



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 voluntarily on an existing structure by or on behalf of the property owner 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 proposed work involving the structural components of an existing structure is sufficiently extensive that the structure should no longer be considered an existing structure and must satisfy all requirements for a new structure. In such situations, the existing structure shall be deemed demolished, and all construction, reconstruction, alterations, repairs, and improvements shall comply with the requirements for new structures in Chapter 71 (Building Code), Chapter 101 (Flood Damage Reduction) as applicable, and all relevant provisions of the town zoning code.

B. Applicability.

The Building Official shall determine utilizing the standards in paragraph C whether proposed work constitutes demolition. For any project involving components of the structure's primary structural system, the applicant for the required building permit shall

provide documentation for the cost of the portion of work in which components of the structural system are to be removed, dismantled, destroyed, or replaced.

C. Standards for deeming a structure as demolished.

- 1) For purposes of this Chapter, a structure shall be deemed demolished when the cost of proposed work that will remove, dismantle, destroy or replace components of the building's primary structural system, plus the cumulative cost of structural work completed during the five year-period preceding the date of building permit application for the proposed work, equals or exceeds 50% of the market value of the structure before the start of the proposed work.
- 2) 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 utilizing recognized and accepted building standards.
- 3) 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.
- 4) POSSIBLE AMENDMENT If the proposed work would exceed the standard for deeming the structure demolished, but the proposed work would renovate or reconstruct the structure in essentially the same configuration, then the proposed work may not be deemed as demolition. In such situation, the structure may not be added to or expanded unless the structure as modified complies with all zoning regulations for new construction and the requirements of Chapter 71 (Building Code), Chapter 101 (Flood Damage Reduction), and any other provision of the Town Code, state law, or federal law applicable to new structures.

D. 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.

E. Written determination.

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

- 1) Whether the proposed work constitutes demolition under this section.
- 2) The factual basis supporting the determination.

83 3) Any engineering reports or other documentation relied upon in making the
84 determination.

85 4) Any conditions applicable to the determination.

86
87 F. Effect of determination and compliance with other laws.

88 Once a structure has been deemed demolished under this section:

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

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

93 3) All repairs, construction, reconstruction, alterations, and improvements shall comply
94 with the requirements of Chapter 71 (Building Code), Chapter 101 (Flood Damage
95 Reduction), and any other provision of the Town Code, State law, or Federal law
96 applicable to new structures.

97 **Section 3.** Amend Chapter 185-58 of the Code of Ordinances as depicted by strikeouts and substitutions
98 depicted below:
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100 § 185-58 Discontinuance of nonconforming uses or building.
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102 No building, land, or portion thereof which is used in whole or in part for a nonconforming use,
103 that remains idle or unused for a continuous period of one year, whether or not the equipment
104 or fixtures are removed, shall again be used, except in conformity with the regulations of the
105 district in which such building or land is located, provided that if the building, land or any
106 portion thereof becomes idle or unused due to a fire, storm, infestation or other peril not
107 caused intentionally by the property owner, then such building, land or portion thereof may
108 remain idle or unused for a continuous period of one year and six months, after which the use
109 must conform to the regulations of the district in which such building or land is located if such
110 building, land or portion thereof continues to remain idle or unused.

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

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

117 Time during which the property is actively undergoing permitting, insurance adjustment, repair,
118 reconstruction, or other good-faith efforts to restore the property following the casualty shall
119 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