

Minutes of the
TOWN OF DEWEY BEACH
PLANNING and ZONING COMMISSION
MEETING
Saturday, March 18, 2017, 10:00 am
At the
Dewey Beach Lifesaving Station
1 Dagsworthy Avenue, Dewey Beach, DE 19971

The Vice Chairman of the Planning Commission, Mike Harmer, convened the Planning Commission public hearing and meeting at 10:00 am, and opened with the "Pledge to the Flag." All commissioners were present, as determined by affirmative responses to Roll Call. The commissioners included Jimmy O'Conner and Mark Norquist, who were recently appointed by the Town Commissioners. Also present were Commissioners Jim Bielicki, Jim Dedes, Don Gritti, Mike Harmer, and Marty Seitz. Mr. Noel Primos, of the law offices of Schmittinger and Rodriguez, was present to support the Commission in its deliberations. Members of the public were present including Mayor Dale Cooke and Mr. Chris Flood.

The Commissioners paused to express a moment of respect for the Commission's former Chairman, Mike Paraskevich. The commissioners discussed persons who could serve as chairman. Commissioner Don Gritti moved that the Planning Commission elect Vice Chairman Mike Harmer as the chairman of the commission. Commissioner Jim Dedes seconded the motion. The commissioners voted unanimously in favor of the motion.

Chairman Harmer opened the public hearing and described the subject of the hearing and procedures to be followed during the public hearing. The public hearing regarded a draft ordinance that would amend the Town's Code Article IX relating to non-conforming properties, specifically Section 186-59. The ordinance, if approved by the Town commissioners, would add language to the Town Code to prevent damage to properties from flooding by adding section (B) permitting a non-conforming structure to be elevated in a flood zone. Further, the ordinance being considered would amend Article VII, titled supplementary height, area, and bulk regulations. The ordinance being considered would modify Section 185-46, modification of height regulations, to include the elevation of non-conforming structures to prevent flooding.

Chairman Harmer suggested that that Commissioners would respond to question about the intent of the ordinance prior to hearing from the public about pros and cons to the ordinance or about specific word changes to the draft. Members of the public asked about the intent of the hearing, in general, and individuals suggested that they did not have specific expertise in the subject at hand, but were here to learn. Chairman Harmer then asked for comments supporting the ordinance or objecting to the ordinance, or any

comments regarding wording. The public did not offer specific comments relating to the draft ordinance. Chairman Harmer then closed the public hearing.

Chairman Harmer then re-convened the meeting for the planning commissioners to deliberate on the above-referenced draft ordinance and suggest amending it, as appropriate. The Chairman suggested that commissioners may wish to vote on any motion concerning a recommendation that the Town Commissioners approve or deny the proposed ordinance.

The commissioners began the discussion by asking Mr. Primos to summarize the changes he suggested to the draft that was published as a supporting document with the announcement of the public hearing. The commissioners suggested keeping several of the nine changes offered by Mr. Primos and proposed alternatives to some proposed changes. The commissioners discussed additional possible changes to the draft ordinance.

The discussion included a reminder from Chairman Harmer reminded that Table 2 is included as part of chapter 185-46. The discussion included the expression of Commissioner Seitz expressed an interest in using the ordinance to steer owners of a non-conforming properties toward conformance as they raised their structures to protect against flood damage. Commissioner Dedes noted that, in general, Town Hall always steers owners toward conformance when they apply for permits to modify their structures. So, inclusion of such direction in this specific ordinance would be superfluous. Various discussions ensued about changes that could clarify the ordinance and remove perceived ambiguities.

Following these discussions, Commissioner Marty Seitz moved that the Planning Commission recommend that the Town commissioners amend Article IX of the Town's Code to prevent flooding by permitting a non-conforming structure in a flood zone to be elevated prior to flood damage. The ordinance to implement these changes is as follows: Beginning with the draft ordinance provided to the Planning Commission by the Town, incorporate the changes in wording suggested by the Planning Commission's attorney, Noel Primos, in the discussion above. Also, incorporate the following changes: (1) add the phrase "but not to exceed," after the words "shall be elevated to" in line 5 of the first paragraph in sub-section A, Article IX, of the draft. Also, add the phrase, "but not to exceed, the" after the words "structure shall be" in line 5 of sub-section B; (2) Change paragraph (3) under sub-section A to sub-section C, and move it to reside below section B.

Commissioner Don Gritti seconded the motion. Following discussions, the commissioners approved the motion by unanimous vote. The draft ordinance recommended to the Town commissioners is attached.

Chairman Harmer tentatively scheduled additional meetings of the Planning Commission on April 15, May 19 and June 16, based on the availability of the

commissioners. Meetings on any of these dates will be cancelled if specific work of the Planning Commission is not requested by the Town commissioners.

Commissioner Dedes moved that we adjourn the meeting. Commissioner O'Conner seconded the motion, and the motion passed by unanimous vote of the commissioners.

Respectfully Submitted,

Commissioner Marty Seitz
Secretary, Planning Commission

Attachment to the Minutes of the March 18, 2017, meeting of the Planning Commissioners

The Ordinance Recommended to the Town Commissioners

NONCONFORMITIES

TOWN OF DEWEY BEACH, DELAWARE

ORDINANCE NO.

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED by the Town Commissioners of the Town of Dewey Beach that the following amendments to section 1K5-59 be adopted.

Article IX. Nonconformities

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

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

If a nonconforming building is damaged by fire, storm, infestation, or other peril not caused intentionally by the property owner, it may be repaired or reconstructed to essentially the same configuration as existed prior to the damage, provided that application for all required building permits be made within one year and six months of the date of the damage. If a different configuration or an expansion of the original building is proposed, it must conform to all applicable regulations, including all applicable setbacks, height and elevation requirements. In addition, and notwithstanding the foregoing, a nonconforming building located in a designated flood zone, in order to prevent potential future damage by flooding, may be elevated to meet current federal and Town flood elevation requirements, as set forth in subpart B below.

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

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

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

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

B. If a non-conforming structure is located in a designated flood zone, and the property owner desires to elevate the structure to prevent flooding based on the Town's elevation requirements in the designated flood zone, the nonconforming structure may be elevated in essentially the same configuration as it currently exists (i.e., with current setbacks and

structural dimensions), and the structure shall be elevated to, but not to exceed, the relevant minimum building-elevation requirement notwithstanding the restrictions set forth in §185-60B.

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

ARTICLE VIII. Supplementary Height, Area and Bulk Regulations

MODIFICATION of height regulations,

§185-46

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

[2]

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