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ORDINANCE # _____

AN ORDINANCE TO AMEND CHAPTER 185. ZONING TO AUTHORIZE THE BOARD OF ADJUSTMENT TO GRANT VARIANCES FROM FLOOD DAMAGE REDUCTION REQUIREMENTS IN CHAPTER 101 OF THE CODE OF THE TOWN OF DEWEY BEACH; TO AMEND CHAPTER 80. CIVIL VIOLATIONS TO PROVIDE A SCHEDULE OF VIOLATIONS AND FINES FOR VIOLATIONS TO ZONING AND FLOOD DAMAGE REDUCTION REQUIREMENTS; AND PROVIDING FOR SEVERABILITY, PROPER FORMATTING, AND ESTABLISHMENT OF AN EFFECTIVE DATE.

WHEREAS, in order to promote the health, safety, and welfare of the present and future inhabitants of Dewey Beach it is appropriate from time to time to amend Town regulations regarding planning and zoning issues within the Town of Dewey Beach, DE; and

WHEREAS, the Town Commissioners approved major amendments to the Town’s floodplain management requirements/regulations incorporated in Chapter 101. Flood Damage Reduction of the Town Code, based upon FEMA-required language and becoming effective March 15, 2015, said amendments giving the Board of Adjustment the responsibility to hear requests for and grant variances from the requirements in the amended Chapter 101; and

WHEREAS, the new Chapter 101. Flood Damage Reduction references penalties and fines for violations of the regulations within as a Civil Offense but Chapter 80. Civil Offenses of the Town Code has no specific penalties and fines listed for such violations;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSIONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION MET THIS _____th DAY OF _____, 2015, THAT:

SECTION 1. AMEND CHAPTER 185 TO AUTHORIZE THE BOARD OF ADJUSTMENT TO GRANT VARIANCES FROM FLOOD DAMAGE REDUCTION REGULATIONS IN CHAPTER 101 OF TOWN CODE.

To bring Chapter 185. Zoning and the amended Chapter 101. Flood Damage Reduction into alignment:

A. Insert the following language, taken from the DNREC/FEMA model ordinance, as a new subsection 185-66.C.(2) between current paragraphs (1) and (2), and renumbering the current paragraph (2) to (3):

“To authorize, in specific cases, such variances from the requirements of Chapter 101 Flood Loss Reduction that will be not inconsistent with Federal regulations nor contrary to the public interest where, owing to special conditions of the lot or parcel, a literal

Comment [DSK1]: Question for Fred. Should we be using “regulations”, “requirements” or both here and everywhere herein?

Comment [DSK2]: Frec: I think this set of commas should be deleted. Do you agree?

Comment [DSK3]: Frec: I think this set of commas should be deleted. Do you agree?

45 enforcement of the provisions of the regulations included in Chapter 101 would result in
46 unnecessary hardship and/or exceptional practical difficulty.”

Comment [DSK4]: DNREC has suggested “and/or” here, 185-68 has a simple “and”. Fred, your guidance?

47 **B.** Insert the following language, which is mainly a repeat of language in 185-68.A.(1), as a new
48 sub-section 185-68.A.(2):

49 “A variation in any flood damage reduction requirement not inconsistent Federal
50 regulations nor contrary to the public interest in any special flood hazard area so as to
51 relieve unnecessary hardships and exceptional practical difficulties in cases when and
52 where by reason of exceptional narrowness, shallowness, or other unusual characteristic
53 of size or shape of a specific piece of property at the time of the enactment of such
54 regulation or restriction, or by reason of exceptional topographical conditions of other
55 extraordinary situation or condition of such piece of property, or by reason of the use or
56 development of property immediately adjacent thereto, the strict application of each
57 regulation or restriction would result in unnecessary hardship and exceptional practical
58 difficulties. Such granting of variance shall comply, as nearly as possible in every respect
59 with the spirit, intent, and purpose of Chapter 101. Flood Damage Reduction; it being the
60 purpose of this provision to authorize the granting of variation only for reasons of
61 demonstrable and unnecessary hardship and exceptional practical difficulties as
62 distinguished from variations sought by applicants for purposes or reasons of
63 convenience, profit, or caprice. See Chapter 101 Section 7 Variances for specific details,
64 procedure and limitations.”
65

Comment [DSK5]: Delete? While this might make sense in Chapter 185, it is not clear it is appropriate for variances from requirements/regulations in Chpt 101.

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67 **SECTION 2. AMEND CHAPTER 80. CIVIL OFFENSES TO DEFINE**
68 **APPROPRIATE VIOLATIONS AND PENALTIES FOR VIOLATIONS OF TOWN**
69 **ZONING AND FLOOD DAMAGE REDUCTION REGULATIONS.** Establish a schedule of
70 zoning code and flood damage reduction violations and penalties by:

71
72 **A.** Amending Chapter 80 to create a new Article III Flood Damage Reduction and Zoning
73 Offenses

74
75 **B.** Amending Chapter 80 to create a new Section 80-14. Flood Damage Reduction as follows:

76
77 **80-14 Flood Damage Reduction (ALTERNATIVE 1)**

Comment [DSK6]: Two alternatives are suggested

78 **A. Violations.** Violations of the Town’s Flood Damage Reduction regulations incorporated
79 in Chapter 101 of the Code of The Town of Dewey Beach are a civil offense.

80 **B. Fines and Penalties.** Whoever violates any regulation in Chapter 101. Flood Damage
81 Reduction of the Code of The Town of Dewey Beach shall be subject to a fine of not
82 more than \$25 for each and every offense, and whenever such person shall have been
83 notified by the Floodplain Administrator or designee in writing that he is committing
84 such violation of said chapter each day that he shall continue constitutes a separate
85 offense punishable by like fine or penalty.

Comment [DSK7]: Basically language from old Section 101-22 moved into Chpt 80.

86 **C. Enforcement.** The Dewey Beach Floodplain Administrator or designee shall have the
87 authority to enforce violations of all flood damage reduction regulations as incorporated
88 in Chapter 101 of the Code of The Town of Dewey Beach.

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OR

80-14 Flood Damage Reduction (ALTERNATIVE 2)

D. Violations. Violations of the Town’s Flood Damage Reduction regulations incorporated in Chapter 101 of the Code of The Town of Dewey Beach are a civil offense.

E. Fines and Penalties. Whoever violates any regulation in Chapter 101. Flood Damage Reduction of the Code of The Town of Dewey Beach shall be subject to a fine of not less than \$500 nor more than \$1,000 for a first offense and not less than \$1,000 nor more than \$2,500 for any subsequent similar offense. This fine shall be levied separately upon the owner(s) of the property cited and any contractor(s) involved in the work that is being cited. The property owners and/or contractor have 30 calendar days following notification in writing of a flood damage reduction regulation violation to apply for the required building permits or appeal the Town’s decision to the Board of Adjustment or remediate the violation. Unless the owner(s) and/or contractor(s) is(are) contesting the citation through a formal appeal process, if no action is taken to obtain the required permits or remediate the violation the subject of such citation shall result in subsequent citations being issued every 30 calendar days until such action is taken. Additionally, if the Town’s notification of any flood damage reduction regulation violation is upheld by a final decision of the Board of Adjustment or courts the aforementioned schedule of fines shall apply. If no action is taken to obtain required building permits or remediate any violation of the requirements/regulations of Chapter 101 within 180 calendar days of a notification by the Town of such an offense or final decision upholding the Town’s citation, in whole or part, by the Board of Adjustment or courts the Town may remediate the violation and place a lien on the property. Any contractor or sub-contractor convicted on more than two separate instances for violations of the regulations in Chapter 101. Flood Damage Reduction shall have its Dewey Beach business license voided for the remainder of that year and have any business license application in the next three Town business license cycles denied.

F. Enforcement. The Dewey Beach Floodplain Administrator or designee shall have the authority to enforce violations of all flood damage reduction regulations as incorporated in Chapter 101 of the Code of The Town of Dewey Beach.

SECTION 3. SEVERABILITY. 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. FORMATTING. Minor changes of formatting, grammar, and typography may be made to assist incorporating these changes into the Town Code.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective **MARCH 15, 2015.**

135 Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach on
136 _____, 2015.

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DIANE HANSON
Mayor

Attest: _____
MARC APPELBAUM
Town Manager

148 **Synopsis:** Amendments are made to Chapter 185. Zoning to authorize the Board of
149 Adjustment to grant requests for a variance to Flood Damage Reduction regulations in Chapter
150 101 of the Town Code and to establish a schedule of violations and penalties for flood damage
151 reduction regulation violations as a civil offense.

DRAFT