

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY, CHAPTER 145,
ZONING, ARTICLE III, "DEFINITIONS", ARTICLE X, "DIMENSIONAL
REQUIREMENTS", ARTICLE XI, "SETBACK REQUIREMENTS", AND ARTICLE XV,
"BOARD OF ADJUSTMENT"
ORDINANCE 180-16 (THIRD READING)
(Sponsored by Councilman Schrader)**

This ordinance amends Chapter 145, "Zoning", to:

- Change the height limit on houses in the VE zone only to 33 feet above BFE and to 35 feet above BFE when two feet of freeboard is included, but no higher than 48 feet NAVD due to variations in the elevation of Ocean Drive.
- Authorize the Code Enforcement Constable to grant up to one foot encroachment into the setback for minor surveying and/or construction errors.
- Allow steps to encroach into the setback for existing structures being raised to meet BFE and/or to provide for freeboard.
- Revise definition of Floor-to-Area Ratio (FAR) to exclude the portion of steps allowed to encroach into setback.
- Change the date for appointment of the BOA Chairman.



ORDINANCE NO. 180-16

AN ORDINANCE TO AMEND the Code of the Town of South Bethany, Chapter 145, **Zoning**, Article III, "Definitions", Article X, "Dimensional Requirements", Article XI, "Setback Requirements", and Article XV, "Board Of Adjustment"

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, a majority thereof concurring in Council duly met, that Chapter 145 ("Zoning") be amended as follows (additions are **highlighted** and deletions **marked through**):

**ARTICLE III
Definitions**

§ 145-3. Definitions and word use.

FLOOR-TO-AREA RATIO (FAR) A ratio of the total square footage of floor area to the total lot area. Not included in area calculation for FAR percentage: attic floor area, crawl space area, "second-floor" air space in a room with cathedral ceiling, elevator shafts above the first floor of living space, ground-level boardwalks, ground-level decks, ***the portion of steps, ramps, or platforms allowed to encroach into the setback per Article XI***, and unenclosed ground-level paved or unpaved spaces among pilings, including areas surrounded by lattice or boards with spaces between them. [Added 3-12-2004 by Ord. No. 122-03; amended 12-10-2010 by Ord. No. 155-10; 3-14-2014 by Ord. No. 171-13]

**ARTICLE X
Dimensional Requirements**

§ 145-35. R-1 Single-Family Dwelling District

E. Building encroachments.

- (1) The encroachments of a building into the lot setback areas not exceeding a total of one foot to all sides is permitted on structures built or altered prior to June 9, 1984, provided that this exception shall not be construed so as to permit any new encroachment after June 9, 1984, unless a variance has been granted in accordance with ***item (2) below or § 145-58C*** of this chapter.

- (2) In accordance with Delaware Code Title 22, § 327, (a), (3), on a case by case basis, the Code Enforcement***

Constable is authorized to administratively grant a dimensional variance allowing encroachment into the setback of up to one foot, without the application being considered by the Board of Adjustment, when both of the following conditions are satisfied:

(a) The structure has been in existence for at least five years on the same lot as evidenced by a certificate of Compliance/Occupancy or other records of the town.

(b) The encroachment is due to a surveying error and/or the encroachment is due to a minor unintentional construction error where the structure, or portion of the structure, which is in noncompliance was legally constructed with a valid building permit.

(2)(3) Encroachments of roof overhangs, cornices, eaves, gutters, or chimneys projecting not more than 18 inches into the setback are allowed, provided that no railings, decks, or other structures shall be constructed on top of that portion of the overhang that encroaches into the ~~set back~~ **setback**.

J. Maximum building height:
[Amended 8-8-2014 by Ord. No. 172-14]

(1) Principal building: 32 feet; accessory building: 15 feet, measured from center line of street, except as provided in § 145-38E(2). Minimum roof pitch: 4/12.

(2) Notwithstanding § 145-35J(1) above, where the principal building has a freeboard equal to or greater than two feet above the base flood elevation (BFE), the principal building maximum height may be 34 feet measured from center line of the street or 38 feet based on NAVD 88. Minimum roof pitch: 4/12.

(3) In the VE Zone only, the principal building height may be 33 feet above the base flood elevation (BFE). Where the principal building has a freeboard equal to or greater than two (2) feet above the base flood elevation (BFE), the principal building maximum height may be 35 feet above base flood elevation (BFE). The principal building height shall not have a total height greater than 48 feet based on NAVD 88. Minimum roof pitch: 4/12.

ARTICLE XI Setback Requirements*

*NOTE: (Where the lot width of any lot now existing or hereafter created exceeds the standard lot width as stated hereafter as to each location, the stated side yard setbacks shall be increased by that percentage that the lot width exceeds the stated standard lot width provided that one side setback may be as small as the original required setback. (By way of illustration, where the standard lot width was stated as 50 feet and the total side yard setbacks were set at 16 feet, an existing or newly created lot having a lot width of 75 feet would be required to have total side yard setbacks of 24 feet, i.e., $75/50 = 150\%$; $150\% \times 16 \text{ feet} = 24 \text{ feet}$).

§ 145-37 R-1 District east of Delaware Route No. 1.

- F. Existing dwellings raised to meet BFE or to provide freeboard in the R-1 District on lots west of Ocean Drive and east of Delaware Route No. 1, or abutting Sea Side Drive may include steps, a ramp, or platform in the setback area, provided that each of the following are satisfied:***
- (1) No other reasonable alternative is possible such as but not limited to changing the direction of the steps, a ramp, or platform; and***
 - (2) No step, ramp or platform shall be wider than four feet or longer than five feet extending toward the property line; and***
 - (3) The top of the step, ramp, or platform shall be no higher than the elevation of the first livable floor of the dwelling; and***
 - (4) Such structures must otherwise be in compliance with the International Codes, IBC/IRC, as specified by the Sussex County Building Department and Coastal Floodplain Regulations, as amended; and***
 - (5) Off-street parking requirements of Article XIII, § 145-41A, are satisfied.***
- F-G.** For structures allowed in the setback area, see § 145-38H, J, K, and L.

§ 145-38 R-1 District west of Delaware Route No. 1.

A. Residential lots abutting Petherton, Brandywine, Henlopen, New Castle, Layton and Bayshore Drives; Godwin, Kent and Sussex Places; Cleveland Avenue; Peterson, Canal and Anchorage Drives; Evergreen and Russell (east of Canal Drive) Roads; West 1st to West 11th Streets; South Anchorage Avenue; Mays Way, Elizabeth Way and Elizabeth Court (standard lot width: ~~70~~ **50** feet).

- (1) Front: 25 feet.
- (2) Rear: 25 feet.
- (3) Sides: eight feet.

F. *Existing dwellings raised to meet BFE or to provide freeboard in the R-1 District on lots west of Delaware Route 1 may include steps, a ramp, or platform in the setback area, provided that each of the following are satisfied:*

- (1) No other reasonable alternative is possible such as but not limited to changing the direction of the steps, a ramp, or platform; and*
- (2) No step, ramp or platform shall be wider than four feet or longer than five feet extending toward the property line; and*
- (3) The top of the step, ramp or platform shall be no higher than the elevation of the first livable floor of the dwelling; and*
- (4) Such structures must otherwise be in compliance with the International Codes, IBC/IRC, as specified by the Sussex County Building Department and Coastal Floodplain Regulations, as amended; and*
- (5) Off-street parking requirements of Article XIII, § 145-41A, are satisfied; and*
- (6) Lots in Cat Hill (see item E above) shall not be allowed to have encroachments in the side setbacks any closer than 2 feet from the side property line. Also, encroachment into the front setback shall not be any closer than 10 feet from the front property line (the street right-of-way).*

- FG.** Davits are curved metal uprights projecting over waterways used for the purpose of lowering and raising small boats. They shall not be considered structures under the setback provisions of this article. The frame of davit lifts, including support pilings, shall not protrude into the canal more than 20% of the canal width, not to exceed 13 feet for canals wider than 60 feet. (See § 50-8.1.) When davit arms are not in use, they shall be retracted to a line at least four feet parallel to the bulkhead. The installation of such shall require a building permit.
- GH.** Boat lifts are mechanical devices used to raise and lower boats into the waterways. They shall not be considered structures under the setback provisions of this article. The outside frame of boat lifts, including support pilings, shall not protrude into the canal more than 20% of the canal width, not to exceed 13 feet for canals wider than 60 feet (§ 50-8.1), and the perimeters of submerged boat lifts shall be clearly identified by reflectors so as not to be a hazard to boat traffic. The boat lift shall also be securely anchored, and the installation of such shall require a building permit.
- HI.** Structures such as birdhouses, flagpoles, and clotheslines, provided that they do not exceed 30 feet in height, and trash and recycle container bins (See § 114-7), mailboxes, fences, and dish antennas no larger than 36 inches in diameter, shall not be considered structures under the setback provisions of this article, provided they are maintained in good repair.
- IJ.** All front and rear measurements are taken from the front property line.
- JK.** Ground-level decks and boardwalks not higher than six inches (See § 145-3 for definition, and § 145-14.3G for additional limitations.) shall not be considered structures under the setback provisions of this article. If the ground on which the deck or boardwalk is constructed is sloped or not level, the deck or boardwalk shall be "stepped" so as to not allow its height to exceed six inches above the ground immediately below or adjacent to it.
- KL.** Notwithstanding any other provisions of this article, swing sets are allowed in the rear setback no closer than five feet to the property boundary lines.
- LM.** Heat pumps, air-conditioning units, and propane or heating oil tanks are allowed in the setback area, provided such equipment shall be adjacent to the principal building and shall not extend more than five feet into the setback area.

ARTICLE XV
Board of Adjustment

§ 145-57 Procedure.

- A. The Board of Adjustment shall elect from among its own members a Chairperson and a Secretary annually in the month of ~~June~~ **August**. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this chapter. Meetings shall be held at the call of the Chairperson with reasonable notice to the other members and at such other times as the Board may determine. The Chairperson or, in his absence, the Acting Chairperson may administer oaths and compel the attendance of witnesses and the presentation of documents. All meetings shall be open to the public.
[Amended 3-14-2014 by Ord. No. 171-13]

- B. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its actions, all of which shall be a public record and shall be filed in accordance with § 145-62 of this article.

Effective date: This ordinance shall become effective upon the date of adoption.

**ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SOUTH BETHANY,
SUSSEX COUNTY, DELAWARE, ON THE 13TH OF MAY 2016.**