



ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 1-16 OF THE DEWEY BEACH CODE OF ORDINANCES TO DEFINE "DEMOLITION," AND AMEND CHAPTER 185 REGARDING DEMOLITION OF STRUCTURES

WHEREAS, the Town of Dewey Beach recognizes the need to establish clear and objective standards for determining when work performed on an existing structure constitutes demolition for zoning purposes; and

WHEREAS, the proposed amendments clarify the relationship between demolition determinations, nonconforming structures, and reconstruction following casualty events to promote consistent administration of the Town's zoning regulations.

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. Amend Chapter 1-16 of the Code of Ordinances as depicted by strikeouts and substitutions depicted below:

DEMOLITION

The voluntary removal, dismantling, destruction, or replacement of structural components of a building or structure by or on behalf of the property owner, where such work meets or exceeds any threshold established in §185-22.2

Section 2. Amend Chapter 185 of the Code of Ordinances by adding a new section 185-22.2 to read as follows:

§ 185-22.2 Determination of Demolition for Zoning Purposes

A. Purpose.

The purpose of this section is to establish objective standards for determining when work performed on an existing structure constitutes demolition for purposes of this Chapter.

The provisions of this section are intended solely for zoning administration and shall not modify or supersede the requirements of Chapter 71 or Chapter 101 of the Dewey Beach municipal code, or any applicable State or Federal law.

B. Applicability.

The Building Official shall determine whether proposed work constitutes demolition for zoning purposes in accordance with the standards established in this section.

C. Structures located within the Special Flood Hazard Area.

For structures located within a Special Flood Hazard Area as identified on the Town's adopted Flood Insurance Rate Maps:

- 1) All construction, reconstruction, alterations, repairs, and improvements shall comply with the applicable requirements of Chapter 101 (Flood Damage Reduction) and Chapter 71 (Building Code) of the Town Code.
- 2) Nothing contained in this section shall modify, supersede, or replace the requirements of Chapter 101 or Chapter 71.

D. Standards for determining demolition

For purposes of this Chapter, a structure shall be deemed demolished whenever proposed work removes, replaces, or destroys fifty percent (50%) or more of the building's primary structural system.

For purposes of this section, the primary structural system shall include foundations, load-bearing walls, floor framing, roof framing, structural beams, structural columns and other principle structural members as determined by the Building Official.

Primary structural system shall not include roofing materials, siding, windows, doors, drywall and interior finishes, floor finishes, non-load-bearing partitions, cabinetry, plumbing or electrical systems.

E. Voluntary demolition.

Nothing contained herein shall prevent a property owner from voluntarily electing to classify a project as demolition regardless of whether the thresholds established by this section have been reached.

F. Unforeseen structural deficiency exception.

A project lawfully permitted as a renovation, rehabilitation, or repair shall not be deemed demolition solely because an existing foundation or other concealed structural element is subsequently determined to be structurally deficient and incapable of safely supporting the approved work, provided that all of the following conditions are satisfied:

- 1) The structural deficiency was not reasonably discoverable prior to commencement of construction through ordinary inspection.
- 2) The structural deficiency is documented in a written report prepared and sealed by a professional engineer licensed in the State of Delaware.
- 3) The Building Official determines that replacement of the deficient structural element is reasonably necessary to protect public health, safety, and welfare.

76 4) Replacement is limited to the minimum work reasonably necessary to safely complete
77 the approved renovation or rehabilitation.

78 5) The project does not increase the degree of any existing zoning nonconformity unless
79 otherwise authorized by this Chapter.

80 6) At the time the structural deficiency is discovered, the project was proceeding in
81 compliance with the approved permit and was not undertaken for the purpose of
82 circumventing the demolition provisions of this section.

83 The professional engineer's report and the Building Official's determination shall become
84 part of the permanent permit record.

85 A project qualifying under this subsection shall retain its status as an existing lawful
86 structure and shall not be deemed demolished solely because additional structural
87 replacement became necessary due to the unforeseen structural deficiency.

88 G. Written determination.

89 Upon request of an applicant or whenever necessary to administer this Chapter, the
90 Building Official shall issue a written determination identifying:

91 1) Whether the proposed work constitutes demolition under this section.

92 2) The factual basis supporting the determination.

93 3) Any engineering reports or other documentation relied upon in making the
94 determination.

95 4) Any conditions applicable to the determination.

96 H. Effect of determination and compliance with other laws.

97 Once a structure has been determined to constitute demolition under this section:

98 1) The structure shall no longer be considered an existing structure for purposes of zoning
99 compliance unless otherwise provided by this Chapter.

100 2) Reconstruction shall comply with all zoning regulations applicable to new construction
101 except as otherwise expressly authorized by this Chapter.

102 3) A determination that a structure constitutes demolition under this section shall not
103 relieve the owner or applicant from complying with the requirements of Chapter 71
104 (Building Code), Chapter 101 (Flood Damage Reduction), or any other applicable
105 provision of the Town Code, State law, or Federal law.

106 **Section 3.** Amend Chapter 185-58 of the Code of Ordinances as depicted by strikeouts and substitutions
107 depicted below:
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§ 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.~~

No building, land, or portion thereof devoted to a lawful nonconforming use that remains idle or unused for a continuous period of one (1) year shall thereafter be used except in conformity with the regulations of the district in which it is located.

Where the discontinuance results from fire, flood, storm, infestation, or other casualty not intentionally caused by the property owner, the lawful nonconforming use may remain discontinued for a period not to exceed eighteen (18) months following the casualty.

Time during which the property is actively undergoing permitting, insurance adjustment, repair, reconstruction, or other good-faith efforts to restore the property following the casualty shall not be considered idle or unused for purposes of this section.

Section 4. Amend Chapter 185-59 of the Code of Ordinances as depicted by strikeouts and substitutions depicted below:

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

If a nonconforming building is damaged by fire, flood, 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.

Section 5. Amend § 71-1(B) of the Code of Ordinances by deleting subsection (B) in its entirety, as depicted by the strikeout below, and renumbering all subsequent subsections accordingly:

§ 71-1 Adoption of standards; exceptions.

~~B. Effect on existing buildings.~~

~~1) If, within any twelve-month period, alterations or repairs in excess of 50% of the square footage, as calculated by the building perimeter, are made to an existing building, such building shall be made to conform to the requirements of this Code for new buildings and~~

also, for any building located in an established fire district, the applicable provisions of the IBC.

2) If an existing building is damaged by fire or otherwise in excess of 50% of the square footage, as calculated by the building perimeter, before such damage is repaired, it shall conform to the requirements of this Code for new buildings.

3) If the nature of occupancy of an existing building is entirely changed, the building shall be made to conform to the requirements of this Code for the new occupancy. If the occupancy of only a portion of an existing building is changed and that portion is separated from the remainder as stipulated in the IBC or the IRC, as appropriate, then only such portion need be made to conform.

4) Repairs and alterations not covered by the preceding subsections of this section, such as restoring a building to its condition previous to damage or deterioration or altering it in conformity with the provisions of this Code or in such manner as will not extend or increase an existing nonconformity or hazard, may be made with the same kind of materials as those of which the building was originally constructed.

Section 6. 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.

Section 7. This Ordinance shall take effect immediately upon its passage by a majority vote of the Commissioners of the Town of Dewey Beach.

Adopted by at least a majority of the Commissioners of the Town of Dewey Beach on this -- day of --, 2026.

SYNOPSIS

TBD

Mayor, William Stevens

Town Manager, Bill Zolper