

VERSION: September 13, 2021  
AUTHOR: Commissioner Gay, Commissioner Gossett, and Glenn Mandalas  
TOPIC: Commercial Gross Floor Area  
PRESENTATION DATE: September 17, 2021 regular meeting

**AN ORDINANCE TO AMEND CHAPTER 270, ZONING,  
OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH,  
DELAWARE, 2001, BY AMENDING SECTION 270-4  
RELATING TO GROSS FLOOR AREA**

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2       **WHEREAS**, two appeals challenging the City Building Inspector’s application of the  
3 Code definition of “Gross Floor Area” were considered and decided by the City’s Board of  
4 Adjustment on August 26, 2019 (Case No. 0719-05, 240 Rehoboth Avenue, reheard and  
5 affirmed on November 25, 2019) and on September 23, 2019 (Case No. 0819-08, 19 Baltimore  
6 Ave., reheard and affirmed on September 28, 2020);

7  
8       **WHEREAS**, both appeals involved proposed commercial construction in the  
9 Commercial (C-1) zoning district; and

10  
11       **WHEREAS**, both appeals resulted in the Board of Adjustment affirming the City  
12 Building Inspector’s interpretation of the term “Gross Floor Area”; and

13  
14       **WHEREAS**, both decisions of the Board of Adjustment were appealed to the Superior  
15 Court of the State of Delaware and the Superior Court subsequently affirmed the decisions of the  
16 Board of Adjustment; and

17  
18       **WHEREAS**, through the Board of Adjustment appeals process, the City’s Building &  
19 Licensing Department learned that the manner in which it has interpreted the term “Gross Floor  
20 Area” for purposes of reviewing and approving residential construction plans is inconsistent with  
21 the Board of Adjustment’s interpretation of “Gross Floor Area” and consistent with the manner  
22 in which it has interpreted the term “Gross Floor Area” for purposes of reviewing and approving  
23 commercial construction plan; and

24  
25       **WHEREAS**, the Board of Adjustment’s interpretation of “Gross Floor Area” is binding  
26 on the City’s Building & Licensing Department; and

27  
28       **WHEREAS**, the Mayor and Commissioners adopted an Ordinance on March 19, 2021 to  
29 ensure that reviews of residential plans are conducted as they were prior to the issuance of the  
30 Board of Adjustment decisions; and

31  
32       **WHEREAS**, the Mayor and Commissioners desire to modify the Code to bring greater  
33 clarity to the term “Gross Floor Area” such that its interpretation for commercial uses is  
34 consistent with current and past practices of the Building & Licensing Department and consistent  
35 with the Board of Adjustment and Superior Court decisions; and

36  
37       **WHEREAS**, the insertion of specific inclusions and exclusions in the definition of Gross  
38 Floor Area for commercial uses will provide greater clarity to the term “Gross Floor Area” to  
39 assist the Building & Licensing Department in its review of commercial development plans; and  
40

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41           **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or  
42 the purpose of promoting health, safety, morals or the general welfare of the community, the  
43 legislative body of cities and incorporated towns may regulate and restrict the height, number of  
44 stories and size of buildings and other structures, percentage of lot that may be occupied, the size  
45 of yards, courts and other open spaces, the density of population, and the location and use of  
46 buildings, structures and land for trade, industry, residence or other purposes”; and

47  
48           **WHEREAS**, Article X, Amendment Procedure, Sections 270-86 and 270-88 of the  
49 Municipal Code of the City of Rehoboth Beach provides the following procedure to be followed  
50 by the City Commissioners before exercising the aforesaid authority:

51  
52           1.       Hold a public hearing at which hearing parties in interest and citizens shall have  
53 an opportunity to be heard;

54  
55           2.       Provide at least fifteen (15) days notice of such hearing by publishing notice of  
56 the time and place of such hearing in an official newspaper of the City of Rehoboth Beach or a  
57 newspaper of general circulation in the City; and

58  
59           **WHEREAS**, a public hearing was conducted on March 19, 2021.

60  
61           **WHEREAS**, at least fifteen (15) days notice of such hearing was provided by publishing  
62 notice of the time and place of such hearing in an official paper or a paper of general circulation  
63 in the City.

64  
65           **BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session  
66 met, a quorum pertaining at all times thereto, in the manner following to-wit:

67  
68           **Section 1.**     Chapter 270, Section 270-4, of the Municipal Code of the City of  
69 Rehoboth Beach, Delaware, 2001, as amended be and the same is hereby further amended by  
70 making insertions as shown by underline and deletions as shown by strikethrough to the  
71 definition of “FLOOR AREA, GROSS” as follows:

72  
73           **FLOOR AREA, GROSS**

74           The sum of the gross horizontal areas of the several floors of a building measured  
75 from the exterior face of the exterior walls or from the center line of a wall  
76 separating two attached buildings, including basements but not including any  
77 space where the floor-to-ceiling height is less than six feet, six inches; subject to  
78 the following:

79  
80           A       It shall include the horizontal area of any space beneath any building  
81 created by pilings, piers or any other structural support which is greater  
82 than four feet in height; however, if said building is located within any

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83 area designated as a special flood hazard area as determined by the Federal  
84 Emergency Management Agency (FEMA) and, as a result, the building is  
85 mandated by FEMA to be elevated in excess of four feet in height by  
86 pilings, piers or any other structural support, then said space shall not be  
87 included in calculating the gross floor area, so long as the building's  
88 elevation does not exceed by more than one foot the elevation so  
89 mandated.  
90

91 B Floors or stories or a portion thereof with a ceiling height greater than 12  
92 feet shall be included twice in the computation of gross floor area. For  
93 rooms with cathedral ceilings where the ceiling is the underside of a roof  
94 the height shall be determined at the top wall plate, the point where the  
95 horizontal dimension begins to decrease.  
96

97 C. Gross Floor Area in a single-family and two-family dwelling unit is  
98 deemed to include:  
99

100 (1) The actual floor space of all habitable areas above a finished  
101 height, at or above, 6 foot, 6 inches;  
102

103 (2) Portions of basements above a finished height at or above 6 feet, 6  
104 inches;  
105

106 (3) Covered porches, balconies, decks, patios, and unimproved areas;  
107

108 (4) Interior courtyards, atria, walkways and corridors that are fully  
109 enclosed;  
110

111 (5) Storage and equipment spaces, at a finished height at or above 6  
112 foot, 6 inches, that are roofed and enclosed on all sides;  
113

114 (6) Covered parking, carport, garage, porte cochere at or above grade;  
115

116 (7) Parking area located below finished grade or finished floor of  
117 habitable space;  
118

119 (8) All interior stairwells and stairhalls, on all levels, above grade;  
120

121 (9) Elevators, elevator equipment rooms, and elevator shafts;  
122

123 D. Gross Floor Area in a single-family and two-family dwelling unit is  
124 deemed to exclude:  
125

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- 126 (1) Uncovered decks, uncovered balconies, uncovered porches, and  
127 uncovered platforms;  
128  
129 (2) Attics where finished height is less than 6 feet, 6 inches with an  
130 access hatch and pull-down stairs;  
131  
132 (3) Areas under overhangs of 2 feet or less.  
133

134 E. Gross Floor Area in a Commercial Use is deemed to include:  
135

- 136 (1) The actual floor space of all habitable spaces above a finished  
137 height, at or above 7 feet, 6 inches;  
138  
139 (2) Portions of basements above a finished height at or above 6 feet, 6  
140 inches;  
141  
142 (3) Porches, balconies, decks, patios, pergolas, gazebos, canopies,  
143 whether covered or uncovered;  
144  
145 (4) Courts closed on three or more sides and covered;  
146  
147 (5) Atria, or greenhouses, closed on all sides and covered;  
148  
149 (6) Walkways and corridors that are covered;  
150  
151 (7) Storage and equipment spaces, at a finished height at or above 6  
152 feet, 6 inches;  
153  
154 (8) Heating, ventilating and cooling devices, compressors or pumps in  
155 enclosed and roofed habitable areas;  
156  
157 (9) Roofed outdoor showers;  
158  
159 (10) Covered parking, carport, garage, port cochere at or above grade;  
160  
161 (11) Parking area located below finished grade or finished floor of  
162 habitable space, except as;  
163  
164 (12) All interior and exterior stairwells and stairhalls, on all levels,  
165 above grade;  
166  
167 (13) Elevators, elevator equipment rooms, and elevator shafts;  
168

