

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY,
CHAPTER 145-37, “Setback Requirements” and
CHAPTER 145-38, “R-1 District west of Delaware Route 1”
ORDINANCE 206-21 (FIRST READING)
(Sponsored by Councilmember William Shaw)**

This ordinance amends Chapter 145-37, “Setback Requirements”, to reference changes made herein to Chapter 145-38 “R-1 District west of Delaware Route 1”; and amends Chapter 145-38 “R-1 District west of Delaware Route 1” to permit specified construction of outdoor recreation areas in setback areas. ~~in the rear setbacks of lots on the West side of Route 1.~~



ORDINANCE NO. 206-21

AN ORDINANCE TO AMEND the Code of the Town of South Bethany, Chapter 145-37, **Setback Requirements**, and Chapter 145-38, **R-1 District west of Delaware Route 1** to permit certain specified types of construction in the rear setbacks of lots on the West side of Delaware Route 1.

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 **bold and highlighted in red text and underlined** and deletions are highlighted and **marked through**):

CHAPTER 145 Article XI Setback Requirements

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

A. Lots east of Ocean Drive (standard lot width: 50 feet).

- (1) Setback requirements shall be as follows:
 - (a) Front: 20 feet from the west property line.
 - (b) Rear: no structure more than 87 feet east of west side of property line.
 - (c) Side: eight feet.
- (2) Dwellings in the R-1 District on lots east of Ocean Drive may include, for the purpose of primary access only, steps, ramp or platform in the front setback area, provided that:
 - (a) No step, ramp or platform shall be wider than four feet nor longer than five feet extending toward the west property line.
 - (b) The top of the step, ramp or platform shall be no higher than the elevation of the first livable floor of the dwelling.
 - (c) 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

- (d) Off-street parking requirements of Article **XIII**, §**145-41A**, are satisfied.

B. Lots west of Ocean Drive (standard lot width: 70 feet).

- (1) Setback requirements shall be as follows:
 - (a) Front: 20 feet.
 - (b) Rear: 10 feet.
 - (c) Sides: 10 feet.
- (2) Corner lots adjacent to Route No. 1.
 - (a) Front yards shall be measured from the Town street running east and west, thus providing front yards which face either north or south.
 - (b) Rear yards shall be that part of the lot adjacent to and bordering another lot and face either north or south.
 - (c) Side yards shall be measured from the east and west boundary lines; the western side yard shall be 20 feet from the Route No. 1 right-of-way, and the eastern side yard shall be 10 feet from the adjacent property line.
- (3) Corner lots adjacent to Ocean Drive.
 - (a) Front yards shall be measured from the Town street running east and west, thus providing front yards which face either north or south.
 - (b) Rear yards shall be that part of the lot adjacent to and bordering another lot and face either north or south.
 - (c) Side yards shall be measured from the east and west boundary lines; the eastern side yard shall be 20 feet from Ocean Drive, and the western side yard shall be 10 feet from the adjacent property line.

C. Lots fronting Ocean Drive, facing east (standard lot width: 70 feet). Setback requirements shall be as follows:

- (1) Front: 20 feet.
- (2) Rear: 10 feet.
- (3) Sides: 10 feet.

D. Lots abutting Seaside Drive (ocean side of Seaside Drive) (standard lot width: 50 feet). Setback requirements shall be as follows:

- (1) Front: 20 feet.
 - (1) Rear: no structure more than 72 feet east of west side of property line.
 - (2) Sides: eight feet.
- E. Lots abutting Seaside Drive (except ocean side of Seaside Drive) (standard lot width: 70 feet). Setback requirements shall be as follows:
- (1) Front: 20 feet.
 - (2) Rear: 10 feet.
 - (3) Sides: 10 feet.
- 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 Seaside Drive may include steps, a ramp, or platform in the setback area, if 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.
 - (2) No step, ramp or platform shall be wider than four feet or longer than five feet extending toward the property line.
 - (3) The top of the step, ramp, or platform shall be no higher than the elevation of the first livable floor of the dwelling.
 - (4) Such structures must otherwise be following 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.
- G. For structures allowed in the setback area, see §145-38H, J, K, ~~and L~~. **L and N.**

CHAPTER 145-38

Article XI

Setback Requirements

§ 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: 50 feet).

- (1) Front: 25 feet.
 - (2) Rear: 25 feet.
 - (3) Sides: eight feet.
- B. Residential lots abutting Carlisle Drive (standard lot width: 70 feet).
 - (1) Front: 25 feet.
 - (2) Rear: 25 feet.
 - (3) Sides: 10 feet.
- C. Boone Road (standard lot width: 70 feet).
 - (1) Residential lots abutting west side of Boone Road:
 - (a) Front: 20 feet.
 - (b) Rear: 20 feet.
 - (c) Sides: 10 feet.
 - (2) Residential lots abutting east side of Boone Road:
 - (a) Front: 20 feet.
 - (b) Rear: 10 feet.
 - (c) Sides: 10 feet.
- D. Residential lots west of York Canal and south of Bayshore Canal (contiguous to York Drive, Rebecca Road, Kimberly Road, Tern Drive, Victoria Road, Bristol Road and Plymouth Road) (standard lot width: 70 feet).
 - (1) Front: 20 feet.
 - (2) Rear: 20 feet.
 - (3) Sides: 10 feet.
- E. Residential lots west of and abutting on Canal Drive and abutting Cattail Road, Black Gum Drive, Kent Avenue (County Road No. 361), Periwinkle Road, Russell Road (west of Canal Drive), Tamarack Court and Tamarack Drive (standard lot width: 70 feet).
 - (1) Front setbacks shall be staggered so as to prevent construction of dwellings in a straight line, with a minimum of three feet difference. Front or rear setbacks of dwellings on lots on a street of this subsection shall be determined by the first permit issued on that street.
 - (2) Building height:
 - (a) Principal building is 33 feet, to be figured from the mean level of the

lot with six sightings. These six sightings shall be taken as follows: one at each of two rear corners of such lot; one at each of two front corners of such lot; and one each at the midpoint between the two side property lines of such lot, such that no point is in a ditch but is as close as practical to the intended point. Minimum roof pitch: 4/12.

- (b) Notwithstanding anything herein to the contrary, where the house has a freeboard equal to or greater than two feet above the base flood elevation (BFE), the house elevation may be 38 feet based on NAVD 88 or may be 35 feet above the mean level of the lot as calculated in Subsection **E(2)(a)** above. Minimum roof pitch: 4/12.
 - (c) In the AE Zone, if the bottom of the lowest horizontal structural member supporting the lowest floor is at or above base flood elevation (BFE), the principal building height may be 33 feet above the base flood elevation (BFE). Where the bottom of the lowest horizontal structural member supporting the lowest floor is two feet or more above the base flood elevation (BFE), the principal building height may be 35 feet above the base flood elevation (BFE). Minimum roof pitch: 4/12.
 - (d) Minimum ground floor elevation: The elevation of any ground floor structure shall be equal to or greater than the center line of the street.
- (3) Maximum footprint: 1,700 square feet, including steps, decks more than six inches above ground level, and porches. However, for every full 100 square feet in lot size over 5,000 square feet, the maximum footprint shall be increased by 20 square feet.
- (4) Setbacks:
- (a) Front: 10 feet.
 - (b) Rear: 10 feet.
 - (c) Sides: two feet with a minimum of 10 feet between houses.
- F. Existing dwellings raised to meet BFE or to provide freeboard in the R-1 District on lots west of Delaware Route No. 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;
 - (2) No step, ramp or platform shall be wider than four feet or longer than five feet extending toward the property line;
 - (3) The top of the step, ramp or platform shall be no higher than the elevation of the first livable floor of the dwelling;
 - (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;

- (5) Off-street parking requirements of Article **XIII**, § **145-41A**, are satisfied; and
 - (6) Lots in Cat Hill (see Subsection **E** above) shall not be allowed to have encroachments in the side setbacks any closer than two 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).
- G. 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.
- H. 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.
- I. 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.
- J. All front and rear measurements are taken from the front property line.
- K. 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.
- L. 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.
- M. 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.

N. Notwithstanding other provisions of this article, outdoor recreation area, and open/exterior living areas (herein: outdoor recreation area) shall not be considered structures under the setback provisions of this article. Outdoor recreation areas include, but are not limited to, permanent or non-portable pergolas, outdoor kitchen, or food preparation areas, including grills or ovens, fireplaces or firepits, seating and lounge areas, hot tub/spas, and any other such permanent or non-portable item within an outdoor space designed and constructed in a fashion that would be generally recognized as being used for outdoor recreation of the occupants. Outdoor recreation areas shall comply with any applicable Sussex County building code provisions, and the following provisions.

- (1) No permanent or non-portable portion of the outdoor recreation area shall be closer than 5 feet to the adjoining property line and no closer than 3 feet to the outermost edge of the bulkhead (West of Route 1) or rear property line.**
- (2) A detailed drawing shall be submitted as part of the permitting process identifying the layout, location of appliances, and location of other non-movable and permanent items.**
- (3) No pergola shall be more than 12 feet high measured from ground, and no pergola shall have permanently affixed sides enclosing one or more sides. Pergolas are permitted to have draw shades attached, as to provide shade from the sun, as needed.**
- (4) The chimney of any wood-burning fireplace or wood-burning oven shall not be higher 12 feet, measured from the ground.**
- (5) Non-portable and permanent wood-burning fire pits may be incorporated into the design of the outdoor recreation area and shall be no closer than 5 feet to the primary residential structure. Fire pits shall not be used to burn trash or yard waste. Non-portable and permanent wood-burning fire pits shall be constructed of non-combustible material and shall have a wood-pit size no larger than 9 cubic feet as measured from the top surface of the fire pit (e.g., this is approximately a 40" round x 12" deep or 36" x 36" x 12" square fire pit).**
- (6) All hot tubs/spas shall have a safety cover with a locking mechanism.**

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 ____ OF _____ 2022.**

SEAL:

Timothy D. Saxon, Mayor

Richard Oliver, Council Secretary

ATTEST: _____

1st Reading: 12.10.21

2nd Reading:

Sponsored by Councilmember William Shaw
WS:jp: Ordinance 205-21
First Reading