

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 185 ZONING OF THE CODE OF THE TOWN OF DEWEY BEACH, DE TO PROVIDE CONDITIONAL-USE ZONING RELIEF FOR OWNERS OF RESIDENTIAL STRUCTURES IN FLOOD-PRONE AREAS (i.e., FEMA-DESIGNATED VE, AE AND AO FLOOD ZONES) TO ELEVATE SUCH STRUCTURES TO MINIMUM BUILDING ELEVATION REQUIREMENTS.¹

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, it is the desire of the Town Commissioners of the Town of Dewey Beach to encourage the sustainability of the Dewey Beach “way of life” in the face of increasingly-severe storm- driven flood damage and sea-level rise; and

WHEREAS, it is the desire of the Town Commissioners of the Town of Dewey Beach to provide mechanisms and processes for owners of residential-use properties within FEMA-designated flood zones that suffer substantial flood damage to continue to enjoy the use of such properties; and

WHEREAS, it is the desire of the Town Commissioners of the Town of Dewey Beach to provide mechanisms and processes for owners of residential-use properties within FEMA-designated flood zones to take proactive steps to improve the resilience of their property to the ravages of increasingly harmful storms and rising sea levels; and

WHEREAS, it is the desire of the Town Commissioners of the Town of Dewey Beach to provide encouragement for the prompt repair of, and investment in residential-use properties within FEMA-designated flood zones.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE TOWN COMMISSIONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION MET THIS ____ DAY OF _____, 2013, THAT:

¹ **SYNOPSIS.** This ordinance amends Chapter 185-60 Extension of nonconforming use or building, sub-section B. (which currently prohibits expansion “either vertically or horizontally in the setback area”) to provide a conditional-use process for elevating residential structures which encroach in any required setback area(s) and which are located in any VE, AE or AO flood zone to meet the Town’s minimum building elevation requirements provided the final height of the elevated structure does not exceed the town-wide 35’ building height limit.

1 **SECTION 1. Amend Section 185-60 Extension of nonconforming use or building.** Amend
2 Section 185-60 Extension of nonconforming use or building by deleting sub-section B. in its
3 entirety and replacing with the following:
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5 B. A building nonconforming only as to height, area, or bulk requirements may be altered or
6 extended provided such alteration or extension does not create any new non-conformity
7 or increase the degree of any existing nonconformity in any respect. A building which
8 does not conform to the required setbacks in any respect shall not be expanded either
9 vertically or horizontally in said setback area(s).
10

11 1. Except that a residential-use structure located in any flood-prone area (i.e., any
12 Federal Emergency Management Agency (FEMA)-designated VE, AE or AO
13 flood zone) which does not currently conform to the required setbacks in any
14 respect (referred to in this sub-Section as the “Structure”) and which cannot be
15 elevated to the Town’s building-elevation requirement (BER) without increasing
16 the vertical extent of said encroachment may apply for conditional-use approval
17 to be elevated by the minimum amount necessary to meet the Town’s building-
18 elevation requirement.
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20 a) For the purposes of this Chapter, the “Town’s building-elevation
21 requirement” shall be the sum of the FEMA designated 1% annual
22 probability base flood elevation (BFE) for the flood zone in which the
23 Structure is located as shown on the effective Flood Insurance Risk Map
24 (FIRM) plus the additional height required by the Town as part of its
25 participation in the National Flood Insurance Program (NFIP), i.e.,
26 freeboard. (The required freeboard is specified in the Town Code in
27 Section 101-11 Elevation, floodproofing and constructions standards
28 applicable within general floodplain areas. At the time of enactment of this
29 ordinance the Town’s freeboard height requirement is one foot.)

30 I. The Structure’s “building elevation” shall be defined as per NFIP
31 regulations as “the elevation of the lowest habitable floor
32 (including basement)” for buildings in AO and AE flood zones and
33 as “the elevation of the bottom of the lowest horizontal structural
34 member of the lowest floor” for buildings in a VE flood zone.
35 Building elevation may at times be referred to as base elevation in
36 Town code.
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38 b) If the Structure can be relocated on its lot or parcel so as not to encroach in
39 any required setback and be so relocated without the movement or razing

1 of any other permanent structure, e.g., a garage or workshop on said lot or
2 parcel it shall be so relocated and cannot be elevated in place.
3

4 c) If the Structure can be rebuilt in substantially the same configuration other
5 than its building elevation and be relocated so as not to increase its vertical
6 extent within any required setback without the movement or razing of any
7 other permanent structure on said lot it shall be so rebuilt and relocated.
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9 d) If the Structure is located on an unbuildable lot or if the character of the
10 lot is such that the Structure cannot be rebuilt and/or elevated without
11 increasing its encroachment in the required setback(s) and the Structure is
12 substantially damaged (and therefore required by FEMA to be elevated to
13 local flood-elevation standards) or the owners wish to proactively elevate
14 the structure to the Town's building-elevation requirement, the owners
15 shall follow a conditional-use process that includes:
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17 I. Review and recommendation of the proposed site and building
18 plans by the Town Building Official regarding conformity to all
19 Town building and zoning codes;
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21 II. Review by the Planning Commission of the proposed site and
22 building plans and a recommendation to the Town Commissioners.
23 In its review, the Planning Commission shall consider and make
24 recommendations on issues, including but not limited to:

- 25 a. effective zoning requirements;
- 26 b. neighborhood design standards;
- 27 c. possible trade-offs between encroachment of side yards
28 versus front and rear yards and inter-building separations;
- 29 d. possible trade-offs between increases in ceiling heights of
30 habitable areas to conform to modern building code versus
31 possible changes in roof design to limit the incremental
32 increase in the vertical extent of setback encroachment;
- 33 e. minimization of negative impacts on access to light and air
34 and preservation of privacy of adjacent residential-use
35 properties; and
- 36 f. determination that the proposed elevated structure is in
37 essentially the same configuration other than building
38 elevation as the original structure.
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III. As with other conditional-use applications, the Town Commissioners shall be responsible for final approval and may attach specific conditions to this approval. Such conditions might include, but are not limited to:

- a. changes in roof design;
- b. removal or relocation of windows, doorways, and external staircases;
- c. removal or reduction in size of exterior decks;
- d. removal or reduction in size of those elements listed as exceptions in sub-Section 185-48. B. under Yards and open space generally; and
- e. construction materials if the structure is being rebuilt or modified.

e) Relief under this sub-Section shall only be provided for the minimum amount of additional elevation in the encroached setback area(s) necessary to meet the Town’s building-elevation requirement. A positive variance in the as-built building elevation of no more than one-tenth foot (0.1 foot) shall be deemed as satisfying this requirement.

f) Whether rebuilt following flood damage or elevated to protect against future flood damage, the newly elevated Structure shall not exceed essentially the same configuration other than building elevation as existed prior to such damage or elevation.

g) Any Structure being elevated under the provisions of this sub-Section may be rebuilt in part or in its entirety using modern building materials and meeting current building codes provided it is built in a manner that does not exceed essentially the same configuration other than the building elevation of the original Structure.

h) For any Structure being elevated under the conditions of this sub-Section, a certified survey from a licensed surveyor clearly showing appropriate setback lines, the location and footprint of the Structure prior to elevation, the location and footprint of all other permanent structures on the same lot or parcel, the proposed location and footprint of the Structure after elevation, and proposed roof and building elevations of the elevated Structure shall be required in the application for a Building Permit.

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- i) The application for a Certificate of Occupancy for any Structure elevated under the provisions of this sub-Section shall include a certified survey from a licensed surveyor showing setback lines, the location and footprint of the elevated Structure, and roof and building elevations of the elevated Structure. No Certificate of Occupancy shall be issued if the elevated Structure exceeds essentially the same configuration other than building elevation in any regard or exceeds the Town’s building-elevation requirement or exceeds the Town-wide 35’ building height.

 - j) For the purpose of this sub-Section, “essentially the same configuration other than building elevation” shall refer collectively to:
 - I. maximum length, maximum width, and gross square footage of the building’s exterior footprint;
 - II. number of habitable levels;
 - III. square footage of enclosed habitable areas including hallways, stairways, closets and bathrooms;
 - IV. square footage of all decks, including open, covered or enclosed, and roof decks;
 - V. overall vertical height of all living areas, decks, and roof after adjusting for any minimum increase(s) in ceiling height(s) required to conform to current building codes;
 - VI. encroachment in setback areas by any exterior staircase(s).

 - k) The gross square footage of the elevated Structure’s footprint, the square footage of all habitable areas including hallways, stairways, closets and bathrooms, the number of decks and square footage of each individual deck, and the number of floors of living space shall not be increased. Nor shall the vertical dimensionality of the roof in the encroached setback area(s) be increased, where the “vertical dimensionality of the roof” shall mean the height of the top of the roof above the ceiling of the top floor of the existing Structure..

 - l) Rebuilt areas shall be designed and constructed so as to conform to all current building codes. Because many existing residential structures in Town were built with ceiling heights in habitable areas lower than current minimum standards a minimum amount of increase in ceiling height in habitable areas shall be considered as contributing to being of essentially the same configuration other than building elevation. Nevertheless, offsetting changes in roof design may be imposed as part of the

1 conditional-approval process to minimize the overall extent of increased
2 vertical encroachment in setback area(s).

- 3
4 2) Under no circumstance can any Structure elevated under this Section exceed the
5 Town-wide 35' height limit.
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8 **SECTION 2 Conditional use.** Amend Table 1 Uses in Residential Districts and Table 3 Uses in
9 Resort Business Districts to add as a Conditional Use in NR, RR, PR, RB-1, RB-2 and RB-3
10 zoning districts the following: Elevation to the Town's minimum building-elevation requirement
11 of a residential-use structure located in any flood-prone area (i.e., FEMA-designated VE, AE or
12 AO flood zone) which encroaches in any required setback area(s) provided the final height of the
13 elevated structure does not broach the town-wide 35' building height limit.
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15 **SECTION 3 Emergency building permit.** Amend Section 185-80 Building permits; fee as
16 shown in the red-lined text below:
17

18 185-80. Building permits; fee.

19 ~~A.~~—No building shall be erected, constructed, altered, moved, converted, extended or
20 enlarged without the owner or owners first having obtained a building permit, and such
21 permit shall require conformity with the provisions of this chapter; ~~provided, however,~~
22 ~~that the Town Building Code Official may, at his discretion, issue an emergency permit~~
23 ~~not in conformity with the provisions of this chapter when:~~

24 ~~(1) A dwelling has been made uninhabitable by fire, wind, flood, or impact by motor~~
25 ~~vehicle or airplane, or similar natural or man-made disaster;~~

26 ~~(2) A written statement by the applicant has been filed, certifying the dwelling to be~~
27 ~~uninhabitable to [sic] due to fire, wind, flood, impact, or similar natural or man-~~
28 ~~made disaster; and~~

29 ~~(3) The Mayor has indicated approval by initialing the application.~~
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31 **SECTION 4 Severability.** If any provision of this Ordinance shall be deemed or held to be
32 invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall
33 not affect any other provision of this Ordinance which may be given effect without such invalid
34 or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared
35 to be severable.
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37 **SECTION 5. Formatting and minor editorial changes.** Minor changes of formatting,
38 grammar, and typography may be made to assist incorporating these changes into the Town
39 Code.
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41 **SECTION 6. Adoption.** This Ordinance shall take effect immediately upon its adoption by a
42 majority vote of the Commissioners of the Town of Dewey Beach.

Planning Commission Recommendation to Town Commissioners (11/16/2013)
re: elevation of encroaching residences

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Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach
on _____, 2013.

BY: _____
Mayor Diane Hanson

ATT: _____
Town Manager Marc Appelbaum