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.

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.

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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."

§ 185-59.1 Existing non-conforming swimming pools; maintenance, repair, reconstruction and replacement.

A. A lawfully existing swimming pool that does not conform to applicable zoning requirements may be maintained, repaired, reconstructed, or replaced, provided that the pool remains substantially in the same location and retains the same footprint, dimensions, and configuration, and that such work does not increase an existing nonconformity or create a new nonconformity.

B. This protection also applies to lawfully existing related accessory structures, including equipment and appurtenances necessary for the operation or safety of the pool, subject to the same limitations.

C. All work shall comply with applicable permitting, building, safety, electrical, floodplain, and other Town Code requirements, except for the existing zoning nonconformities permitted to continue under this section.

~~D. Any existing impervious ground-level surface surrounding or serving the pool, including walkways, patios, pool decks, and equipment pads, that is repaired, restored, reconstructed, or replaced shall be converted to a pervious surface. Materials and installation methods shall permit water to infiltrate into the underlying soil. This requirement does not apply to the pool shell or to components required to be impervious by applicable building, safety, electrical, or floodplain requirements. The protections afforded by this section shall not authorize retention of an impervious surface contrary to this subsection.~~

D.E. The reconstruction or replacement permissions provided in this section and §185-59.2 do not authorize the expansion, reconstruction, or replacement of nonconforming impervious decking, patios, paving, or other ground-level surfaces with impervious materials. Such surfaces remain subject to §185-51F. Any portion rebuilt or replaced shall be constructed as a pervious surface, except for the swimming pool walk space expressly permitted by §185-51F, which may be impervious and shall not exceed three feet in width. Replacement of the pool itself does not, by itself, require conversion of surrounding surfaces that are neither rebuilt nor replaced.

§185-59.2 Damage or destruction of nonconforming swimming pools.

A lawfully existing nonconforming swimming pool damaged or destroyed by fire, storm, flood, infestation, or other unintended peril may be repaired, restored, or reconstructed, provided that:

1) The pool was lawfully existing before the damage or destruction.

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2) The pool is repaired, restored, or reconstructed substantially in the same location, without increasing its footprint or dimensions or materially changing its configuration.

3) The work does not increase an existing nonconformity or create a new nonconformity.

4) Applications for all required building permits are submitted within eighteen months after the damage or destruction.

5) All work complies with applicable building, safety, electrical, floodplain, and other Town Code requirements, except for the existing zoning nonconformities expressly permitted to continue under this section.

6) Any impervious ground-level surface surrounding or serving the pool that is repaired, restored, reconstructed, or replaced as part of the work shall be converted to a pervious surface in accordance with §185-59(1)D.

§185-59.3 Nonconforming swimming pools and related accessory structures serving multifamily residential parcels.

A. Applicability.

This section applies to lawfully existing swimming pools and related accessory structures serving a multifamily residential parcel whose locations are depicted on a recorded subdivision plan or declaration plan.

For purposes of this section, "related accessory structures" means lawfully existing structures directly associated with the operation, use, or safety of the swimming pools and depicted on the recorded plan.

B. Permitted work.

Notwithstanding otherwise applicable zoning requirements concerning setbacks, green space, location, placement, or similar site restrictions, swimming pools and related accessory structures qualifying under Subsection A may be maintained, repaired, restored, reconstructed, or replaced in the same locations established by the recorded plan, subject to Subsection C.

This authorization applies to work undertaken because of ordinary deterioration and to work following casualty damage or destruction.

C. Limitations.

Work authorized by this section shall:

1) Retain the previously lawful locations, without enlarging the previously lawful footprints or dimensions of the swimming pools or related accessory structures.

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2) Not increase impervious surface coverage or reduce green space from the previously lawful condition.

3) Not increase an existing nonconformity or create a new nonconformity.

~~4) Convert any existing impervious ground-level surface surrounding or serving the pool that is repaired, restored, reconstructed, or replaced to a pervious surface in accordance with §185-59(1)D. The recorded plan shall not exempt such surfaces from this requirement.~~

~~4)~~5) Notwithstanding §185-51F or §185-59.1D, lawfully existing decking, walkways, and other surfaces surrounding or serving the pool may be maintained, repaired, restored, reconstructed, or replaced in the same locations, footprints, dimensions, configurations, and surface materials documented by the recorded subdivision plan or declaration plan required under Subsection A, including replacement with impervious materials. This authorization applies to ordinary deterioration and casualty damage or destruction, provided that the work does not increase the previously lawful impervious surface coverage or reduce the previously lawful green space.

D. Current construction requirements.

~~All work shall comply with current applicable floodplain requirements, including applicable FEMA standards, and current building, electrical, safety, and permitting requirements. The zoning exceptions expressly authorized by this section shall not waive those requirements or the pervious-surface requirement in Subsection C(4).~~

All work shall comply with current applicable floodplain requirements, including applicable FEMA standards, and current building, electrical, safety, and permitting requirements. The zoning exceptions expressly authorized by this section shall not waive those requirements.

E. Casualty damage or destruction.

Lawfully existing swimming pools and related accessory structures qualifying under this section that are damaged or destroyed by fire, storm, flood, infestation, or other peril not caused intentionally by the property owner may be reconstructed or replaced in accordance with this section, provided that applications for all required building permits are submitted within eighteen months after the date of the damage or destruction.

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.

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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 ordinance establishes regulations for the maintenance, repair, reconstruction, and replacement of lawfully existing nonconforming swimming pools and related accessory structures, including provisions for casualty damage and qualifying multifamily properties. The ordinance permits such improvements to remain in their existing locations without increasing nonconformities, establishes an eighteen-month permit application period following casualty damage, and requires applicable repairs or replacement of surrounding impervious surfaces to use pervious materials.

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Mayor, William Stevens

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Town Manager, Bill Zolper

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