

# Agenda Item Report

## Mayor & Commissioners (Workshop)

June 10, 2024



**SECTION:** Old Business  
**ITEM:** Discussion by the Building & Licensing Department on non-habitable basements.  
**SUBMITTED BY:** Mary Ellen Gray, Director, Building and Licensing

### PURPOSE

The purpose of this topic is to propose a draft ordinance with accompanying presentation to amend selected portions of the city's zoning code relating to non-habitable basements.

### BACKGROUND

Over the past 12 months, city officials from Building and Licensing have brought forth inconsistencies between the city's zoning code and adopted building code with regard to basements in Rehoboth Beach. On one hand, the zoning code suggests that a home may be built with a non-habitable basement that has a ceiling height of less than 6 feet 6 inches. On the other hand, the adopted building code states non-habitable basements have a minimum ceiling height of 6 feet 8 inches.

During the March 6th, 2024 Mayor and Commissioner's workshop, a majority vote was taken to prohibit the future construction of non-habitable basements. This majority vote was in favor of permitting crawl spaces at a maximum vertical height of four feet and habitable basements at a minimum ceiling height of seven feet. City staff have developed recommended zoning code changes that align with this path forward.

### OPTIONS (COURSE OF ACTION)

The Building and Licensing Department recommends the Mayor and Commissioners consider the city staff's presentation, listen to public input and consider adopting or amending the proposed draft ordinance.

### STAFF RECOMMENDATION

The Building and Licensing Department has recommended the following changes:

1. Create definitions to basement, crawl space, floor and wall finish.
2. Delete all mention of 6-foot 6-inch basements.
3. Propose a 250 sq-ft credit to unfinished electrical, mechanical and plumbing equipment spaces in basements
4. Propose zoning protection and limitations for existing dwellings incorporating non-habitable basements

### FINANCIAL IMPLICATIONS

N/A

## **BUDGET REVIEW**

N/A

## **LEGAL REVIEW**

N/A

## **PROPOSED MOTION**

N/A

## **CDP AFFILIATION**

### **Chapter 5 - Housing and Economic Development**

a) Strictly enforce the City's vacation rental housing regulations, health and safety inspections, and licensure., b) Continue to monitor public concerns about overcrowded rental units, large numbers of cars at rental units, cars blocking sidewalks, and associated loud and unruly behavior., j) Continue to reevaluate the City's codes and regulations to provide clear and unambiguous code language, regulations, and definitions.

## **ATTACHMENTS/SUPPORT DOCUMENTS**

[The Case for Basements June 10 2024](#)

[Rehoboth Draft Ordinance re Basement Height June 2024 - Draft 1](#)



# The Case for Basements

COREY SHINKO  
BUILDING INSPECTOR  
JUNE 10, 2024

# Introduction – Main Issue to Resolve

- ▶ Over the past 20+ years, Rehoboth Beach's zoning code has allowed "basements" to be built that are not included in the house's floor area, if this basement had a ceiling height of less than 6'6".
- ▶ These 6'6" basements are prohibited in Rehoboth Beach's adopted building code, and this code has never been amended.
- ▶ These 6'6" basements were never intended to be used as living or sleeping spaces. However, they are being utilized as such in many cases.
- ▶ These basements are referred to as **Non-habitable Basements**
- ▶ Citing life-safety issues, unlawful conversions and overall risk of non-habitable basements, Commissioners tasked city staff with removing them from Rehoboth Beach zoning code at the May 10<sup>th</sup> workshop.

# Objective

To eliminate life safety issues arising from non-habitable basements.

1. Create definitions to basement, crawl space, floor and wall finish
2. Delete all mention of 6'6" basements
3. Propose a 250 sq-ft credit to unfinished electrical, mechanical, gas and plumbing equipment spaces in basements
4. Propose zoning protection and limitations for existing dwellings incorporating non-habitable basements

# How can Commissioners Help?

1. Listen to city staff's presentation
2. Listen to public input
3. Consider adopting or amending draft ordinance

# Proposed Ordinance Changes

# Amendment to §270-4

- ▶ Expand on the definition of “basement” and define “crawl space” in §270-4 to avoid future confusion and to distinguish a crawl space from a basement.
  - ▶ BASEMENT
    - ▶ That portion of a building between the floor and ceiling which is wholly or partly below grade, having a minimum ceiling height of 7 feet and having 50% or more of its height below the finished grade at any point on the periphery of the building.
  - ▶ CRAWL SPACE
    - ▶ An underfloor space that is not a basement, which has a vertical measurement not more than 48 inches, measured from the constructed or natural floor to the underside of the floor joists of the floor above.
- ▶ Current Definitions:
  - ▶ **Basement:** The floor or story of a building that is partially or completely below ground.
  - ▶ **Crawl Space:** N/A



# Amendment to §270-4 continued

- ▶ Define “finish, floor” and “finish, wall” in §270-4 to clarify city staff's recommended amendment for a 250 sq-ft credit to unfinished electrical, mechanical, gas and plumbing equipment spaces in basements.
  - ▶ FINISH, FLOOR
    - ▶ Any natural or synthetic material covering masonry, wood or steel framed floors, including but not limited to carpet, hardwood, vinyl, and tile. Protective epoxy coatings are permitted.
  - ▶ FINISH, WALL
    - ▶ Any natural or synthetic material covering masonry, wood or steel framed walls, including but not limited to drywall, tile, paneling, plaster, moldings, and trim.
- ▶ Current Definitions: None

# Amendment to §270-4 continued

- ▶ Delete the following sections under the definition of “Floor Area, Gross”.
  - ▶ C.(1)
    - ▶ The actual floor space of all ~~habitable~~ areas above a finished height, at or above six feet, six inches;
  - ▶ C.(2)
    - ▶ ~~Portions of basements above a finished height at or above six feet, six inches;~~
  - ▶ E.(1)
    - ▶ The actual floor space of all ~~habitable~~ areas above a finished height, at or above seven feet, ~~six inches;~~
  - ▶ E.(2)
    - ▶ ~~Portions of basements above a finished height at or above six feet, six inches;~~
- ▶ Current definitions suggest these areas can lawfully be built. Removing these sections will move the zoning definitions in line with adopted building code.

# Amendment to §270-21.B.(1)(c)

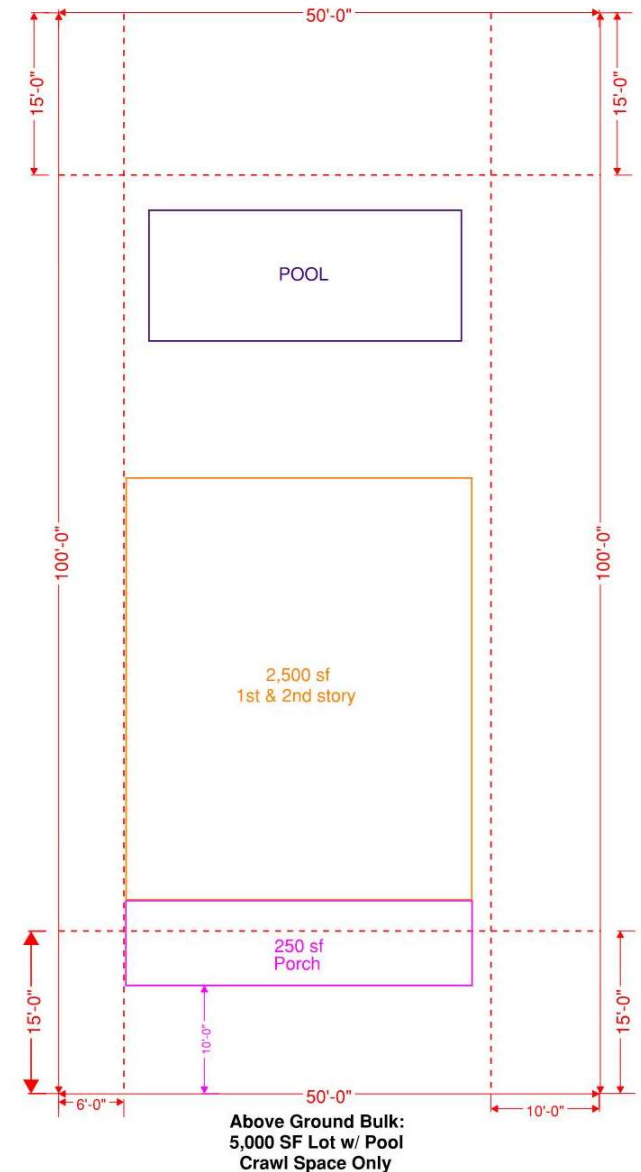
- ▶ **Delete** section §270-21.B.(1)(c) suggests newly constructed non-habitable basements may be built to a finished height of 6' 6".
  - ▶ §270-21.B.(c): "A basement, where the vertical measurement from the basement floor to the bottom of the first-floor floor joists does not exceed 6 1/2 feet and the bottom of the first-floor floor joists are not at a height of more than three feet as measured from a point where the center line of the building to be erected intersects with the center line of the street on which the building will front, shall not be included in gross floor area."
- ▶ Current code suggests newly constructed non-habitable basements may be built to a finished height of 6' 6" which is prohibited by the city's adopted building codes.

# What Remains: §270-21.B.

## § 270-21.B.(1)(a)

- ▶ In the R-1(S) District, the floor area ratio (FAR) for the residence structure combined with the accessory structures, if any, shall not exceed 0.50. In R-1 and R-2 Districts, the FAR for the residence structure combined with the accessory structures, if any, shall not exceed 0.60 for the first 5,000 square feet of gross lot area, and 0.30 for any additional gross lot area, or **for properties incorporating an accessory swimming pool 0.50 for the first 5,000 square feet of gross lot area and 0.25 for any additional gross lot area.**
  - ▶ **(a)** The first 250 square feet of an open front porch shall be excluded from the gross floor area, provided that such porch is on the street side of the building, at the first-floor level, roofed, one floor with no living space or deck above the porch, meets the definition of open porch in **§ 270-4**, and is not heated or air-conditioned. Any square footage in excess of 250 square feet shall be included in the gross floor area.

Figure shows above ground bulk of SFD w/ pool & crawl space

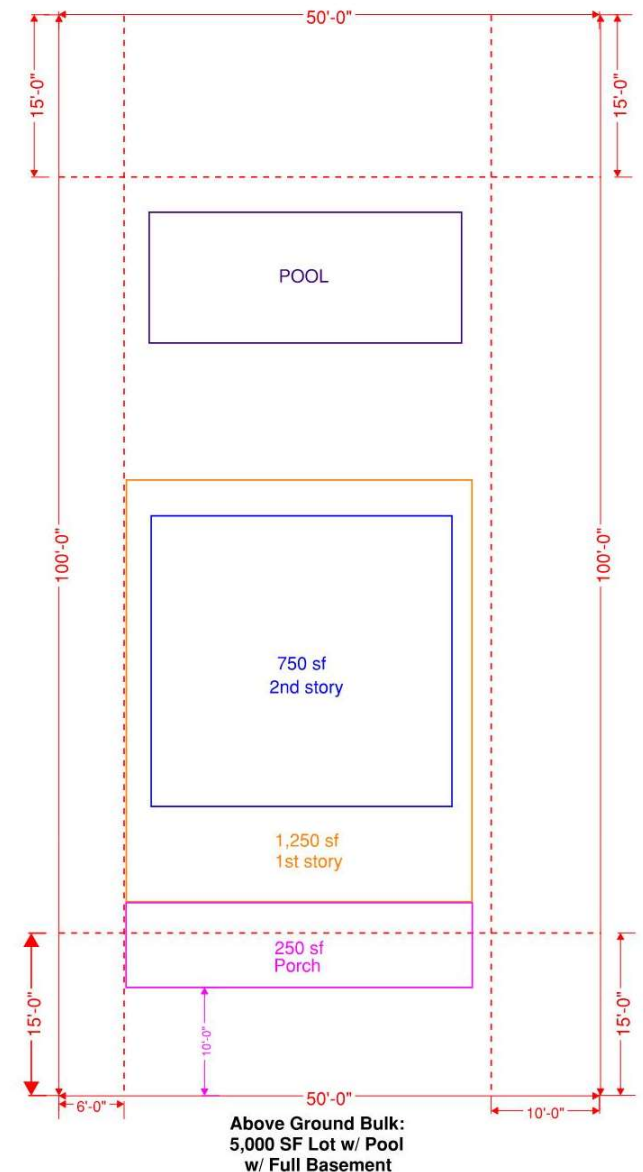


# What Remains: §270-21.B.

## § 270-21.B.(1)(b)

- ▶ A maximum of 1,000 square feet of a basement may be excluded from the gross floor area of a residence structure subject to the following conditions:
  - ▶ [1] The vertical measurement from the basement floor to the bottom of the first-floor floor joists must not exceed eight feet.
  - ▶ [2] The bottom of the first-floor floor joists must not be at a height of more than three feet. The measurement should be taken from a point where the center line of the building to be erected intersects with the center line of the street on which the building will front.
  - ▶ [3] FAR for the remainder of the residence structure combined with the accessory structures, if any, does not exceed 0.50 for the first 5,000 square feet of gross lot area and 0.30 for any additional gross lot area, or **for properties incorporating an accessory swimming pool 0.40 for the first 5,000 square feet of gross lot area and 0.25 for any additional gross lot area.**

Figure shows above ground bulk of SFD w/ pool & full basement



# Density Comparison – 5,000 sf Lot

## ▶ Current

- ▶ 6'6" non-habitable basements
- ▶ **Red indicates currently permitted 6'6" basement areas found to be unlawfully advertised as usable space**

Type of House	Above-ground Usable sq.ft.	Under-ground Usable sq.ft.	Total Usable sq.ft.
SFD w/out pool or 6'6" basement	3,000	0	3,000
SFD w/out pool but w/ 6'6" basement	3,000	0 1,500 finished (avg)	3,000 4,500 w/ finished 6'6"
SFD w/ pool but w/out 6'6" basement	2,500	0	2,500
SFD w/ pool and w/ 6'6" basement	2,500	0 1,250 finished (avg)	2,500 3,750 w/ finished 6'6"

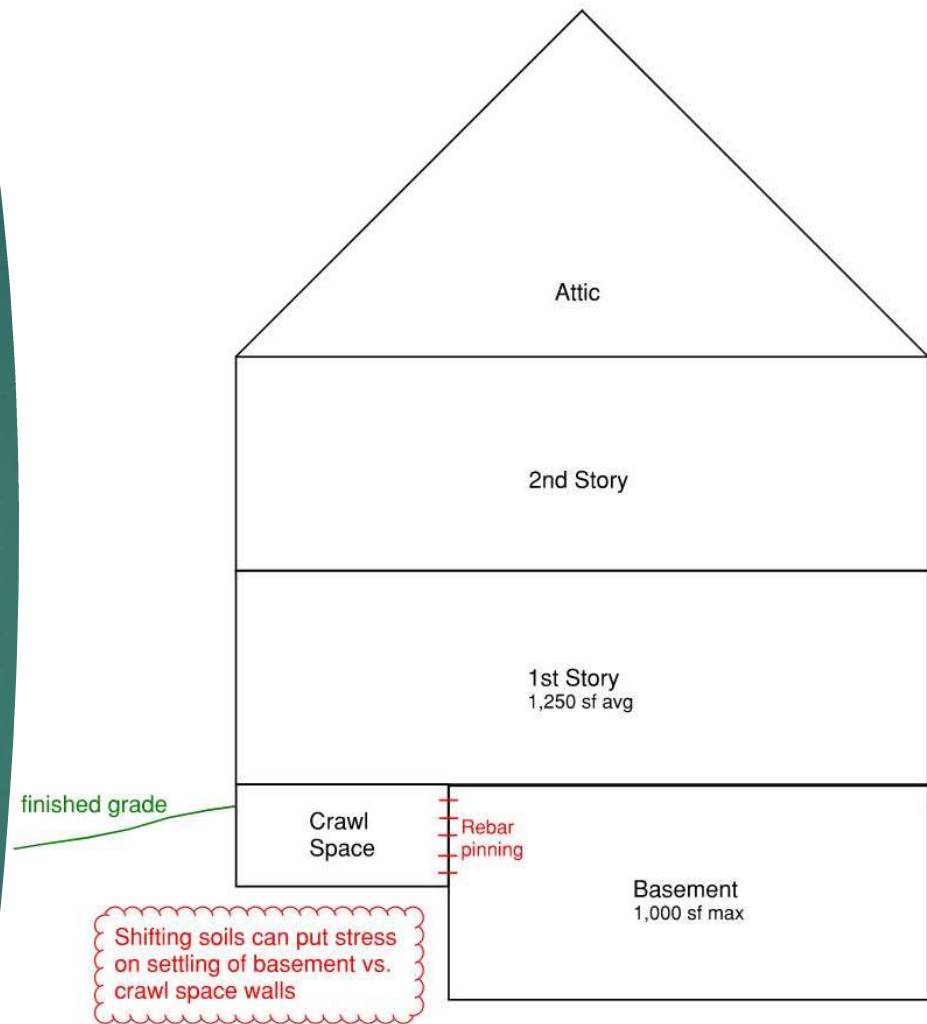
## ▶ What Remains

- ▶ Fully Habitable basements

Type of House	Above-ground Usable sq.ft.	Under-ground Usable sq.ft.	Total Usable sq.ft.
SFD w/out pool or basement	3,000	0	3,000
SFD w/out pool but w/ basement	2,500	1,000	3,500
SFD w/ pool and w/out basement	2,500	0	2,500
SFD w/ pool and w/ basement	2,000	1,000	3,000

## Structural Issues at risk under §270-21.B.(1)(b)

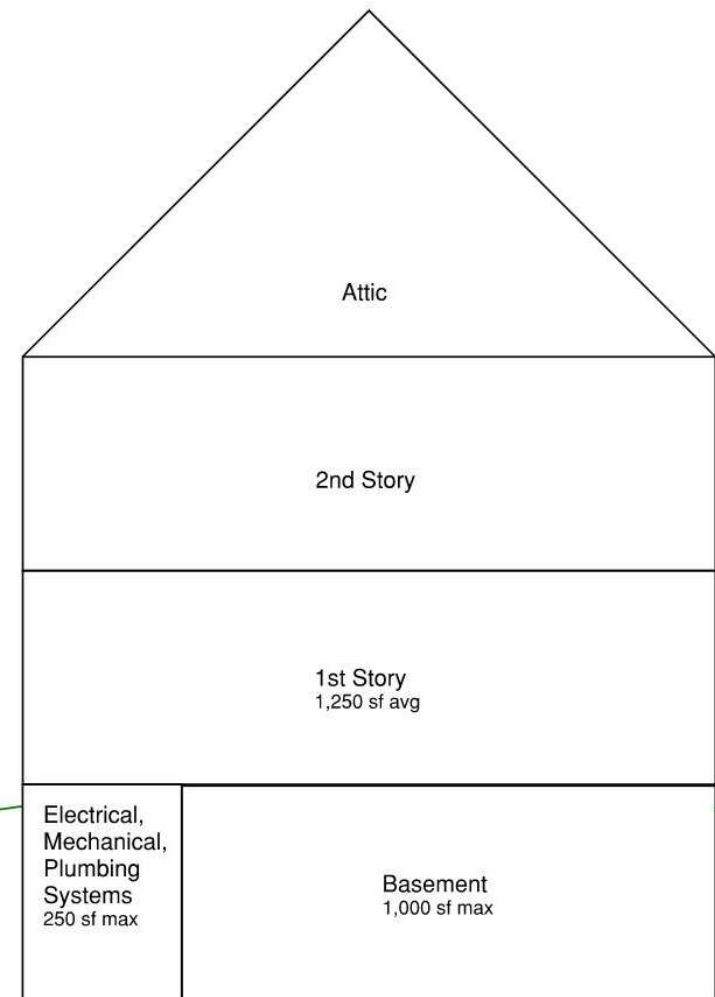
- On average, properties incorporating a swimming pool on a 5,000 square foot lot build a 1,250 square foot 1<sup>st</sup> floor in Rehoboth Beach.
- On average, properties that **do not** incorporate a swimming pool on a 5,000 square foot lot build a 1,500 square foot 1<sup>st</sup> floor in Rehoboth Beach.
- If these properties continue to build 1<sup>st</sup> floors on the sizes above, a portion of the foundation will be used for 7-8 foot basement walls, while a separate portion uses 4 foot crawl space walls to ensure all exterior walls rest on masonry foundation walls.
- Reinforcement (rebar) pinning will be utilized to connect the two spaces and will be subject to shifting soils, which will put stress on the connection points.



# Recommended Amendment to §270-21.B.(1)(c)

## § 270-21.B.(1)(c)

- ▶ A maximum of **250 square feet** of a basement may be excluded from the gross floor area of a residence structure subject to the following conditions:
  - ▶ [1] The vertical measurement from the basement floor to the bottom of the first-floor floor joists must not exceed eight feet.
  - ▶ [2] The bottom of the first-floor floor joists must not be at a height of more than three feet. The measurement should be taken from a point where the center line of the building to be erected intersects with the center line of the street on which the building will front.
  - ▶ **[3] The space remains without floor and/or wall finishes and is used solely for electrical, mechanical, plumbing and gas equipment.**
- ▶ This allows for exterior walls to be supported on an equal and continuous foundation wall





# Recommended Addition of §270-21.B.(1)(f) – *Existing Houses*

- ▶ **Add** section §270-21.B.(1)(f) to state the following:
  - ▶ (f) Any non-habitable basement existing on \_\_\_\_\_, 2024, with a ceiling height of less than 6 feet 8 inches, shall not be included in gross floor area to the extent it is used only for mechanical, plumbing and electrical equipment, laundry machines, storage and the like; no additional walls or finish materials including but not limited to drywall, flooring, trim, doors, electrical upgrades and plumbing fixtures are added; and provided further that the bottom of the first-floor floor joists shall not be at a height of more than four feet as measured from a point where the center line of the building intersects with the center line of the street on which the building fronts.
    - ▶ [1] A dwelling incorporating a non-habitable basement which was an existing structure prior to \_\_\_\_\_, 2024, is a legal nonconforming structure.
    - ▶ [2] A dwelling incorporating a non-habitable basement under an active and valid building permit issued by the City prior to \_\_\_\_\_, 2024 shall be permitted as a legal nonconforming structure.
    - ▶ [3] Any addition, reconstruction, alteration, repair or demolition to a dwelling incorporating a non-habitable basement shall be subject to the provisions of Article VI of this chapter.

# Recap:

**Objective:** To eliminate life safety issues arising from non-habitable basements.

1. Create definitions to Basement and Crawl Space
2. Delete all mention of 6'6" basements
3. Propose a 250 sq-ft credit to unfinished electrical, mechanical and plumbing equipment spaces in basements
4. Propose zoning protection and limitations for existing dwellings incorporating non-habitable basements

The background features a dark teal color with a pattern of 3D question marks. A solid red vertical bar is positioned in the upper right corner.

Questions?

1  
2                                   **AN ORDINANCE TO AMEND CHAPTER 270 OF**  
3 **THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001,**  
4       **BY AMENDING SECTIONS 270-4 AND 270-21(B)(1)(c), AND INSERTING A NEW**  
5       **SECTION 270-21(B)(1)(f) RELATING TO THE DEFINITIONS OF BASEMENT AND**  
6 **CRAWL SPACE, AND FLOOR FINISH, AND WALL FINISH, AND MODIFYING THE**  
7       **GROSS FLOOR AREA EXEMPTION FOR QUALIFYING BASEMENTS**  
8

9           **WHEREAS**, on December 20, 2019, the Commissioners of the City of Rehoboth Beach  
10 adopted Ordinance No. 1219-02, which in relevant part, amended Chapter 102, Article I,  
11 Adoption of Building Code, of the Municipal Code of the City of Rehoboth Beach, Delaware,  
12 2001, as amended, for the purpose of adopting the 2018 edition of the International Building  
13 Code to regulate and govern the conditions and maintenance of all property, buildings and  
14 structures in the best interests of the City of Rehoboth Beach; by providing the standards for  
15 supplied utilities and facilities and other physical things and conditions essential to ensure that  
16 structures are safe, sanitary and fit for occupation and use; providing for the issuance of permits;  
17 and  
18

19           **WHEREAS**, Ordinance No. 1219-02 also amended other provisions in Chapter 102, of  
20 the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, as amended, including the  
21 amendment of Chapter 102, Article XV, Adoption of Residential Code, of the Municipal Code of  
22 the City of Rehoboth Beach, Delaware, 2001, for the purpose of adopting the 2018 edition of the  
23 International Residential Code, to regulate and govern the construction, alteration, movement,  
24 enlargement, replacement, repair, equipment, location, removal and demolition of detached one-  
25 and two-family dwellings and multiple single-family dwellings (townhouses) not more than three  
26 stories in height with separate means of egress in the City of Rehoboth Beach is in the best  
27 interests of the City; by providing for the issuance of permits and collection of fees therefor; and  
28

29           **WHEREAS**, the 2018 edition of the International Residential Code provides that  
30 portions of basements that do not contain habitable space shall have a ceiling height of not less  
31 than 6 feet 8 inches; and  
32

33           **WHEREAS**, the 2018 edition of the International Residential Code provides that  
34 portions of basements that do contain habitable space shall have a ceiling height of not less than  
35 7 feet; and  
36

37           **WHEREAS**, Chapter 270, Sections 270-4 and 270-21, of the Municipal Code of the City  
38 of Rehoboth Beach, Delaware, 2001, as amended, contain references to basements ceiling  
39 heights of less than 7 feet; and  
40

41           **WHEREAS**, the Commissioners of the City of Rehoboth Beach have determined that it  
42 is in the best interest of the City to provide consistency throughout the Municipal Code of the  
43 City of Rehoboth Beach, Delaware, 2001, as amended, and modify the criteria for excluding  
44 certain basements from gross floor area calculations.

45  
46 **BE IT ORDAINED**, by the Commissioners of the City of Rehoboth Beach, in session  
47 met, in the manner following to wit:  
48

49  
50 **Section 1.** Chapter 270, Section 270-4 of the Municipal Code of the City of Rehoboth  
51 Beach, Delaware, 2001, as amended, be and the same is hereby further amended by making  
52 insertions as shown by underlining and deletions as shown by strikethrough as follows:  
53

54 **BASEMENT**

55 ~~The floor or story of a building that is partially or completely below ground.~~ That portion of a  
56 building that is wholly or partly below grade, having a minimum ceiling height of 7 feet, and  
57 having 50% or more of its height below the finished grade at any point on the periphery of the  
58 building.

59  
60 **CRAWL SPACE**

61 An underfloor space that is not a basement and has a vertical measurement not more than 48  
62 inches, measured from the constructed or natural floor to the underside of the floor joists of the  
63 floor above.

64  
65 . . . .

66  
67 **FINISH, FLOOR**

68 Any natural or synthetic material covering masonry, wood or steel framed floors, including but  
69 not limited to carpet, hardwood, vinyl, and tile. This definition does not include protective epoxy  
70 floor coatings.

71  
72 **FINISH, WALL**

73 Any natural or synthetic material covering masonry, wood or steel framed walls, including but  
74 not limited to drywall, tile, paneling, plaster, moldings, and trim.

75  
76  
77 **FLOOR AREA, GROSS**

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

82  
83 . . . .

84  
85 C. Gross floor area in a single-family and two-family dwelling unit is deemed to include:

86 (1) The actual floor space of all **habitable** areas above a finished height, at or above six  
87 feet, ~~six~~ eight inches;

88 ~~(2) Portions of basements above a finished height at or above six feet, six inches;~~

89  
90 . . . .  
91

92 **E.** Gross floor area in a commercial use is deemed to include:

- 93 (1) The actual floor space of all ~~habitable~~ spaces above a finished height, at or above
- 94 seven feet, ~~six inches~~;
- 95 ~~(2) Portions of basements above a finished height at or above of six feet, six eight~~
- 96 ~~inches;~~

97  
98 **Section 2.** Chapter 270, Zoning, Section 270-21 of the Municipal Code of the City of  
99 Rehoboth Beach, Delaware, 2001, as amended, be and the same is hereby further amended by  
100 amended by making insertions as shown by underlining and deletions as shown by strikethrough  
101 as follows:

102 **§ 270-21 Natural area, floor area ratio and lot coverage.**

103 . . . .

104  
105  
106 **B.** Floor area ratio.

- 107 (1) In the R-1(S) District, the floor area ratio (FAR) for the residence structure combined
- 108 with the accessory structures, if any, shall not exceed 0.50. In R-1 and R-2 Districts, the
- 109 FAR for the residence structure combined with the accessory structures, if any, shall not
- 110 exceed 0.60 for the first 5,000 square feet of gross lot area, and 0.30 for any additional
- 111 gross lot area, or for properties incorporating an accessory swimming pool 0.50 for the
- 112 first 5,000 square feet of gross lot area and 0.25 for any additional gross lot area.

113 . . . .

114  
115  
116  
117  
118  
119 ~~(e) — A basement, where the vertical measurement from the basement floor to the~~

120 ~~bottom of the first floor floor joists does not exceed 6 1/2 feet and the bottom of~~

121 ~~the first floor floor joists are not at a height of more than three feet as measured~~

122 ~~from a point where the center line of the building to be erected intersects with the~~

123 ~~center line of the street on which the building will front, shall not be included in~~

124 ~~gross floor area.~~

125  
126 (c) A maximum of 250 square feet of a basement may be excluded from the gross

127 floor area of a residence structure subject to the following conditions:

128  
129 [1] The vertical measurement from the basement floor to the bottom of the first-

130 floor floor joists must not exceed eight feet.

131

132 [2] The bottom of the first-floor floor joists must not be at a height of more than  
133 three feet. The measurement should be taken from a point where the center line of  
134 the building to be erected intersects with the center line of the street on which the  
135 building will front.

136  
137 [3] The space remains without interior floor finish, and wall finish, and the space  
138 is used solely for electrical, mechanical, plumbing, or gas equipment.

139  
140 . . . .

141  
142 (f) Any non-habitable basement existing on\_[INSERT DATE], 2024, with a ceiling  
143 height of less than 6 feet 8 inches, shall not be included in gross floor area to the  
144 extent it is used only for mechanical, plumbing and electrical equipment, laundry  
145 machines, storage and the like; no additional walls or finish materials including  
146 but not limited to drywall, flooring, trim, doors, electrical upgrades and plumbing  
147 fixtures are added; and provided further that the bottom of the first-floor floor  
148 joists shall not be at a height of more than four feet as measured from a point  
149 where the center line of the building intersects with the center line of the street on  
150 which the building fronts.

151  
152 [1] A dwelling incorporating a non-habitable basement which was an existing  
153 structure prior to [INSERT DATE], 2024, is a legal nonconforming structure.

154  
155 [2] A dwelling incorporating a non-habitable basement under an active and valid  
156 building permit issued by the City prior to \_\_\_\_\_, 2024 shall be permitted as a  
157 legal nonconforming structure.

158  
159 [3] Any addition, reconstruction, alteration, repair or demolition to a dwelling  
160 incorporating a non-habitable basement shall be subject to the provisions of  
161 Article VI of this chapter.

162  
163 . . . .

164  
165 **Section 3.** If any provision of this Ordinance shall be deemed or held to be invalid or  
166 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect  
167 any other provision of this Ordinance which may be given effect without such invalid or  
168 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to  
169 be severable.

170  
171 **Section 4.** This Ordinance shall become effective immediately upon its adoption by the  
172 Commissioners of the City of Rehoboth Beach.

173  
174  
175

Version: June 4, 2024  
Author: A. Burns; C. Shinko  
Topic: Draft Basement Height Ordinance  
Presentation Date: June 2024, Mayor and Commissioners Workshop Meeting

176 Adopted by the Commissioners  
177 of the City of Rehoboth Beach  
178 \_\_\_\_\_, 2024

179  
180  
181  
182 \_\_\_\_\_  
183 Secretary of the Commissioners of  
184 the City of Rehoboth Beach

185  
186 SYNOPSIS: This Ordinance amends Chapter 270, Sections 270-4, and 270-21 of the Municipal  
187 Code, to revise the vertical measurement from the basement floor to qualify a basement for  
188 exemption from Gross Floor Area. This Ordinance also amends Chapter 270, Section 270-4 of  
189 the Municipal Code, to revise the definitions of Basement, and Floor Area Ratio, and add  
190 definitions for Crawl Space, Floor Finish, and Wall Finish.  
191

DRAFT