren't budgeted because, like,
 15 they're unpredictable.

16 They don't -- there's no specific trend on
 17 exactly how -- how -- how much the city's going to
 18 -- how much the town's going to get each year. It
 19 could be -- it could be a million, it could be not.
 20 I think one of the big things that we -- one of the
 21 big things we noted initially is, what are the exact
 22 terms of the -- what are the exact terms of these
 23 grants?

24 Like, are these grants specifically for --
 25 can these grants be spent for anything that the town

1 here.

2 MAYOR STEVENS: Matt, while you're looking
 3 at that, I guess just -- let's just -- we'll --
 4 we'll focus on the Chief.

5 MATT: Okay.

6 MAYOR STEVENS: If -- if -- if the Chief
 7 had received grants for \$280,000 or \$260,000,
 8 whatever --

9 MATT: Uh-huh.

10 MAYOR STEVENS: -- whatever number it is
 11 during the course of our fiscal year --

12 MATT: Uh-huh.

13 MAYOR STEVENS: -- and that \$260,000 would
 14 be in our operating budget --

15 MATT: Uh-huh.

16 MAYOR STEVENS: -- which includes
 17 equipment -- equipment purchases, correct?

18 MS. HALL: Correct.

19 MATT: Uh-huh.

20 MAYOR STEVENS: Then you would see
 21 positive 260, you know, 260 in revenue, 260 -- like,
 22 to me there would be a balance.

23 MATT: Uh-huh.

24 MAYOR STEVENS: And we would see it on
 25 both sides?

1 MATT: Correct.
 2 MAYOR STEVENS: What we as Council have a
 3 responsibility, is to -- when we look at the budget
 4 to actual, and if the actual especially on the
 5 expenditure side, is out of whack, why?
 6 MATT: Uh-huh.
 7 MAYOR STEVENS: Well, it's out of ways.
 8 It -- it -- we -- we spent more -- 300,000 more than
 9 we budgeted because we received donations.
 10 MATT: Uh-huh.
 11 MAYOR STEVENS: We received grants. It
 12 wasn't due to lack of fiscal responsibility?
 13 MS. BANASZAK: Uh-huh.
 14 MATT: Huh-uh.
 15 MAYOR STEVENS: Right? So that to me is
 16 what the budget amendment should be for to capture
 17 those things --
 18 MATT: Uh-huh.
 19 MAYOR STEVENS: -- not \$100,000 worth of
 20 parking fines that we did anticipate.
 21 MATT: Uh-huh. Yeah. Correct. And I --
 22 we comes -- when it comes to the budget amendment, I
 23 don't think it's going to -- I don't think it tell
 24 -- I don't think it tells the use of the financial
 25 statements that the town of Dewey did not anticipate

1 MATT: Correct.
 2 MR. BRAUER: -- they're over here in the
 3 -- on the capital expense.
 4 MATT: Correct.
 5 MR. BRAUER: So just -- I wanted to make
 6 sure that there are some grants like that.
 7 MS. HALL: And -- and to -- to be able to
 8 get a -- a full exact change to the fund balance
 9 where the -- the report that has come up with now to
 10 show the changes in the funds each month, gives --
 11 we're hoping gives a very good -- close -- accurate
 12 estimation. We would have to close out all capital
 13 expenditures every month.
 14 MAYOR STEVENS: Uh-huh.
 15 MS. HALL: And we would have to basically
 16 do a year-end close every month to get exact
 17 figures. So it's -- it's very hard. The -- the
 18 budget amendment, we -- we -- personally, I -- I --
 19 I take the ding and not do the budget amendment
 20 because I'm -- I'm causing more confusion and gray
 21 hair for way too many people.
 22 I'm talking myself, sir.
 23 MR. BRAUER: I beg my pardon.
 24 MAYOR STEVENS: I -- I don't want us to
 25 take -- look, I -- the -- the -- I don't want us to

1 this.
 2 If the -- if the town is able to fully
 3 support those grants of, like, whether it be --
 4 whether it be through, like, you know, a grant
 5 letter, like, emails or documentation of that, if
 6 the grant's able -- if the town's able to fully
 7 support where those grant funds came from and -- and
 8 they're able to fully support that -- fully support
 9 their expenditures.
 10 And I think the town would be in pretty
 11 good shape in case any of -- like, if -- if one of
 12 us or the auditors had questions about it, then I
 13 don't think there should just be any issues. As
 14 long as it's -- it's an accurate paper trail, I
 15 think we should be okay.
 16 MR. BRAUER: But, Mr. Mayor, not all the
 17 -- not all the grants are for operational, correct
 18 me if I'm wrong, Chief, some of them are for capital
 19 expenditures, for example, like for the 45 for the
 20 police car, and then the radios went under -- did
 21 the radios go under --
 22 MS. HALL: The radios are under capital
 23 expenditures also.
 24 MR. BRAUER: And those were grants that we
 25 got, but they're not part of the operating --

1 take a ding on the audit. We've done so many
 2 different positive things in terms of the audit
 3 process. In terms of the -- in terms of the
 4 pleasing as we move forward. I just want to make
 5 sure we're not pushing things through that we don't
 6 need to push through, and it -- we're not -- again,
 7 it's -- I'm not opposed to an amendment, as long as
 8 I can see that Sheena spent 200,000 more than she
 9 should have.
 10 But that's because, using as an example,
 11 she received these operating grants to cover this
 12 special payroll, to cover this, to cover this, to
 13 cover this. I can see adding that to the -- the
 14 grant donation revenue line, because she would not
 15 have made that decision had she not received those
 16 funds.
 17 MS. HALL: What -- what -- where do we
 18 then go with the -- the state grants we get, most of
 19 them ahead of time. The Sallie and ED, we get the
 20 funds and then are told to spend them.
 21 MS. BANASZAK: Uh-huh.
 22 MS. HALL: The federal grants --
 23 MAYOR STEVENS: Well, they -- they --
 24 MS. HALL: -- they don't get the funds
 25 into the account.

1 MAYOR STEVENS: Hang up. Hang up. Then
 2 you would create a receivable or under --
 3 MS. HALL: But how do you show that in the
 4 amendment because receivables are not in your
 5 operating? That's --
 6 MAYOR STEVENS: I would not pull it into
 7 the -- I'm sorry, I don't mean to monopolize the
 8 situation.
 9 MS. HALL: No. I know.
 10 MAYOR STEVENS: I would not pull it into
 11 the operating -- this amendment, until the matching
 12 -- if it was a grant received --
 13 MS. HALL: Okay.
 14 MAYOR STEVENS: -- I would have it in the
 15 unearned revenue grant received other than balance
 16 sheet --
 17 MS. HALL: Uh-huh.
 18 MAYOR STEVENS: -- on asset. I wouldn't
 19 pull it into an amendment until the expenditure
 20 occurred to get the match in there.
 21 MS. HALL: Okay. But --
 22 MAYOR STEVENS: And likewise, I would have
 23 a grant receivable --
 24 MS. HALL: Right.
 25 MAYOR STEVENS: -- out there to put the --

1 Instead, whenever I buy something, it's
 2 going under my line items, and then it shows up on
 3 the monthly report that I'm over budget by \$10,000,
 4 but that's not the case because it was grant money
 5 and I don't understand why it can't be separated.
 6 MAYOR STEVENS: It's a timing -- it's a
 7 timing and it's an accounting flaw. It's not you.
 8 MS. GIBBINGS: But it always makes
 9 (indiscernible).
 10 MAYOR STEVENS: Not accounting -- but not
 11 our accounting, I mean accounting in general --
 12 MS. HALL: Yeah. I know.
 13 MAYOR STEVENS: -- by -- I see -- but --
 14 but we need to put the right process in place, just
 15 as I'm saying. If you get the grant or is the grant
 16 receivable, it -- I'm not going to get in this kind
 17 of (indiscernible.)
 18 MR. PERSINGER: But I -- but I thought in
 19 the monthly financial reports, we had taken all
 20 those grant expenditures out. We're not looking at
 21 those.
 22 MS. HALL: Right. But -- so that --
 23 MR. PERSINGER: Because we don't -- you
 24 don't budget for grants as -- as you say.
 25 MS. HALL: Right.

1 if you wanted to put in the -- the revenue and
 2 expenditure at the same time.
 3 MS. HALL: Okay.
 4 MAYOR STEVENS: So that way, you know it's
 5 coming. Like the \$48,000 for the --
 6 MS. GIBBINGS: Car?
 7 MAYOR STEVENS: No. System that you just
 8 bought.
 9 MS. GIBBINGS: Radio system?
 10 MS. HALL: Hot pop. Hot pop?
 11 MS. GIBBINGS: (Indiscernible.)
 12 MAYOR STEVENS: It was the last line item
 13 on your capital expenditure in that spreadsheet.
 14 MS. GIBBINGS: Yeah.
 15 MS. HALL: I understand.
 16 MS. GIBBINGS: I -- I have a question
 17 because I've brought this up many times. Obviously
 18 with the amount of grant funds than we have, like
 19 you said, Sallie, ED, SLIF, all these different
 20 grants. So we know the money is coming here and
 21 then we know the expense. So if I apply for a grant
 22 for five radios and it's \$10,000 and SLIF says, "I'm
 23 giving you \$10,000." I don't understand why it can't
 24 show up here for grant categories, SLIF, 10,000 in,
 25 10,000 out, radios."

1 MR. PERSINGER: So what we -- we do budget
 2 for a number of other things, so why -- why would we
 3 cloud the picture of how we're doing with respect to
 4 the original budget by adding in revenue items and
 5 even expenditures, attributable grants? So those --
 6 those are going to show up in your -- your police
 7 fund anyway, right?
 8 MS. HALL: Okay. So at the end of the
 9 year, when the auditors say that we've gotten all
 10 this money in -- in revenue and it's not matching
 11 what the monthly financials, because it's money that
 12 we didn't --
 13 MR. PERSINGER: But those monthly
 14 financials are out for us so that we and I think the
 15 public can understand.
 16 MS. HALL: Right.
 17 MR. PERSINGER: It does not have to match
 18 exactly any specific accounting reports. I -- I
 19 don't believe. And we're trying to make sense out
 20 of all of this. And, you know, you're going to have
 21 some arcane accounting rules that you have to follow
 22 because that's what accountants do. Sorry.
 23 MAYOR STEVENS: You're pretty close to
 24 one, so be careful there.
 25 MR. PERSINGER: So you're going to have to

1 follow those rules and -- and, you know, I think
2 you've done that over, you know, the past X number
3 of years, because the auditors have really not found
4 any -- any problems in -- in the way -- when they've
5 done the audit and the way things have been
6 accounted for.

7 There've been a few corrections here and
8 there, but by and large, the town is accounting for
9 things as they should be. It's just that we need
10 reports that make sense to us. When we develop an
11 -- an operating budget, we need to be able to track
12 that and track the spending, and the revenues in the
13 same categories in which we did the original budget.
14 That's -- that's what makes sense and that's how we
15 determine what's left over at the end of the year in
16 the unassigned fund.

17 MS. HALL: So --

18 MR. PERSINGER: And is there anything
19 beyond, you know, what -- what is required by the
20 general fund balance policy?

21 MS. HALL: So with that in mind, would --
22 a budget amendment doesn't work since a budget
23 amendment is to show -- takes into consideration
24 full revenue based on the guidance then?

25 MAYOR STEVENS: I'll -- let me speak for

1 authority? It's because they got grants to do it.
2 Now, we may have issues or errors in terms of like,
3 well, we have the lifeguard and the time clock.

4 Those things are going to happen. They're
5 not intentional. But I think that's kind of a
6 process we should look at. If it's something that's
7 specific to an asset or to a purchase of a piece of
8 equipment, that's over in capital -- in capital
9 expenditures.

10 MS. HALL: Uh-huh.

11 MAYOR STEVENS: Has nothing to do with how
12 the town is running day to day. Does that make
13 sense?

14 MS. HALL: Yes, sir.

15 MAYOR STEVENS: All right.

16 MATT: Yeah. Can I also make -- also make
17 an additional comment on that?

18 MAYOR STEVENS: Sure.

19 MATT: I think what -- it's currently
20 mid-January and the audit's probably going to be
21 coming around probably in April and May. A lot of
22 -- hearing a lot of good discussion, but I think
23 just, like, going forward, like, the entire process
24 that you guys explained, like, how -- like, how the
25 police chief like, makes the -- applies for the

1 Gary.

2 MS. HALL: I'm -- I'm -- I'm trying to
3 understand.

4 MAYOR STEVENS: No. I -- I -- I -- I
5 liked your initial point, which is that you're not
6 trying to push this through. It's not you. You --
7 you think you would rather take the thing on the
8 audit than -- than create more inconsistency or lack
9 of communication.

10 MS. HALL: Yes, sir.

11 MAYOR STEVENS: I agree with that. I
12 think what we have is a need for us to have an
13 understanding that we don't actually -- we don't
14 budget for donations and grants, but if there is a
15 decision that's in -- made in -- in town hall to
16 create an expenditure within our operating fund,
17 which now is, you know, it shows that we started
18 with the \$600 and we have that expense, how do we
19 show that -- that as the budget amendment in the
20 next fiscal year?

21 Let's get a process down where we go. All
22 right. This is donation expense. We didn't spend
23 it, because I don't want from these -- from their --
24 from their perspective, why did they spend more
25 money than we budgeted? Who gave them the

1 grants, gets the revenue and purchases the -- like,
2 purchases, the equipment.

3 I would make -- just make the suggestion
4 that make sure, like -- let's make sure that all of
5 these processes are, like, fully -- like, fully
6 documented from the moment from start to --

7 MAYOR STEVENS: Right.

8 MATT: -- like start to finish, because
9 from an auditor -- from, like -- from an audit
10 perspective, they're going to want to see that and
11 they're going to want to see example. Like, see the
12 full paper trail of that from -- from -- very much
13 from start to finish.

14 If you're able to explain -- if you're
15 able to explain that thoroughly to -- to -- to -- to
16 them, I think -- I think you guys should be in
17 pretty good shape because it's your -- I mean, it's
18 your process. It's -- it's how you -- it's you --
19 how you guys do and how you guys present in the
20 financials. And if you want to make some additional
21 explanations of that process on the notes of the
22 financials, I don't see why the auditors would say
23 no to that.

24 MAYOR STEVENS: Okay. All right. So to
25 -- just clarification, we're going to try to --

1 we're going to create a -- I'm thinking that we're
 2 not in today's meeting, but create a process where
 3 we can bridge budget to actual on what could be an
 4 amendment or where -- where things are flowing on
 5 the -- whether it's the -- it's a grant receivable
 6 or grant received. It's like the flow. It's really
 7 a flow of funds and how it's reported on accounting
 8 basis. Okay?
 9 So are we good with tabling this for right
 10 now? Because I don't think we feel --
 11 MR. BRAUER: Yeah. Yeah. I -- I --
 12 MAYOR STEVENS: I know you would like to
 13 say yes at 5 o'clock every time.
 14 MS. BANASZAK: But we -- we didn't used to
 15 have budget amendments when I first came.
 16 MAYOR STEVENS: No. I know. That's just
 17 for sure.
 18 MS. BANASZAK: And -- and I'm still trying
 19 to make sense of them, so I -- yeah.
 20 MAYOR STEVENS: The whole intent is that
 21 we're giving a -- a more transparent, clearer
 22 picture of the operations --
 23 MS. BANASZAK: Uh-huh.
 24 MAYOR STEVENS: -- of town hall year over
 25 year. That's all.

1 MAYOR STEVENS: Well --
 2 MR. PERSINGER: It should not be here.
 3 MAYOR STEVENS: Let's not get into that,
 4 so.
 5 MR. PERSINGER: Again, some of this stuff
 6 is - is for us, you know, maybe -- I -- I just think
 7 if you start putting those things in there, people
 8 are not going to be able to interpret that.
 9 MAYOR STEVENS: I -- maybe we agree on one
 10 thing. I -- I like the fact that when we create a
 11 budget, we stick with that budget, and if we need to
 12 do an explanation as to why it was different at year
 13 end, we can do that with an explanation for the
 14 town. It -- does that -- versus the -- I'm not
 15 personally a fan of the budget amendment process.
 16 But I'm only one out of five. Yeah.
 17 MR. PERSINGER: I'm not in favor of that.
 18 I -- I want, again, I want to be able to track out
 19 our original budget and what we're doing.
 20 MAYOR STEVENS: Yep. All right. Motion
 21 to table.
 22 MR. BAUER: Motion.
 23 MS. BANASZAK: Motion to table.
 24 MR. PERSINGER: Second.
 25 MAYOR STEVENS: All in favor?

1 MS. BANASZAK: But it seems to be
 2 confusing instead of clarifying.
 3 MAYOR STEVENS: But it may look like -- it
 4 may look like we -- we're fantastic this year when
 5 we -- when really, we weren't. Like, we expended,
 6 we -- we -- and it --
 7 MS. HALL: Yes.
 8 MAYOR STEVENS: -- it's supposed to give a
 9 better, clearer picture of -- of the financial
 10 statements.
 11 Okay, Gary.
 12 MR. PERSINGER: Yeah. I -- I don't really
 13 agree with your approach, but I think it should be
 14 tabled, right?
 15 MAYOR STEVENS: Okay.
 16 MR. PERSINGER: I think we have to talk
 17 through the approach. I -- I think you're going to
 18 give -- create some more confusion, like, as soon as
 19 you start throwing funds and expenditures in there.
 20 I don't think that's going to explain anything.
 21 MAYOR STEVENS: Well, it's in there, now.
 22
 23 MR. PERSINGER: Well, it shouldn't be. That's my
 24 point.
 25

1 MR. BAUER: Aye.
 2 MR. MOSKOWITZ: Aye.
 3 MAYOR STEVENS: All right. Kate thought
 4 we were getting out of here at 3:30, that didn't
 5 happen. Everyone okay out there? Anybody need
 6 bathroom breaks?
 7 MR. BAUER: I think we lost most of
 8 everybody.
 9 MAYOR STEVENS: All right. All right. E,
 10 discussion, possible action resolution to approve
 11 the purchase of a donor recognition wall for the new
 12 town hall building. Discussion will include an
 13 update on fundraising efforts. Kate, you want to
 14 bring up the image of the town?
 15 So, I'll rely upon Kate for some of this.
 16 She did some of the background research for the
 17 donor wall. We found an organization called Auria
 18 who has done thousands of these across the United
 19 States. They're various different walls, whether it
 20 be for hospitals, schools, nonprofits, you name it,
 21 they've -- they've -- they've -- this is what they
 22 do for a living.
 23 What we had met with them and given them
 24 kind of a perspective of the square footage, what
 25 this -- the donor wall, we're thinking is as you

1 walk into the main lobby and you go to the right, to
2 the administrative lobby, there's a wall that's
3 roughly, you know, 17 by 7 or 17 by 8, whatever it
4 is that's right there left. That way the donor wall
5 will have more of a visibility versus putting it
6 upstairs in the meeting room.

7 MS. BANASZAK: Uh-huh. Okay.

8 MAYOR STEVENS: The -- the -- the wall
9 itself has -- and this is kind of what they've come
10 up with as a design. So it's not just a donor wall.
11 It's a -- these -- each of those -- each of those
12 boards will have either pictures of old town Dewey
13 or current Dewey, different things. The nice thing
14 about the rail system is that you can interchange
15 them. It's not permanent. So as things change, you
16 can slide them out and just use a local printer to
17 slide them back in if need be.

18 The white hand sections on the left and
19 the right, those are actually where people's names
20 might be for -- for part of the donor wall, just to
21 -- to thank them. One of the other areas that we
22 put in is the -- the display in the middle, was
23 actually display screen. I believe it was a 48 inch
24 display, something like that. Can be used for
25 either updated information, what's going on in town.

1 addition to the donor wall. And I -- and I think
2 it's -- with approval, the intention is to use this
3 design, to have them to go through a final design
4 piece and then use that to get more donations in.
5 To date, I believe we're at 400,000?

6 MR. ZOLPER: We're -- we're pretty close.

7 MS. GIBBINGS: Uh-huh.

8 MAYOR STEVENS: We're right around 400,000
9 right now with donations for the -- towards that --
10 from -- from a donor wall perspective.

11 MS. BANASZAK: And that's not including
12 bricks, that's just the donor wall.

13 MAYOR STEVENS: And additional 200 bricks.

14 MS. GIBBINGS: 160.

15 MAYOR STEVENS: 200. Approximately 200
16 bricks, right, Ellen? Right. So, with that being
17 said, that's my sales pitch. I'll throw it out for
18 comment of the commissioners. Commissioner
19 Jasinski, you still there?

20 MR. JASINSKI: Yeah. I'm here. I think
21 it looks -- I think it looks great. I think our --
22 our donors deserve to kind of be recognized in a
23 classy way. So, thanks, you know, to Kate and
24 everybody else who kind of found a nice solution.

25 MS. BANASZAK: I like that it's going to

1 It could be --

2 MS. BANASZAK: Announcements.

3 MAYOR STEVENS: -- announcements. It is
4 -- this comes with the software that will not -- so
5 that Kate or someone in town hall can do that
6 themselves in terms of updating it, but it also will
7 -- has the software and software does -- it is
8 \$1,200 a year, if I remember correctly. That's --
9 it's a software license that it comes with the
10 ability to have two other digital additions.

11 For example, if we had a kiosk in the
12 front, if we end up putting a kiosk in the front,
13 still they would control that software also. If --
14 if we decided to put any signage on the outside of
15 the building, it can control that also.

16 So, the -- the donor ask or the -- the --
17 so what we're asking here is approval for \$24,000.
18 You always correct me when I say this wrong.

19 MS. GIBBINGS: 24,948.

20 MAYOR STEVENS: So \$25,000. It's what --
21 I'm going to try to sell it a little bit. What I
22 like about it, it's not just bronze plaques in the
23 middle behind a glass, it's a little bit more than
24 that. It's not just a donor wall, it's a
25 celebration of -- of things that are Dewey Beach in

1 be in the lobby instead of up in the room, because
2 it'll get more views that way. I like the fact that
3 it's dynamic, so we can make changes, we can update,
4 we can change out. I had the opportunity to look at
5 a number of donor walls and hospitals and stuff over
6 the East Coast and some of them just look like they
7 were artifacts. This is -- this is better.

8 MAYOR STEVENS: Kind of like the one
9 that's in our lobby at the current town hall.
10 Commissioner Persinger?

11 MR. PERSINGER: I'm not in favor of it.
12 Do I read this right that we've already paid them
13 \$4,000? How -- how did that happen without
14 anybody's approval?

15 MAYOR STEVENS: It happened with my
16 approval because under my budget, my ability to --
17 to have that expenditure to get it designed.

18 MR. PERSINGER: Huh. Okay. Well, I --
19 here's my -- my basic problem is, we started the
20 whole development of the town hall looking at what
21 we need versus what would be nice to have. I think
22 the donors who are committed to this town and
23 willing to put substantial financial resources into
24 this new town hall, certainly deserve visible
25 recognition. I don't think that spending \$30,000 on

1 this, it should be what the total would be, really
2 gets us what we need.

3 I think there -- there's certainly
4 elements here on things that would be nice to have.
5 You know, if we -- we took that \$30,000 and applied
6 it and -- and didn't apply it to reducing the debt
7 that we may have with respect to this town hall,
8 it's, you know, it's another 12, \$13,000 in interest
9 costs that we'd be paying.

10 So, again, I -- I -- I don't think we need
11 it, I think that we need something that visibly
12 recognizes those donors. I just think that spending
13 the equivalent of three top level contributions or
14 12 of the first level contributions is just not the
15 right thing to do.

16 MAYOR STEVENS: Okay.

17 MR. BAUER: I think, you know, if we
18 brought in 400,000 and eventually get up to 6, 7,
19 800,000 or whatever number we end up at, I mean, I
20 -- in the grand scheme of things, the 25 or 30,000,
21 it, you know, it's -- it's recognition to the people
22 that gave us money. I think it might drive more
23 people to want to be involved in it. If we can't do
24 that, we'll write a nice article about it.

25 MAYOR STEVENS: And got to use an image

1 budget problem, so I -- I'm kind of in Gary's camp,
2 so, you know, that's -- that could be aspirational,
3 but does it have to be the minute the building
4 opens, you're building, doing this big thing, or do
5 you say this is our vision in the short term, this
6 is our -- our first cut. And then if we can afford
7 it later, great.

8 MS. BANASZAK: So, budget friendly could,
9 like, not have the center screen or something like
10 that, put it in later.

11 MR. BAUER: Can we get it, then that be
12 added later when we have more money? Either get it
13 up front or you don't get it at all.

14 MS. GIBBINGS: When it's worked into the
15 design like that, it's little difficult to add it
16 after the fact. You have a comment on Zoom.

17 MAYOR STEVENS: Please bring them in.

18 MS. GIBBINGS: Sure. David, go ahead.

19 MR. MOSKOWITZ: Yeah. David Moskowitz.
20 Just a comment that if someone donated a commitment,
21 donated anything and expects to be on that wall,
22 they should disclose it before taking any vote on
23 it.

24 MAYOR STEVENS: Oh, I donated. I think
25 it's what he's referring to.

1 and picture and buy a brick and --

2 MR. BAUER: No. Besides the brick, I
3 mean, you know, these are significant donations
4 we're getting and, you know, significant donation to
5 recognize that, you know, we -- we can argue about
6 the -- the amount of money, but I -- I think we're
7 on the right path. Yeah. Is there any way to get
8 the price done a little bit? I don't know. Can we
9 get it to 20? I -- I don't know any of those
10 things, but -- but I think, you know, I -- I think
11 it's worth to recognize the people that gave that
12 kind of money to us, especially some of the really
13 high end ones that we got in.

14 MAYOR STEVENS: Yes. Please public
15 comment.

16 MS. CURTIS: I -- I would just say that --
17 sorry.

18 MAYOR STEVENS: Or hand her that one.

19 MS. CURTIS: Iris Curtis, Dewey Beach
20 resident. I -- my -- my only idea is that could --
21 could we do something initially in the short term
22 that is not this elaborate and then have that be an
23 end goal because you're committing a big upfront
24 cost and then also there's a recurring cost to it.

25 You know, we're just here talking about a

1 MR. JASINSKI: Yeah. Me too. I donated
2 as well.

3 MS. BANASZAK: I bought a brick.

4 MR. ZOLPER: I bought a brick.

5 MAYOR STEVENS: Two bricks.

6 MR. ZOLPER: So --

7 MAYOR STEVENS: Okay. All right. Thank
8 you, David. Interesting.

9 So, there -- there's two paths. You --
10 you -- all of you know me well enough that I -- I
11 like for us all to be in agreement. I don't like
12 for -- for any -- for anybody not wanting to go
13 forward. And I know it's -- it's unique, but this
14 is how this Council's worked and how this Council --
15 Council's been successful.

16 I do think that if we push for a vote, I
17 think we can get it to -- to move forward. I would
18 -- I would be amenable to -- if I can get the fifth
19 person to be amenable, if there was a target, like
20 if we hit X amount of dollars on the donations, we
21 can move forward using this as an example of that we
22 need these funds to get to that. Now, Kate, before
23 I put this out as an ask, how long will it take to
24 develop the board? Do you, or is it --

25 MS. BANASZAK: That kind of --

1 MAYOR STEVENS: Like we don't need to --
 2 MS. BANASZAK: That kind of depends on us
 3 too, because that \$4,000 that we put up isn't just
 4 for this draft, this is the first draft they came up
 5 with, so, we could go back and forth and, you know,
 6 for months if we needed to, to finally come to a
 7 decision on what we liked, so that -- that's kind of
 8 on us.

9 MR. PERSINGER: I -- I -- I will say this,
 10 I mean, I don't mind being a minority if -- if, you
 11 know, if you want to push for a vote and, you know,
 12 I -- I vote against, you know, sort of why I'm --
 13 I'm okay with that. I'm not sure that there's a
 14 threshold that I would really feel comfortable with.

15 I mean, what I would prefer to -- to see
 16 is getting the town hall built and, you know, at
 17 some point you might get somebody, another donor, to
 18 actually support the cost of this after we've, you
 19 know, fully supported the cost of building the town
 20 hall. That's sort of my preferred approach.

21 I mean, I think design looks great. I
 22 know you guys have spent time on this, you know, it
 23 would be a nice thing to have, but I -- I think
 24 there are probably fewer and fewer reasons that
 25 people have to come to town hall because we can do

1 so much things -- so many things online, but that's
 2 -- that's another issue.

3 I -- I, again, the donors need to be
 4 recognized, they need to be recognized visibly. You
 5 know, I would prefer to -- to wait to have the final
 6 design of this thing until after the town hall is --
 7 is -- is completed and you've got all the financing
 8 in place and then we can look for additional money.

9 MAYOR STEVENS: Well, that being said --
 10 yeah, no, that being said, I just -- the -- the --
 11 I'm -- I am going to move to ask for a vote. And
 12 the -- and the reason -- the thought process here is
 13 that we could finalize the overall design elements,
 14 we can use it as a marketing piece to get more
 15 donations, but to know that we're going to keep
 16 taking donations probably through the end of -- at
 17 least through the end of phase one of building town
 18 hall.

19 So, through the -- through August of this
 20 year, assuming it's done. So, the actual creation
 21 of the boards that would be needed for -- to -- to
 22 -- for the donors wouldn't be done till after that
 23 cutoff period anyway. So, and we all would be
 24 buying it and putting in stock waiting for the wall
 25 to be ready to put it up. So this is really

1 allowing us to go to the next level, which is, just
 2 finalizing the design piece.

3 MS. BANASZAK: Well, because the design
 4 being able to pop pieces out --

5 MAYOR STEVENS: Correct.

6 MS. BANASZAK: -- that you could continue
 7 in -- in that (indiscernible) because yes, you could
 8 continue to add names to it.

9 MAYOR STEVENS: Don't complicate it.

10 MS. CURTIS: No. But that wasn't --

11 MAYOR STEVENS: You're right.

12 MS. CURTIS: -- that was my -- that was my
 13 two questions. You're behind the screen, you can't
 14 -- I have my fingers up like two, two. Item 1,
 15 people have donated with the assumption they're
 16 going to be recognized, so we have to figure out a
 17 way to do that and to do it and then undo it to do
 18 it better seems like poor use of money, but delaying
 19 it might be one thing.

20 And then item 2 was, could we keep
 21 collecting after August because there's space,
 22 because somebody might say, oh my God, I love this
 23 building and I -- I love what you did and I want to
 24 support you now, so we could add a name. Okay.
 25 Those are my two. Thank you.

1 MAYOR STEVENS: Can I have a motion?

2 MR. JASINSKI: I move we approve this.

3 MR. BAUER: Second.

4 MAYOR STEVENS: All in favor?

5 MS. BANASZAK: Aye.

6 MAYOR STEVENS: Aye. All nos?

7 MR. PERSINGER: No.

8 MAYOR STEVENS: All abstaining?

9 Abstaining? All right. It's 4-1, not 4-0. Next.

10 Discuss in instituting a fee for scooter and moped
 11 parking on public streets during the summer season.

12 Mr. Zolper.

13 MR. ZOLPER: Yes, Mr. Mayor. Thank you.

14 So, three years ago, we started putting scooter
 15 parking around town. There's almost one on every
 16 street that's around the commercial districts. We
 17 do have people that take advantage of them. Most of
 18 them are employees that work here in town, that work
 19 at most of the restaurants and the commercial
 20 establishments.

21 We usually average about 75 scooters to
 22 maybe a hundred, maybe during -- during summer in
 23 town at those spots. We were thinking of \$40 per --
 24 per scooter for the -- for the year. When we look
 25 at that times 100, it's only \$4,000. We have to --

1 to buy the signage. We already have signs up now
2 that -- that basically gives them free scooter
3 parking. We have to replace those or changes that,
4 that signage. Park Mobile will not let us go with,
5 doing any type of scooter parking.

6 So if you pulled into a scooter spot,
7 you'd still pay \$4 an hour if we went to paying for
8 those like we do for vehicles, that -- that would be
9 something. And then we'd have to -- for -- for our
10 folks that are parking ambassadors would also be --
11 be dealing with that. I'm not sure now would be a
12 good time to instill this at -- with the town. I
13 think we should table it for now and I think we
14 should leave right now the scooter parking the way
15 it is.

16 MAYOR STEVENS: Motion to table.

17 MR. JASINSKI: Second.

18 MS. BANASZAK: Motion to table.

19 MAYOR STEVENS: All in favor?

20 MR. ZOLPER: Aye.

21 MR. BAUER: Aye.

22 MAYOR STEVENS: Aye. Aye, David? Okay.

23 G, discuss recommendations regarding minimum
24 standard property maintenance. Council may vote to
25 draft an ordinance based on these recommendations to

1 plant growth exceeding 12 inches in height.

2 The rest of that section, 138, 139,
3 138-10, 138-11, those are all existing sections of
4 the code. There would be no change there. The next
5 change, we would add a new Article 3, which would be
6 exterior structure and property maintenance
7 standards. 38-12 would provide some general
8 requirements, talks about some examples of exterior
9 elements that might raise some concern among the --
10 by the building official.

11 It talks about some environmental --
12 environmental hazards, and in terms of maintaining
13 them free from environmental hazards including mold,
14 asbestos, and lead-based paint exposure. Accessory
15 structures would be limited -- would have to be
16 maintained in a structurally sound condition and
17 good repair that includes fences, walls, detached
18 garages, swimming pools, and hot tubs. Rodent
19 harborages, harborage -- structures in exterior
20 property should be kept free from rodent harborage.

21 The last part, 138-15, 16 and 17, these
22 are all new sections. These have not been
23 considered before, but the idea is that the building
24 official would be authorized to notify in writing by
25 certified mail, the property owner or the agent or

1 be discussed at future meetings.

2 Commissioner Persinger.

3 MR. PERSINGER: Okay. We discussed
4 property maintenance standards at the last meeting.
5 We had quite a number of people in the room who made
6 very substantive comments. We got certainly some
7 email comments and the people online as well.

8 What I tried to do is, and I worked with
9 the chairman of the charter and code review
10 committee to -- to pair these recommendations down
11 so that hopefully we have a more manageable set of
12 recommendations here that may be more palatable.
13 What I try to do is to, I'll put the changes in the
14 context of the sections of the code where it might
15 appear.

16 There is already Chapter 138 property
17 maintenance, Article 2, weeds and vegetation, and we
18 would add some substance to Section 138-7. You'll
19 note at the bottom of that section, there is already
20 language that deals with this, but it's not very
21 specific. And so what's added here is, better
22 specificity, definition of weeds, and specific
23 responsibilities that the property owner would be
24 responsible for in -- in terms of keeping control of
25 -- not having uncontrolled vegetation, weeds and

1 whoever's occupying the property at that time of a
2 violation and as part of that notification, the
3 building official would have to specify those
4 maintenance elements that would have to be
5 addressed.

6 The owner, or occupier or agent would have
7 30 days after the date of the return receipt for the
8 notice of the violation to acknowledge the notice
9 and provide a plan for addressing the maintenance
10 elements included in the notice. The plan would have
11 to include a timeline for completion of the
12 maintenance elements within 180 days after the date
13 of the acknowledgement.

14 Then there were penalties here, failure to
15 acknowledge the notice of violation within the
16 required 30 days shall be subject to a penalty of
17 \$500. It would be an additional \$500 for each 30
18 day period, after that during which acknowledgement
19 has not been received. If somebody fails to
20 complete the maintenance elements within a required
21 180 day period would be subject again to another
22 \$500-fine for each 30 days beyond the initial 180
23 days.

24 What I think is important to add here is
25 that this also provides the building official with

1 discretion to extend both the time periods that are
 2 specified above, as well as waive fines as warranted
 3 depending on specific circumstances for a given
 4 property.
 5 MAYOR STEVENS: Where is it?
 6 MR. PERSINGER: That's the last --
 7 MS. GIBBINGS: Last couple of lines.
 8 MR. PERSINGER: -- set of penalties,
 9 138-17. Building officials shall have discretion to
 10 extend these documents and waive fines. Okay. Then
 11 the last change we have, again, this is added to an
 12 existing part of the -- the code, and this is in
 13 section 185-94, which means that if we went forward
 14 with this, we would have to get potentially,
 15 consider at least planning and zoning review of
 16 this.
 17 It would add a paragraph D, which would
 18 apply just to new residential and commercial mix new
 19 structures, would require that they ensure that all
 20 water generated on a property, including storm
 21 water, irrigation runoff and similar sources be
 22 managed entirely within the boundaries of the
 23 property. The construction plans would have to
 24 include appropriate grading, draining systems or
 25 contain the measures to prevent offsite flow and

1 ensure compliance with this requirement.
 2 So I think the -- the assumed penalty here
 3 is, if you don't do that, then you don't get a
 4 building permit. So that -- that -- that's what
 5 we've paired this back to. I don't know if you feel
 6 like we have enough time to consider this today and
 7 decide whether or not we want to write a formal
 8 ordinance, a draft ordinance. I mean, we have
 9 basics of the draft ordinance right here.
 10 MAYOR STEVENS: This is a --
 11 MS. GIBBINGS: Discuss recommendation.
 12 MAYOR STEVENS: -- just discuss
 13 recommendations to not necessarily (indiscernible.)
 14 Okay. All right. So, first of all, any -- anyone
 15 here for public comment after Gary's review? Anyone
 16 in the background?
 17 MS. GIBBINGS: David wants to talk.
 18 MAYOR STEVENS: Anyone on Zoom?
 19 MR. JASINSKI: Not really. I mean, the
 20 only thing I was going to say is I -- I like the
 21 paired down scope, and I like the fact that you kind
 22 of included proposed language around penalties and
 23 whatnot. It sounds like we have to get planning and
 24 zoning on board, so I don't know what the logical
 25 next steps are.

1 MAYOR STEVENS: Paul?
 2 MR. BAUER: My thought, like Gary's -- I
 3 like it as well. Can we compare this with, you
 4 know, with the instructions to P&Z to compare this
 5 to what the county code is for it and highlight the
 6 areas that we're being more restrictive on or less
 7 restrictive on? You know, otherwise we're writing a
 8 -- a code that already exists that we're going to
 9 follow anyhow. So you -- you know, you don't want
 10 to -- we don't want to recreate the -- the wheel on
 11 it.
 12 MR. PERSINGER: Yeah. We can certainly do
 13 that.
 14 MAYOR STEVENS: My only -- I -- I have two
 15 things. One, is that in reading through this, I --
 16 I felt like a -- a \$500 fine was -- was too much. I
 17 felt that that was -- I was -- when -- when thinking
 18 about this, I was thinking it would be 150. Like
 19 there was something about, you know, something that
 20 it's still a little bit painful, but not incredibly
 21 painful. To me, 500 is incredibly, incredibly
 22 painful.
 23 MR. BAUER: So you'll remember for a
 24 while.
 25 MAYOR STEVENS: So, and -- and the other

1 thing is, anytime that we give the subjectivity that
 2 -- that the building official has the ability to --
 3 to do it on their -- we're -- we're opening up
 4 paying for town hall. So unless there's some very
 5 specific reasons why, like if you're getting a
 6 certified letter back, you obviously have received
 7 it, but if that letter states that I cannot, but
 8 you're still giving them 180 days to do it. So
 9 those -- I don't know what those exceptions would be
 10 and I would not want to put that in their hands.
 11 MR. PERSINGER: Yeah. The -- the -- the
 12 only reason I put that in there is there -- there
 13 were -- have been some comments about specific
 14 situations where I guess the property owner was
 15 maybe in a nursing home or in hospice care or
 16 something like that. And so it was, you know,
 17 difficult if not impossible to get a response about
 18 --
 19 MS. BANASZAK: So would the --
 20 MR. PERSINGER: I don't know what the
 21 family situation was, but it seemed to me that there
 22 might be extenuating family circumstances. And, you
 23 know, there's certainly -- Bill shared with me some
 24 pictures of some properties that would be obvious
 25 candidates for enforcement of this kind of

1 requirement. But again, I -- I don't know what the
 2 circumstances are. The idea was just to give the
 3 building officials some discretion to be able to --
 4 and maybe we could do that with the town manager's
 5 approval as well, and add that in there.
 6 MS. BANASZAK: In those circumstances,
 7 would the letter have been delivered?
 8 MR. PERSINGER: I -- I -- I don't know.
 9 I, again, I'm just trying to build in some -- some
 10 flexibility.
 11 MS. BANASZAK: You know what, would they
 12 have -- would they have received notice?
 13 MAYOR STEVENS: The way that it's written,
 14 you would have to -- we would get certified mail
 15 response back that they have received, and that the
 16 time clock wouldn't start until we've gotten the
 17 fact that they've received a certified mail, the way
 18 that's been presented. So I don't think the time
 19 starts and if they're -- have those --
 20 MS. BANASZAK: So somebody has to sign in.
 21 MAYOR STEVENS: -- extenuating
 22 circumstances --
 23 MS. BANASZAK: Yeah.
 24 MAYOR STEVENS: -- then like they're in a
 25 nursing home or in hospice, they would not have

1 signed for the letter.
 2 MS. BANASZAK: Right. So this does not
 3 address unoccupied homes that have fallen into
 4 disrepair.
 5 MAYOR STEVENS: Right. So, those are my
 6 only two comments --
 7 MS. BANASZAK: Uh-huh.
 8 MR. PERSINGER: Sure.
 9 MAYOR STEVENS: -- trying to make it easy
 10 for town hall and then the -- I think this -- the
 11 fee is just a little --
 12 MR. BAUER: Yeah. I think 500 might be a
 13 little -- a little extravagant, but -- so I -- I
 14 would be amenable to having a -- a lower number.
 15 150, 200, whatever it is.
 16 MAYOR STEVENS: It -- it -- it could be,
 17 you know, matching down below the 250 dollar fine on
 18 the property for the stormwater runoff. Again, it's
 19 --
 20 MR. BAUER: Right. But yeah, I think we
 21 gave -- we can give -- give guidance -- some
 22 guidance on what we're trying to solve here.
 23 MAYOR STEVENS: Any other thoughts on
 24 this?
 25 MR. DEDES: You who?

1 MAYOR STEVENS: You who?
 2 MR. DEDES: That would be me.
 3 MAYOR STEVENS: Ah, you woke up.
 4 MR. DEDES: I do have a question of as far
 5 as the way -- I think we should have a little bit of
 6 leeway on fines, you know, I'm looking at some of
 7 the existing fines. It says, subject to a fine of
 8 250. To me, that means we have leeway that you're
 9 subject to it, but we may not use it.
 10 So I guess the question would be is, do
 11 you feel that we should have some responsibility to
 12 make a judgment call on a fine? And I would like
 13 that to be considered at some point. It's not a
 14 hardship for us to make that, believe me. And that
 15 would be something that the building official in
 16 discussion with the town manager, and the town
 17 manager would have to say as to do it or not -- not.
 18 Sorry about the dog.
 19 MR. JASINSKI: Horrible.
 20 MR. PERSINGER: The other -- the other
 21 reason I -- I think the flexibility is that this is
 22 going to be, I think a relatively rare occurrence,
 23 you know, the property values here in Dewey Beach
 24 are substantial enough and people who own them are
 25 responsible enough and this is not going to happen

1 very -- very frequently. It's going to be some very
 2 --
 3 MAYOR STEVENS: Until they're not.
 4 MR. PERSINGER: -- dire circumstances
 5 that, you know, occur. I mean, again, there's maybe
 6 some (indiscernible) who I don't know, but
 7 generally, yeah, you're going to find that.
 8 MAYOR STEVENS: I'll support however we
 9 want -- however you want to go with this. I just
 10 wanted the town hall support and whether you want
 11 the subjectivity side of it and the -- the
 12 flexibility side of it because I just -- that opens
 13 up work and paying for you and you, Jim, as the
 14 acting building official.
 15 MR. DEDES: Thank you, sir.
 16 MAYOR STEVENS: All right. So --
 17 MR. BAUER: All right. Motion to send it
 18 to P&Z. Or charter code, sorry. No, not yet?
 19 MAYOR STEVENS: No. We can actually make
 20 --
 21 MS. BANASZAK: I think they already did
 22 it.
 23 MAYOR STEVENS: We already did?
 24 MS. BANASZAK: They already did it.
 25 MAYOR STEVENS: The Council may vote to

1 draft an ordinance based on these recommendations to
 2 be discussed in a future meeting.
 3 MS. BANASZAK: We can draft the ordinance
 4 with the \$250 instead of 500 --
 5 MR. BAUER: All right.
 6 MS. BANASZAK: -- and bring it back, we
 7 vote on then. Yes?
 8 MAYOR STEVENS: All -- all in favor? Aye.
 9 MR. BAUER: Aye.
 10 MS. GIBBINGS: Aye.
 11 MAYOR STEVENS: All right. I think we had
 12 a long day.
 13 MS. BANASZAK: Uh-huh.
 14 MAYOR STEVENS: We are going to have a --
 15 a Motion to Convene (indiscernible.) Can we adjourn
 16 the Town Council meeting because we're not going to
 17 come back in and the Motion to Convene --
 18 MS. BANASZAK: Should we do comments first
 19 and then adjourn?
 20 MS. GIBBINGS: (Indiscernible.)
 21 MAYOR STEVENS: All right. We're going to
 22 -- then I -- we have to kick this.
 23 MS. GIBBINGS: I've got all that covered
 24 too.
 25 MAYOR STEVENS: Okay.

1 MS. GIBBINGS: We're going to shut this
 2 down and reboot.
 3 MAYOR STEVENS: Great. With that, I would
 4 like to convene an executive session pursuant to
 5 section 1004B9 of the Delaware Code. The Town
 6 Council will convene an executive session to discuss
 7 personnel matters in which the names, competence and
 8 abilities of individual employees or students will
 9 be discussed.
 10 MR. ZOLPER: I'll vote.
 11 MAYOR STEVENS: Vote? All in favor?
 12 MS. BANASZAK: I vote aye. Then can do
 13 this.
 14 MR. PERSINGER: All right. So 5:31.
 15 MAYOR STEVENS: One time you have to work
 16 a year.
 17 (WHEREUPON, the meeting was adjourned.)
 18
 19
 20
 21
 22
 23
 24
 25

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A			
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92:15,22 93:2,4,5	53:9,10 57:25 58:16	59:18,21 60:9 64:22	\$35,000
93:23 94:2 95:16	58:18 66:5,5 80:2	66:11 67:2,21	101:17 102:6
101:4,23 103:12,18	81:6,6,6,11,12	138:15 139:24	\$4
105:11 113:9	83:22 93:8 97:10	zoom	134:7
114:15 115:20	99:4 101:18 110:4	2:10 3:19 4:18,22	\$4,000
118:24,25 119:4	111:13 113:6,6	40:5,10 41:13 89:10	125:13 130:3 133:25
120:12 123:8	115:5 117:17,18	95:8 128:16 139:18	\$40
131:20 133:24	119:13	ZOPLER	133:23
147:16	yours	30:25 31:9,24 32:2,9	\$48,000
yearly	81:12	42:20	111:5
25:14	yourself		\$500
years	22:20 40:6	\$	137:17,17 140:16
7:21 8:20 10:23	you'd	\$1,200	\$500-fine
11:13 15:8 23:14	44:21 134:7	123:8	137:22
25:21 26:5 31:15	you'll	\$1,500	\$600
33:19 59:5 72:5	3:23 13:23 23:11	18:19	115:18
82:5,20 84:14 85:5	49:20,21 135:18	\$10,000	\$601
98:10 104:6 114:3	140:23	111:22,23 112:3	86:20
133:14	you're	\$100	\$68,000
year's	23:18 38:13 40:25	20:14,17	20:21
23:3 24:24 88:5 93:1	47:1 52:1 53:10	\$100,000	\$83,000

88:13	67:23 75:18,18	46:25 50:4 51:7	2019
\$90	13th	52:17 54:13	69:20 70:2,18 72:16
21:12	27:12	180	79:23 81:19 82:24
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25:22	135:16 136:2	185-51	2021
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0	136:3	185-51B	2024
0	138-11	43:6 58:19	28:22 29:1,7,10,11
30:5,6,7,10 52:20	136:3	185-92	29:18,20 30:1,3,8
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4:3 18:2 23:11 30:10	138:9	187	30:12 69:14 70:9,11
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20:16	136:2	<hr/>	1:11 2:8 92:22
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34:15,21 133:25	76:7 136:21	77:13,18 127:9	24
1004B9	16th	20,000	25:17 29:5,24 30:4,7
147:5	2:8	31:8	30:11 77:4 78:17
101	160	20-some	24,948
6:8 8:10 33:17 52:9	29:9 124:14	10:8	123:19
103	17	200	25
33:19	30:2 76:12 122:3,3	124:13,15,15 143:15	30:4 38:25 126:20
11,254	136:21	200,000	250
98:17	18	93:15 109:8	143:17 144:8
114	43:13 46:13,18 47:8	2013	26
35:9	48:13,15,19,21	40:23 52:22 67:5,25	78:6 85:21
12	51:15 52:20 56:19	68:1,2	260
10:2 17:13 20:12	57:24 58:1 61:17	2016	105:21,21,21
30:3 52:18 75:8	64:16 66:17 76:20	15:13	27
126:8,14 136:1	77:4 91:24	2018	77:13 85:22
13	18-foot	15:12	275

29:6	35	95:17	7:20
28	8:21 36:1 97:14 99:1	443,000	600
9:1	35-foot	88:20	88:24,25
28-page	34:5	45	601
71:2	36	107:19	88:11
287,000	36:1	48	6010100
104:4	363.5	122:23	98:17
29	29:17	495	602
40:19 77:19	366	30:4	30:5
295	28:22		
30:8	367	<hr/> 5 <hr/>	<hr/> 7 <hr/>
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3	368	29:24 73:16 79:16	29:5 74:8 75:2 122:3
2:9 29:25 30:6 47:8	28:20	118:13	126:18
48:19,21 56:20	37	5Ks	7:30
64:16 74:16 136:5	30:13 72:16 73:1	21:11	91:12
3rd	79:23	5th	70
16:18	38	13:23	9:18
3,269	95:17	5,000	70s
29:20	38-12	21:22,23	19:21
3,320	136:7	5:00	75
29:11	<hr/> 4 <hr/>	13:23 16:19	89:1 133:21
3-foot	4	5:31	<hr/> 8 <hr/>
53:9	73:5 79:12	147:14	8
3:30	4th	50	29:5 30:3 52:17,17
121:4	12:11,15 25:5,8	38:12 85:9 94:21	74:16 122:3
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38:4 40:17 102:2	29:20	140:21 143:12 146:4	91:12
137:7,16,17,22	4-foot	526,000	8:45
30th	53:10	88:21	85:4 90:13
20:17	4-0	542	80
30,000	133:9	28:21	9:18
126:20	4-1	58	80s
300,000	133:9	23:19,22	19:22
106:8	4.5	<hr/> 6 <hr/>	800,000
302	34:13 35:21,24 52:24	6	126:19
29:7	40	24:10,10 59:3 73:18	83,000
303	72:5	126:18	88:18
29:17	400	6,467	85,280
31	30:21	29:2	98:18
77:24	400,000	6,500	868.50
31st	124:5,8 126:18	30:21	27:19
95:17	42	6,506	<hr/> 9 <hr/>
336	36:1,2 38:5	28:25	9
29:18,19	44	60	

11:13 90:10,13 9:00 85:8 89:23 90:12 900,000 104:5 92 30:1 94 29:25			
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EXHIBIT 10

Posted April 10, 2026 at 2:30pm



AGENDA
TOWN OF DEWEY BEACH
MONTHLY TOWN COUNCIL PUBLIC HEARING & MEETING
Dewey Beach LifeSaving Station
1 Dagsworthy Ave
Dewey Beach, DE 19971

April 17, 2026
3:00pm

This meeting will also be livestreamed on [YouTube](#)
With the option to participate via [Zoom](#)
(Meeting ID 608 759 4237, Dial In 1(646)931-3860)

I. Opening of Meeting

- a. Convene Town Commissioners Meeting
- b. Pledge of Allegiance
- c. Roll Call
- d. Adoption of Agenda
- e. Approval of Minutes
- f. Public Comments (Non-Agenda Items)

II. Reports

- a. Committee Reports
- b. Town Manager
- c. Police Chief
- d. Chamber of Commerce

III. Open Public Hearing

- A. Public Hearing regarding a draft Ordinance to amend Chapter 185-51 of the municipal code relating to location of accessory swimming pools and fences, and height of pool fences. *(G. Persinger)*

IV. Agenda Items (Public comment will be taken for each item after Town Council discussion and prior to vote being taken)

- A. Discussion and possible action regarding a draft Ordinance to amend Chapter 185-51 of the municipal code relating to location of accessory swimming pools and fences, and height of pool fences. *(G. Persinger)*
- B. Review and discuss March financials. *(S. Hall)*

- C. Discussion and possible action on a draft Resolution regarding allocation of the surplus FY 2026 General Fund balance, including but not limited to designation of funds for Rainy Day, Unassigned, Capital Expenditures, New Town Hall, and a proposed Comprehensive Development Plan fund. (B. Stevens, G. Persinger)
- D. Discussion and possible action on a draft Resolution to approve a contract with the Institute for Public Administration to assist with development of the Comprehensive Plan. (G. Persinger)
- E. Discussion and possible action to appoint Jeff Grutkowski, Michael Boyd, and Debra Phillips-Goldenberg to the Infrastructure Committee. (D. Jasinski)
- F. Discussion and possible action on a draft Ordinance to amend Chapter 101-21 of the municipal code relating to placement of electrical, HVAC, plumbing and service equipment for structures in special flood hazard areas. (G. Persinger)
- G. Discussion and possible action on a draft Ordinance to amend Chapter 1-16 of the municipal code relating to the definition of "substantial improvement" to require cumulative tracking of construction and reconstruction costs. (G. Persinger)
- H. Discussion regarding the threshold at which reconstruction, renovation, or structural alteration of a building constitutes a demolition. The Commissioners may vote to refer this item to a committee for further review. (B. Stevens)
- I. Discussion and possible action on a draft Ordinance amending recently adopted Ordinance 866-2026 to clarify and correct the requirements for when a building permit is required for the replacement of siding and roof shingles. (J. Dedes)

V. Closing of Meeting

- a. Commissioner Comments
- b. Adjournment

Please be advised that this agenda is subject to amendment in accordance with FOIA. Agenda items are subject to deletion at any time, including during the course of the meeting. This meeting will be recorded and/or live-broadcast via audio and/or video. A technological failure that prevents, or a technological limitation that limits public access does not invalidate this meeting or any action taken at this meeting.



Town of Dewey Beach

www.townofdeweybeach.com

105 Rodney Avenue
Dewey Beach, DE 19971
P: (302)227-636

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ORDINANCE NO.

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AN ORDINANCE TO AMEND CHAPTER 185, ZONING REGARDING SWIMMING POOLS AND POOL FENCES

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WHEREAS, the Commissioners of the Town of Dewey Beach find it necessary and appropriate to clarify and confirm the intent of the zoning code that the existing prohibition against fence height in a required front yard applies equally to fences required to surround accessory swimming pools; and

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WHEREAS, the Dewey Beach Planning & Zoning Commission convened a duly noticed public hearing on March 3, 2026 and the recommendations provided herein are based upon the Commission's review and deliberation at that hearing.

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

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Section 1. Amend Section 185-51 of the Zoning Code of the Town of Dewey Beach by inserting the underlined language in subsection A thereof as reflected below:

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- A. A hedge, fence or wall not more than 3.5 feet in height may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. This height limit applies equally to pool fences which are required to exceed 3.5 feet in height. Any fence, hedge, or wall for residential use may project into or enclose other required yards, provided such fences, hedges, and walls do not exceed a height of seven feet. This height limit does not apply to fences or walls used for commercial screening or tennis courts.

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Section 2. Amend Section 185-51 of the Zoning Code of the Town of Dewey Beach by inserting the underlined word "rear" in subsection B thereof as reflected below:

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- B. Accessory swimming pools open and unenclosed, may occupy a required rear yard or side yard, provided they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least 4.5 feet in height and constructed of concrete, stockade wood or material of equal quality.

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Section 3. 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.

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Section 4. This Ordinance shall take effect immediately upon its passage by a majority vote of the Commissioners of the Town of Dewey Beach.

45 Adopted by at least a majority of the Commissioners of the Town of Dewey Beach on this 17th day of
46 April, 2026.

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SYNOPSIS

This Ordinance clarifies that swimming pools are permitted to occupy portions of required side and rear yards but not any portion of required front yards. Also, it clarifies that pool fences which by definition must exceed 3.5 feet in height are not permitted in required front yards.

Mayor, William Stevens

Town Manager, Bill Zolper

EXHIBIT 11

101 Carolina Street update...and request for support

The house construction at 101 Carolina is moving along nicely. The pool will be located within the front "building envelope" - meaning, in the area on the site plan where a house can be built (not in the front yard set back area). The required 4'6" pool safety fence will be installed 10 feet back from the front property line per the site plan submitted to the Town. The photo below is a draft rendition depicting the front of the home with the fence in this location (10 feet from front property line). One horizontal off-street parking space is located in front of the fence and two additional spaces are on the west side.

We would appreciate your support of our fence plans by checking the box below. Many thanks!
Marcia

This form is automatically collecting emails from all respondents. [Change settings](#)

Please provide your full name *

Short answer text

Please provide your Dewey Beach Street Address *

Short answer text

Yes, I support the installation of the 4'6" pool safety fence in this location. **Please check the box below.** *



Timestamp	Email Address	Please provide your full name	Please provide your Dewey Beach Street Address	Yes, I support the installation of the 4'6" pool safe
4/17/2026 17:28:06	dantele@shurywillashy.com	Dantele Marenco	121 chesapeake street	Yes, I support
4/18/2026 9:22:25	mbschkeck@gmail.com	Richard Greenfield	1430 Bayard Avenue	Yes, I support the installation of the 4'6" pool safe
4/18/2026 9:45:07	thereseconely@comcast.net	Theresa Conely and Mark Desgras	205 Jersey Street	Yes, I support the installation of the 4'6" pool safe
4/18/2026 10:20:41	rockywood89@gmail.com	Dave Davis	16 Swedes St. #3	Yes, I support the installation of the 4'6" pool safe
4/18/2026 10:39:06	khendersonkendle@gmail.com	Kelley Henderson Kendle	201 carolina Street, Dewey beach	Yes, I support the installation of the 4'6" pool safe
4/18/2026 17:55:16	mupht@hotmail.com	Mary VanVeen	114 Chesapeake st, Dewey Beach DE	Yes, I support the installation of the 4'6" pool safe
4/18/2026 17:55:52	deweylunrentals@gmail.com	Mary Van veen	1301 Coastal Highway, Unit 427, Dewey Beach DE	Yes, I support the installation of the 4'6" pool safe
4/19/2026 9:46:14	mvejd170@gmail.com	Mehrdad Vajdi	115 Jersey st	Yes, I support the installation of the 4'6" pool safe
4/19/2026 12:00:59	cathypascasale@gmail.com	Catherine Pascale	112 Chesapeake street	Yes, I support the installation of the 4'6" pool safe
4/19/2026 15:01:05	mikemcd33@gmail.com	Michael McDermott	202 jersey street	Yes, I support the installation of the 4'6" pool safe
4/19/2026 17:47:36	john.fulchino@gmail.com	John Fulchino	124 Jersey St	Yes, I support the installation of the 4'6" pool safe
4/20/2026 11:02:16	ingramenr@gmail.com	Chadd Ingram	122 Jersey Street	Yes, I support the installation of the 4'6" pool safe
4/20/2026 11:34:25	gmuchhiney@aol.com	Gary McClhiney	16 Swedes St	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:08:38	pwink2104@gmail.com	Phillip Winkler	117 Read Ave	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:09:22	ellenblocher@gmail.com	Ellen Blocher-Winkler	117 Read Ave	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:19:26	melenieodlum@gmail.com	Melanie Odlum	16 Swedes Street, Unit 2, Dewey Beach DE 19971	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:23:38	shoopxs5@gmail.com	Lyn Shoop	15 Saint Louis Street	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:39:30	sheldon.lifelong1@gmail.com	Sheldon roseman	Ok <i>200 Jersey</i>	Yes, I support the installation of the 4'6" pool safe
4/20/2026 13:57:22	deweybchrent@gmail.com	Nancy Chrissenger Cobb	109 bellevue st	Yes, I support the installation of the 4'6" pool safe

Please provide your Dewey Beach Street Address *

Short answer text

Yes, I support the installation of the 4'6" pool safety fence in this location. Please check the box below.



Multiple choice



Yes, I support the installation of the 4'6" pool safety fence in this location

Add option or [add "Other"](#)



Tt

