



ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 185-59 REGARDING RECONSTRUCTION OR REPAIR OF NONCONFORMING SWIMMING POOLS

WHEREAS, the Town Code establishes regulations governing the location, setback, and placement of swimming pools; and

WHEREAS, certain swimming pools may have been lawfully constructed prior to the adoption of regulations that subsequently caused such pools to become nonconforming as to their location, setback, or placement; and

WHEREAS, the Town recognizes the need to provide reasonable provisions for the continued maintenance, repair, restoration, and reconstruction of lawfully existing nonconforming swimming pools following damage or destruction; and

WHEREAS, establishing clear standards for the repair, restoration, or reconstruction of such swimming pools will allow existing lawful improvements to continue while preventing an increase in the degree of an existing zoning nonconformity.

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 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-, or structure.

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.

- 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 one or more required setbacks and does not meet Town building-elevation standards and has suffered substantial damage, said structure shall be elevated to the relevant minimum building-elevation requirement as per § 101-27A for special flood hazard areas other than coastal high-hazard areas, or § 101-33B for coastal high-hazard areas.

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."

B. Notwithstanding any other provision of this Chapter, a lawfully existing swimming pool that is nonconforming as to its location, setback, or placement within a required yard or front buildable area may be maintained, repaired, restored, or reconstructed following damage or destruction, provided that:

- 1) The swimming pool was lawfully constructed and existed prior to the adoption of the regulation that caused the swimming pool to become nonconforming;
- 2) The repaired, restored, or reconstructed swimming pool shall be located in substantially the same location and shall not exceed the dimensions or footprint of the swimming pool existing immediately prior to the damage or destruction;
- 3) The repair, restoration, or reconstruction shall not increase the degree of any existing nonconformity;
- 4) Application for all required permits shall be made within one year and six months of the date of the damage or destruction; and
- 5) Nothing in this subsection shall exempt the swimming pool or property from compliance with applicable building, safety, floodplain management, or other requirements of the Town Code, except for the lawful zoning nonconformity expressly permitted to continue under this subsection.

Section 2. 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 3. 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

This amendment establishes provisions allowing a lawfully existing, nonconforming swimming pool to be maintained, repaired, restored, or reconstructed following damage or destruction. The pool must have been lawfully constructed before the regulation creating the nonconformity, remain substantially in the same location and within its existing footprint, and not increase the degree of nonconformity. Required permits must be applied for within 18 months of the damage or

destruction, and all applicable building, safety, floodplain, and other Town Code requirements must continue to be met.

Mayor, William Stevens

Town Manager, Bill Zolper

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