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Editor's Note: Printed as a chapter in this Code of Ordinances is the unified development code for the town as compiled and adopted in January 2000 and as amended through amendments adopted in June 2020.

Charter References: Authority to adopt zoning regulations, § 201.1.31.

State Law References: Authority to adopt zoning regulations, 22 Del. C. § 301 et seq.

24.04 In General

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24.04.010 Enactment

The zoning and unified development code which is printed herein shall be applicable within the corporate limits of the town.

24.04.020 Title

This zoning ordinance shall be known and cited as the "Unified Development Code of the Town."

(UDC 2002, § 100)

24.04.030 Enabling Legislation

The enabling legislation is an authorization by the general assembly permitting the town as well as other municipalities to adopt a zoning ordinance. 22 Del. C. § 301, permits the legislative bodies of cities and incorporated towns to regulate such matters as the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other spaces, the density of population, and the location and the use of land for trade, industry, residence or other purposes.

(UDC 2002, § 101)

24.04.040 Purpose

The purpose of the zoning ordinance of the town is to promote, in accordance with the present and future needs of its citizens, the health, safety and morals, convenience, order, prosperity and general welfare of the present and future inhabitants of the town. These interests may be promoted by restricting the heights, number of stories and size of buildings and other structures; the percentage of the lot that may be occupied; the size of yards, courts and open spaces; the density of development; and the location, use and extent of use of buildings, structures and land for resident, trade, industry and other purposes by creating districts for said purposes and by establishing boundaries for such districts; by providing for the establishment of a board of adjustment and by imposing penalties for violation of the zoning ordinance. This chapter is adopted so as to lessen congestion in the streets, to secure safety from fire, panic and other dangers; provide adequate light and air; prevent the overcrowding of land; to avoid the undue concentration of population; to facilitate the adequate provision of transportation, water supply, drainage, sanitation, parks, recreation, education and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town.

(UDC 2002, § 102)

24.04.050 Interpretation

This chapter shall be interpreted, whenever an administrator or judiciary is called upon to do so, in conformance with the purposes intended to be served by its enactment. The intent of these standards and supporting definitions is to protect both individual property owners and the general public from adverse impacts, which might otherwise be the result of a proposed land use. It is not intended by this chapter to interfere with or abrogate or annul any easements, contracts, or other easements, or other agreements between parties provided, however, that this imposes greater restrictions upon the use of buildings or premises or upon the height of buildings or other purposes for requirements set forth in this chapter, the provisions of this chapter shall govern. If because of error or omission in the zoning district map, any property in the jurisdiction of this chapter is not shown as being in a zoning district, the said property shall be classified as (P), "preservation" until changed by a zoning map amendment.

(UDC 2002, § 103)

24.04.060 Definitions - Zoning And Unified Development Code

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Accessory building" means a building detached from a principal building located on the same lot to the side or rear of the principal structure, and which is incidental and subordinate to the principal use or building.

"Accessory use" means a use of land or building, or portion thereof, incidental and subordinate to the principal use or building.

"Adult bookstore" means an establishment having, as a substantial or significant portion of its stock in trade, books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section (see below), or an establishment with a segment or section devoted to the sale or display of such material.

"Adult entertainment establishment" means an enclosed building used for presenting material and/or

conduct distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patron therein. This includes bars, restaurants, movie theaters, theaters, peep shows, strip halls, special cabarets, physical culture establishments, photographic studios, or any other normally permitted use where "specified sexual activities" are displayed, or where "specified anatomical areas" are exposed to customers.

A. For the purpose of this definition, the term "specified sexual activities" is defined as:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

B. For purposes of this definition, the term "specified anatomical areas" is defined as:

1. Less than completely and opaquely covered human genitals, pubic region buttocks and female breast below a point immediately above the top of the areola.
2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

"Alteration" means a change in the appearance of building, structure, site, or object which is not otherwise covered by the definition of demolition, or any other change for which a permit is required.

"Apartment" means a multifamily dwelling unit contained in a building comprised of two or more dwelling units.

"Basement" means a story partly underground and having more than one-half of its clear ceiling height above the grade.

"Board of adjustment" means the officially established board of adjustment of the town.

"Buffer yards" means a landscaped strip of land at the periphery of a property created to separate one type of land use or zoning district from another when they are incompatible or in conflict.

"Buildable area" means the land area remaining on a tract after the minimum open space, buffer yards and setbacks have been met.

"Building" means a structure built on a lot, having a roof, and intended to shelter people, animals, property, business activity, use or occupancy.

"Building coverage" means the aggregate of the maximum horizontal cross section areas excluding cornices, eaves and gutters, of all buildings on a lot.

"Building height" means the maximum permitted height of a building permitted on a lot. Building heights is determined from the vertical distance measured from the lowest ground elevation to the highest point of the building, excluding chimneys and antenna.

"Building line" See *lot line*.

"Building primary" See *principal building*.

Business office" See *professional office* and *personal service office.*

Campers/trailers" See *recreation vehicle.*

Cellar" means a story partly underground and having more than one-half of its clear ceiling height below grade.

"Certificate of zone compliance" means a certificate issued by the board of adjustments upon completion of construction, alteration or change in occupancy of a building. Said certificate shall acknowledge compliance with all requirements of this article, such adjustments thereto granted by the board of adjustment, construction in accordance with the plans and specifications filed with the board of adjustment and all applicable town regulations.

"Church" means a building or group of buildings including customary and secondary buildings designed or intended for public worship, organized religious services, and accessory uses associated therewith.

"Commercial Vehicle" shall mean a vehicle of a type required to be registered as commercial under State Law or used or maintained for the transportation of persons or property for hire, compensation, or profit, except taxibabs. Commercial vehicles are further defined by the Federal Highway Administration (FHWA) as a Class 3-vehicle which is classified as a four tire, single unit vehicle.

"Demolition" means the razing or destruction, whether entirely or in significant part, of a building or structure, site or object. Demolition includes the removal of a building, structure or object from its site, the removal or destruction of the facade or surface, or alteration to such an extent that repair is not feasible or so costly so as to be prohibitive, rendering the property unfit for use.

"Density, residential gross" means the total number of dwelling units which may be developed or are developed on a tract of land before requirements for streets, infrastructure and open space are provided. Residential gross density is determined by dividing the number of dwelling units by the total tract area.

"Density, residential net" means the resulting number of units which may be developed on a site after the requirements for streets, infrastructure and open space have been provided. Residential net density is determined by dividing the total number of dwelling units by the net buildable area of the tract.

"Developer" means a person, firm or corporation filing an application for development as defined by this section.

"Development" means any new or expanded use of a building, structure, land or waters; any disturbance of land, soil, vegetation, or waterways; any division of land or land development whether for sale or lease.

"Drive-in facility" means buildings or uses providing drive-in or drive-thru service to customers in automobiles including, for example: drive-in and drive-thru restaurants and banking and pharmacies and similar operation within drive-thru windows.

"Dwelling" means a building, or portion of a building, used as a place of residence, containing sleeping, cooking and sanitary facilities, excluding commercial lodging.

"Dwelling, attached" means two or more dwelling units in a single structure or attached structures, each which could have a single lot, which are separated by a dividing wall. This includes two-family dwellings.

"Dwelling, multifamily" means a structure containing more than one dwelling unit with either direct access to the outside, or through a common hallway, with a separate kitchen facility and living quarters in each unit.

"Dwelling, single-family detached" means a dwelling unit, including a manufactured home, designed for and occupied by not more than one family and having no roof, wall or floor in common with any other dwelling and meeting the following criteria:

A. Minimum floor area of 750 square feet.

B. It has a minimum width along any exterior front, side or rear elevation of 20 feet, exclusive of garage area.

C. If applicable, transportable sections shall be no less than ten feet in width, unless the unit is transportable in three or more sections, in which case only one section need be more than ten feet wide.

D. It is permanently mounted on a solid foundation or pier foundation system and anchored, and in each case in accordance with BOCA.

E. All wheels, axles, transportation lights and towing apparatus, if any, shall be removed from the dwelling when it is placed on the foundation in accordance with paragraph C of this definition.

F. All utilities shall be permanently connected in accordance with the town plumbing and mechanical codes.

G. It has a storage area in a basement located beneath the living area, in an attic area, in a closet area, in an attached or detached garage or enclosed structure constructed on a permanent foundation and having an area of not less than 160 square feet or any combination thereof. The total storage area must not be less than 15 percent of the gross floor area of the dwelling unit. It shall have a weather-resistant exterior covering material comparable in appearance, quality and durability to materials used on the dwelling, such as brick, stone facing, treated lumber, masonry or masonry veneer, which shall extend to the ground.

H. The siding of all dwellings shall be continuous so as to enclose any joining of two or more sections.

I. It complies with all pertinent sections of the building code and the state fire and safety codes.

"Dwelling unit" means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy of one family with separate facilities for all of the following: sanitation, living, sleeping, cooking and eating.

"Family" means one or more persons, related by blood or marriage, occupying a dwelling unit and living as a single nonprofit housekeeping unit.

"Farm" means the land, buildings, structures and machinery which are primarily adapted and used for agricultural purposes.

"Farm building" means any building used for storing agricultural equipment or farm produce, housing livestock and poultry and processing dairy products. The term "farm building" shall not include dwellings.

"Flood fringe" means those portions of the floodplain, outside the floodway, subject to inundation by the 100-year flood and generally associated with standing or slowly moving water rather than rapidly flowing water. The extent of the flood fringe is determined by detailed study data and profiles found in the FEMA flood insurance study.

"Floodplain" means a relatively flat or low-lying land area adjoining a river, stream, or watercourse which is subject to periodic partial or complete inundation. Specifically, those areas identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate map as being subject to periodic inundation by a 100-year storm, including the floodway, flood fringe and areas for which no base flood elevations area available as depicted in the most recent FEMA flood insurance rate map. For land development plans or subdivision plans exceeding 50 acres or proposing to create five or more lots within or adjacent to a floodplain where base flood elevations are not available, the applicant must provide a hydrologic and hydraulic analysis to establish the base flood elevations. The applicant must obtain a letter

of map revision from FEMA prior to final plan approval.

"Floodway" means the portion of the floodplain district required to carry and discharge the waters of the 100-year flood without increasing the water surface elevation at any point more than one foot above existing conditions as demonstrated in a flood insurance study.

"Garage, private" means an accessory building for storage purposes only and used by the owner or tenant of the property, and in which no business, service or industry is conducted.

"Garage/parking, public" means a garage or parking area available to the public for free or a fee.

"Garden apartment" See *apartment.*

"Gross floor area" means the sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed by applying the following criteria:

A. The horizontal square footage is measured from the outside face of all exterior walls.

B. Cellars, basements, penthouses, attics, covered or uncovered porches, balconies and decks, enclosed storage or mechanical areas, mezzanines and similar structures shall be included as GFA wherever at least seven feet are provided between finished floor and ceiling.

C. No deduction shall apply for horizontal areas void of actual floor space, for example, elevator shafts and stairwells.

"Home occupation" means a business, profession, occupation or trade located entirely within and accessory to a residential dwelling which does not change the essential character of the residential use and which is not evident from the exterior of the dwelling.

"Impervious surfaces" means areas that do not allow significant amounts of water to penetrate.

"Junk yard" or *"salvage yard"* means any outdoor establishment or place of business, which is maintained, used, or operated for storing, keeping, buying or selling junk or salvage.

"Lot means a parcel of land whose boundaries have been established by a legal instrument such as a recorded deed, court order, or a recorded plot which is recognized as a separate legal entity for purposes of transfer of title and possessing frontage on at least one street improved to meet the town standards for street construction.

"Lot area" means the area of a lot taken at its perimeter exclusive of any portion within a public or private street right-of-way.

"Lot, corner" means a lot at the junction of and fronting on two or more intersecting streets.

"Lot coverage" means the percentage of the lot area which is covered by impervious surfaces.

"Lot line" means a line, including a property line or lease line, dividing one lot from another or from a street or other public space.

"Lot line, front" means the street lot line from which access is taken. In the case of a corner lot, the lot shall be considered to have two front lot lines and two side lot lines.

"Lot line, rear" means the lot line opposite the front lot line.

"Lot line, side, means the lot lines that run generally perpendicular to or at an angle to the street or any line that is not a front, street or rear lot line.

"Lot line, street" means any lot line that is also a street right-of-way.

"Lot width" means the horizontal distance between the side lot lines, measured between the points on the side lot lines at which they are intersected by the required setback.

"Major land development" means a development plan that proposes one or more of the following:

A. A new public or private street, or dedication to public use of an existing street.

B. Buildings of 5,000 square feet or more of gross floor area.

C. Additions to existing nonresidential developments of ten or more percent of the existing gross floor area.

D. A subdivision of four or more lots.

E. Apartment or multifamily development containing five or more units.

F. Wetlands or floodplain disturbance or stream encroachment.

"Manufactured home means a one-family dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Code.

"Minor land development means any development not qualifying as a major land development as herein defined.

"Mobile home means a transportable one-family dwelling larger that 320 square feet, designed to be used as a year-round residence. This definition does not include motor homes or recreational vehicles.

"Motor vehicle service establishment means a building or use which is intended to be used for fuel sales, servicing, repairs, maintenance, or cleaning of motor vehicles.

"Net lot area" See *lot area*.

"Nonconforming building or use" means a building or a use of land or a building existing at the effective date of the ordinance from which this section is derived which does not conform to the requirements of this article.

"Nonconforming lot" means a lot legally existing at the effective date of the ordinance from which this section is derived which does not conform to the requirements of the zoning district in which it is located, such as lot area, coverage, width, setbacks, etc.

"Office" means a building or portion of a building wherein services are performed involving predominantly administrative, data processing, professional or clerical operations.

"Open space" means land area to be left open and undeveloped as a natural resource preservation, recreation and buffer yards as defined in this section.

"Parking space" means an open space on a lot or in a garage, reserved exclusively for parking motor vehicles, the area of which is not less than nine feet x 18 feet, and to which there is direct access to a street, alley, driveway or vehicular access way.

"Principal building or use "means the main building or use on a lot in terms of size, areas and function.

"Recreation, active" means recreational use areas or activities requiring formal facilities, such as ball fields, courts, running and jogging trails, swimming pools, community centers, etc.

"Recreation, passive" means recreational use areas or activities which require no special or formal facilities or are natural areas. Passive recreation activities include but are not limited to bicycle riding, walking, hiking, bird watching, etc.

"Residential professional office" means a professional office which is operated from a residential property and which is limited to the practice of medicine, law, dentistry, architecture, engineering and similar professional occupations.

"Restaurant" means any establishment at which food is sold for consumption on the premises to patrons seated within an enclosed building.

"Salvage" means any discarded material or articles, including scrap metallic or nonmetallic items, whole or parts of vehicles and equipment, paper, glass, containers and structures, which is separated for industrial processing or reprocessing and further used or reused.

"Sign" means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images and as further defined in this section.

"Special exception" means a form of permitted use, authorized by this article, under the jurisdiction of the board of adjustment. The board of adjustment is empowered to grant permission for special exceptions, consistent with the public interest, in compliance with the standards and procedures established in this article.

"Story" means that portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

"Story, first" means the ground floor story of a building, provided its floor level is not more than four feet below the mean lot level adjacent to the foundations.

"Story, half" means a story under a sloping roof at the top of the building, the floor of which is not more than two feet below the wall plate.

"Street" means a strip of land comprising the entire area within the right-of-way, intended for use as a means of vehicular and pedestrian circulation to provide access to more than one lot. However, the establishment of a common driveway for access purposes for no more than three separate parcels contiguous to one another shall not be considered a street as this term is defined.

"Street, arterial" means a street, which serves, or is designed to serve as a connection between uses which generate heavy traffic volumes, or between other arterial streets.

"Street, collector" means a street, which serves or is designed to serve as the connection from local streets to the arterial streets system.

"Street, cul-de-sac" means a short, independent, local street having only one point of ingress and egress, terminating in a circular turn-around or other approved termination.

"Street line" means a property line of a lot that coincides, with a right-of-way line of street also defined as a street lot line.

"Street, local" means a street, which serves or is designed to serve primarily as access to abutting properties.

"Structure" means any man-made object having ascertainable stationary location on land or in the water,

whether or not affixed to the land.

"Structure, permanent" means a structure placed on or in the ground, or attached to another structure in a fixed position.

"Structure, temporary" means a structure that is designed to be repeatedly erected or inflated, tents and inflatable structures, or buildings that are picked up and moved.

"Subdivision, major" means any subdivision which does not qualify as a minor subdivision as herein defined.

"Subdivision, minor" means a subdivision plan shall be deemed minor if all of the following conditions are met:

A. The proposal does not involve the creation of more than three lots.

B. The proposal does not involve the construction or extension of streets or utilities.

C. The proposal does not require any variances.

D. The proposal does not involve any wetlands or floodplain disturbance.

"Townhouse" means a single-family attached dwelling unit, with a single unit going from ground to roof, and with individual outside access.

"Use" means the specific purposes for which the land or building is designed, arranged, intended, or for which it is or may be occupied or maintained.

"Yard" means an unoccupied space open to the sky on the same lot with a building or structure, the depth of which is determined by the specific requirements of the zoning district in which it is located.

"Yard, front" means a yard extending the full width of the lot between street line and the principal building erected thereon, the depth of which is equal to or exceeds the required setback.

"Yard, rear" means a yard extending the full width of the lot between the rear lot line and the principal building.

"Yard, side" means a yard between the principal building and the side lot line extending from the street line to the rear lot line.

(UDC 2002, § 104)

HISTORY
Amended by Ord. 2024-002 on 5/1/2024

24.04.070 Applicability Of Regulations

A. No building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to, enlarged, nor shall any building or land be used for any purpose other than those included among the uses listed as permitted uses in each zone by this article and meeting the requirements set forth in 24 Appendix A of this chapter, entitled Schedule of Area and Bulk Requirements. No yard contiguous to any building shall be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, offstreet parking requirements, and all other regulations designated in this article for the zoning district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be in violation of this article and the certificate of zoning compliance

shall be void.

B. Any structure or property in compliance with all zoning codes prior to adoption of the unified development code specified herein shall be grandfathered from compliance with said codes.

(UDC 2002, § 200)

24.04.080 Preservation Of Natural Features

A. No structure shall be built within a riparian buffer area.

B. No persons, firm or corporation shall strip, excavate or otherwise remove top soil for sale or other use other than on the premises from which it was taken, except in connection with the construction or alteration of a building on such premises when excavation or grading is incidental to such activity.

C. Existing natural resources, such as woodlands, individual mature trees, streams and watercourses, drainage channels and important vistas and view-sheds shall be retained. Whenever a development proposal is in conflict with the preservation of such natural features, the Planning Commission may authorize their removal or relocation provided that, in their opinion, there will be no substantial adverse impact upon the overall integrity of the community or property values in the area, and no feasible alternative exists.

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~~C.~~D. Paragraph C shall not apply to any Critical Natural Area, forest, or wetland regulated by TMC 24.36. Removal or disturbance of such resources shall be authorized only in accordance with TMC 24.36.050, TMC 24.36.090, TMC 24.36.155 and TMC 24.36.195.

(UDC 2002, § 201)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.04.090 Regulations Applicable To All Zoning Districts

A. No lot shall have erected upon it more than one principal residential building.

B. No yard, setback or open space provided on a lot for the purpose of complying with the provisions of this section shall be considered to provide a yard, setback or open space for any other lot.

C. Every principal building shall be built upon a lot, which possesses frontage upon a street improved to meet the town's requirements for street construction.

D. All yards facing on a street shall be considered front yards and shall conform to the minimum front yard requirements for the zone in which it is located. Corner lots shall provide the minimum front yard requirements for the respective zone for both front yards.

E. Where a building lot obtains frontage on a street, which the comprehensive plan or the official map of the town indicates is proposed for right-of-way widening, the required front yard setback area shall be measured from the proposed right-of-way line.

F. No front yard shall be used for open storage of boats, trailers, recreation vehicles or equipment except for passenger automobile parking on driveways. Boats, trailers, recreation vehicles or equipment shall be stored in side or rear yards only.

G. Vehicles and trucks above a Class 3, as defined by FHWA shall be parked in driveways overnight. Overnight parking on streets is prohibited.

H. Recreational Vehicles. Any boat, boat trailer, motor home, self-contained camper, mobile home, trailer, pop-up camper/tent, horse trailer or similarly oriented vehicle as defined in Title 21 of the Delaware Code as amended from time to time are prohibited from parking on the street, with the

exception of 48 hours to load and unload.

I. Accessory buildings or structures shall be located so as to conform to the required setbacks for the zone in which the structure is located. Accessory buildings or structures shall be located to the rear of the required front yard.

J. The provisions of this section shall not apply to customary local utility distribution or collection lines such as water, gas, telephone, or electric service. All facilities, such as pumping stations, repeater stations and electric substations that require a structure abovegrade shall be subject to the provisions of this section.

K. An ornamental fence or wall not more than (4) ~~3 1/2~~ feet in height may project into or enclose any front or side yard to a depth from the street line to the required depth of the front yard.

L. At the intersection of two or more streets, no hedge, fence, wall (other than a single post or tree) or other such fixture which is higher than two feet above curb level, nor any obstruction to vision shall be permitted in the triangular area formed by the intersecting street lines and a line joining each 20 feet distant from said intersection along said street line.

(UDC 2002, § 202)

HISTORY
Amended by Ord. 2024-002 on 5/1/2024
Amended by Ord. 2025-003 on 11/5/2025

24.04.100 Submission Requirements

A. *Minor Subdivision Or Land Development Plan.* A submission for minor subdivision or land development must contain the following information (when applicable).

1. Name of the subdivision or development.
2. Name and address of the owner and applicant.
3. Name and address of the engineer or surveyor who prepared the plan.
4. Written and graphic scale, not exceeding 1" = 50'.
5. Sheet size of either 24" x 36" or 24" x 42".
6. North arrow.
7. Plan legend.
8. Date of the original plan and all subsequent revision dates.
9. Sheet number, if multiple sheets are used.
10. A location map with a scale of no less than 1" = 500' indicating adjacent streets.
11. Certification of plan accuracy by engineer/surveyor.
12. Certification of ownership.
13. Certification of plan approval.
14. Tax parcel numbers.
15. Zoning district of the subject tract.
16. Source of title.

17. Survey datum and local benchmark.
18. Total site gross and net acreage.
19. Name of water supplier and the note "Water supply is subject to the State Department of Natural Resources and Environmental Control and the Delaware Department of Health."
20. Sanitary sewage disposal method.
21. Number of existing and proposed lots or dwelling units.
22. Lot numbers for all existing and proposed lots.
23. Existing and proposed nonresidential gross floor area.
24. Location of existing and proposed building and structures.
25. The name, right-of-way width and cartway width of all adjoining streets.
26. Tie-in distances from subject property to the nearest street intersection.
27. Location of front, side, and rear yard setbacks and all required buffer yards.
28. Location and dimensions of all existing and proposed sidewalks.
29. Calculation of required off-street parking spaces and number of existing and proposed spaces.
30. Location of off-street loading areas.
31. Location of all existing and proposed site accesses and driveways.
32. Location and design of all proposed off-street parking areas, indicating parking space and access aisle dimensions and directional arrows indicating proposed traffic circulation patterns.
33. Existing and proposed building coverage.
34. Existing and proposed impervious coverage.
35. Name and address, tax parcel numbers and zoning of all adjoining property owners.
36. Location of any water bodies and watercourses.
37. Location of any floodplains, including FEMA map panel number.
38. Location of any wetlands areas delineated during a time of seasonal high ground water tables. If no wetlands present on site, a letter of nonexistence for wetlands is required.
39. Location and identification of any historic structures.
40. Location of all significant natural or manmade structures.
41. Existing and proposed deed restrictions, easements or protective covenants.
42. Grading plan indicating existing contours (at two foot intervals), proposed grading, spot elevations and finished floor elevations and top and bottom of wall elevations for any retaining walls over two feet.
43. Limit of existing tree masses and location, size and species of all individual trees over six inch caliper.
44. A limit of disturbance line.

45. A soil erosion and sediment control plan.
46. Stormwater management plan.
47. Solid waste management plan.
48. Landscape plan.
49. A listing of all existing nonconforming buildings, uses or structures.
50. Digital copies of the submitted application packet.
51. Once the plan has final approval digital copies in CAD or other applicable engineering software must be submitted to the Town Clerk and the Town Engineer.
52. Final Checklist by Town Engineer (Appendix C - Minor Development Checklist).

B. *Major Subdivision Or Land Development Plan*. A submission for major subdivision or land development shall contain all of the information required for minor subdivision/land development plan and the additional following information (if applicable):

1. A traffic impact study, including mitigation measures if deemed necessary by the study.
2. The name, right-of-way width, cartway width, profiles, cross sections and grading for all proposed streets.
3. Type, location, size, material of construction, slope and profiles for all proposed utilities.
4. Location, size, material of construction slope and profiles for all proposed storm sewers.
5. Location, grate elevation and invert elevation for all catchbasins, inlets and manholes.
6. Location of all proposed fire hydrants.
7. Phasing lines for phased developments.
8. Sidewalk locations, pedestrian ways, bikeways, walkways.
9. Proposed passive and active recreation areas.
10. Listing of any required variances.
11. Wetland report.
12. Floodplain study.
13. Construction details for all proposed improvements.
14. Final Checklist by Town Engineer (Appendix D - Major Development Checklist).
15. Delaware Department of Transportation (DelDOT) Pipe cover and lateral spreadsheet.

(UDC 2002, § 203)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.04.105 Lot Consolidation Procedures

A. An application for consolidating three or less parcels shall be made on a form supplied by the Town, together with a plan/map, prepared by and attested to by a licenses surveyor or engineer, showing the

parcels to be consolidated and showing the entire frontage of the proposed consolidated parcels, and that of the adjoining properties of the proposed consolidation. The application, plan and required fees shall be submitted to the Town for recording prior to forwarding to the Town for review. The required fees shall be the fees established in the currently effective Town of Townsend Fee Schedule.

B. The planning Commission may approve consolidation applications that are found to meet all of the requirements of this chapter.

a. No lot consolidation may be approved that creates a Town non-compliance of any other Town Ordinance.

C. The applicant shall submit the approved plan, within 90 days from the approved date to the office of the Recorder of Deeds, in and for New Castle County for recording. If any approved plan is not filed within that period, the approval of such partition shall expire. The Town, for good cause shown, may extend the time for filing the plan for a period not to exceed 90 days. Consolidation plans must be recorded with the Recorder of Deeds office prior to the tax year expiring to be honored for next year's billings. A record of all consolidations and one copy of the approved plan shall be kept by the Town and reflected in the records retained by the Town.

D. IF the Planning Commission disapproved of a consolidation application, a written notice shall be returned to the application stating the basis for such disapproval within 60 days of submission review. Reasons for disapproval shall be remedied prior to any resubmission.

HISTORY
Amended by Ord. 2025-008 on 1/7/2026

24.04.110 Violation And Penalties

Any person that shall violate the provisions of this article, or do any act or thing prohibited, or refuse to do any act or thing required to be done, or refuse or fail to comply with an order of the building official or an order of the board of adjustment, shall upon conviction thereof, be subject for each violation to a forfeit fine not to exceed $100.00. In default to the payment of such fine imposed, such violator may be subject to imprisonment not exceeding 30 days. Whenever such person shall have been officially notified by the building official or by service of a summons in prosecution, or in any other official manner that the person is committing a violation, each day's continuance of such violation after such notification shall constitute a separate offense punishable by a like fine or penalty.

(UDC 2002, § 902)

24.08 Administration
24.08.010 Generally
24.08.020 Board Of Adjustment
24.08.030 Amendments
24.08.040 Planning Commission
24.08.050 Nonconforming Uses

24.08.010 Generally

A. *Enforcement*. It will be the duty of the town council to enforce the provisions of this chapter and to refuse to issue any permit for any building or for the use of any premises which would violate any of the provisions of this article. It shall also be the duty of all officers and employees of the town to assist the town council by reporting any apparent violation in new construction, reconstruction and land uses. The methods of administering this chapter and the procedures to be followed in applying for permits shall be as follows:

1. No premises shall be used, no excavation for any building shall occur, and no building structurally changed, altered, or occupied or used until a certificate of zoning compliance shall have been issued by the town council, stating that the building or proposed use of a building or proposed use of land complies with the provisions of this chapter.

2. It shall be the duty of the town council to keep a record of all applications for certificate of zoning compliance, all certificates issued, all building permits, together with any notations of any special conditions involved.

3. No building shall be erected, constructed, altered, moved, converted, extended or enlarged without the owner first obtaining a building permit from the town council. No such permit shall be issued until the applicant obtains a certificate of zoning compliance. Routine maintenance that does not result in any change to the building will not require a building permit. If the erection, construction, alteration, move, reconstruction, conversion, extension or enlargement is such as to alter the outside dimension of the building, or to increase lot coverage, no such permit shall be issued until the applicant obtains a certificate of zoning compliance.

B. *Construction Prior To Ordinance Adoption*. Any building permit issued pursuant to any ordinances which provided for the erection of a building or structure shall continue in full force and effect, provided that the holder has substantially undertaken construction on the date of the ordinance from which this chapter derives.

C. *Expiration Timeline*. Applicant shall have 18 months to record development plans after the date of Town Council final approval.

(UDC 2002, §§ 900, 905)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.08.020 Board Of Adjustment

A. *Created*. The board of adjustment is hereby established in the manner prescribed by law. Such board shall consist of three members. At least one member shall be a resident of the town who is not a member of town council or an employee of the town. The town council shall approve all appointments for a term of two years. Initial appointment of members shall be as follows: one member for three years and one member for two years and one member for one year. Any member of the board may be removed by a three-fifths vote of the full council. Vacancies shall be filled for the unexpired term of any member whose position become vacant. If at any time a member of the board of adjustment experiences a conflict of interest on his part, that member must step down while the other members reach a decision.

B. *Powers And Duties*.

1. *Powers Of The Board Of Adjustment*. The board of adjustment shall have the following powers:

a. To hear and decide appeals where it is alleged there is an error in any order,

requirement, decision or determination made by an administrative official in the enforcement of the town's codes and the laws of the state and any amendment thereto or to this chapter.

b. To hear or decide variances to the terms of this chapter upon which the board is required to pass under this chapter.

c. To authorize upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where owing to special conditions or exceptional situations, a literal interpretation of the provisions of this chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of this chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter.

d. In exercising the above-mentioned powers, the board of adjustment may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken. Notices of such decision shall be given to all parties in interest.

C. *Meetings Of The Board Of Adjustment.* A meeting shall be held at the call of the chair and at such other times as the board may determine. Such chair or, in his absence, the acting chair may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public and the board shall keep the minutes of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote. The board shall keep a record of its examinations and other official actions, all of which shall be filed in the office of the board and shall constitute a public record.

D. *Appeals*. Any person or persons, or any taxpayer or any officer, department, board or bureau of the Town aggrieved by any decision of the Board of Adjustment may seek review by the Superior Court of such decision, in the manner provided by the laws of Delaware and particularly by Chapter 3, Title 22, annotated Code of Delaware. Such an appeal must be filed within thirty (30) days of the date the Board of Adjustment issues its written opinion on the matter, which is the subject of the appeal.

(UDC 2002, §§ 901A, 901A1, 901B, 901C)

HISTORY
Amended by Ord. 2024-004 on 5/1/2024

24.08.030 Amendments

A. *Town Council Authority To Amend Regulations, Etc*. The town council may from time to time amend, change, modify, repeal or add any regulations, limitations, restrictions of this article, including the zoning map. No such amendment, change, modification, repeal or addition shall be adopted until after a public hearing is held thereon by the town council at which parties in interest and citizens shall have an opportunity to be heard. Failure to give such notice shall not invalidate any such amendment, change, modifications, repeal or addition. No amendment or change shall become effective unless the ordinance proposing such amendment or change shall first have been submitted to the Planning Commission for approval or disapproval or recommendation, and the Planning Commission shall have 60 days after formal submission of the proposed

amendment or change for consideration and report. In the case of an unfavorable report by the Planning Commission, such amendment or change shall not become effective except by a favorable vote of three-fifths of the town council.

B. *Petition To Be Accompanied By Necessary Information*. The Planning Commission is hereby granted the authority to require as a consideration of such proposal, other than one originating within the council, that petition be submitted accompanied by such maps, charts, sketches, and other information as the Planning Commission deems necessary for the proper and effective consideration of such proposal, and to refuse to consider any proposal, and to refuse to consider any proposal not complying with such requirement.

C. *Public Hearing Required*. No proposed change, amendment, modification or repeal of any zoning regulation, restriction or boundary shall become effective until after a public hearing in relation hereto shall have been held by the council, at which interested parties and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation.

D. *Protests To Be Filed With Town Secretary*. In the event of a protest against such changes, a petition signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change or the properties immediately adjacent thereto extending 200 feet from such proposed change, such amendment shall not become effective except for a favorable vote of three-fifths of all members of council. All protests under this paragraph must be filed with the town secretary at least one working day prior to the hearing date of the said proposal.

E. *Failed Proposals*. If, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of one year after final action by the town council, except upon a favorable vote of four-fifths of the town council.

(UDC 2002, §§ 904A–904E)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.08.040 Planning Commission

A. *Planning Commission*. The Planning Commission is hereby established in the manner prescribed by law. This commission shall consist of five members. At all times one member is to be a member of the Board of Adjustment. All members are to be appointed by the town council for a period of three years. Any member may be removed by a majority vote of the full council. Vacancies shall be filled for the un-expired term of any member whose position becomes vacant. The duties of the Planning Commission shall be to review the zoning ordinance and to advise the board of adjustment and town council of proposed amendments or changes in the zoning ordinance on a yearly basis. The Planning Commission has the responsibility of updating the zoning map and developing a comprehensive development plan.

B. *Zoning Map*. The boundaries of the districts described in TMC 24.12.010 paragraph A shall be as shown upon the map attached to and made a part of this chapter, which shall be designated the "the zoning map of the town." Said map and all notations, references and other data shown thereon are hereby incorporated by reference into this chapter and shall be considered as much a part of this chapter as if fully described herein.

(UDC 2002, §§ 907, 908)

HISTORY
Amended by Ord. 16-03 on 4/6/2016

Amended by Ord. 2020-004 on 6/3/2020

24.08.050 Nonconforming Uses

A. *Continuance*. Except as otherwise provided in this article, the lawful use of land or buildings existing at the date of the adoption of the ordinance from which this paragraph is derived may be continued although such use or building does not conform to the regulations specified by this section for the zone in which such land or building is located.

B. *Expansion And Enlargement*.

1. A nonconforming use of a building, structure or land may not be extended or enlarged.
2. A nonconforming use shall be considered terminated when the building, structure or improvements are destroyed in excess of 50 percent of its fair market value, as established by an appraisal prepared by a professional appraiser qualified to do business in the state.
3. A nonconforming building or structure may be extended or enlarged only when:
    a. Any new extension or enlargement conforms to the requirements of this chapter.
    b. If the proposed extension or enlargement exceeds 50 percent of the gross floor area of the existing building or structure, then the entire site and buildings must be brought into conformance with this chapter.
    c. Alteration of a building within an existing footprint is permitted, provided that the alteration does not increase the degree of nonconformity.

C. *Restoration*.

1. Restoration of a nonconforming building or structure destroyed less than 50 percent of its fair market value, as established by an appraisal prepared by a professional appraiser qualified to do business in the state, shall be permitted, provided:
    a. The restoration commences within six months of the date of destruction.
    b. The commencement of restoration shall mean the acquisition of a building permit and commencement of construction within six months from the date of destruction.
2. Restoration of a nonconforming building or structure destroyed in excess of 50 percent of its fair market value, as established by an appraisal prepared by a professional appraiser qualified to do business in the state, shall not be permitted, except in conformance with this chapter.
3. The replacement or repair of portions of a nonconforming building or structure declared by the town building code official, to be a hazard or unsafe shall be permitted provided the repairs or replacement do not increase the gross floor areas of the building or increase the degree of nonconformity with the setback requirements and further provided that the portions declared unsafe do not exceed 50 percent of the fair market value of the whole structure, as established by an appraisal prepared by a professional appraiser qualified to do business in the state.

D. *Abandonment; Discontinuance*. A nonconforming use shall be considered abandoned or

discontinued when there occurs a cessation of any use or activity by an apparent act or a failure to act on the part of the tenant or owner to reinstate such use within a period of three months.

E. *Reversion*. No nonconforming use shall, after being changed into a conforming use, be changed back to a nonconforming.

F. *Changes Of Zoning*. Whenever boundaries of a zoning district are changed so as to transfer an area from one zone to another of different classification, the foregoing paragraph E shall also apply to any nonconforming use.

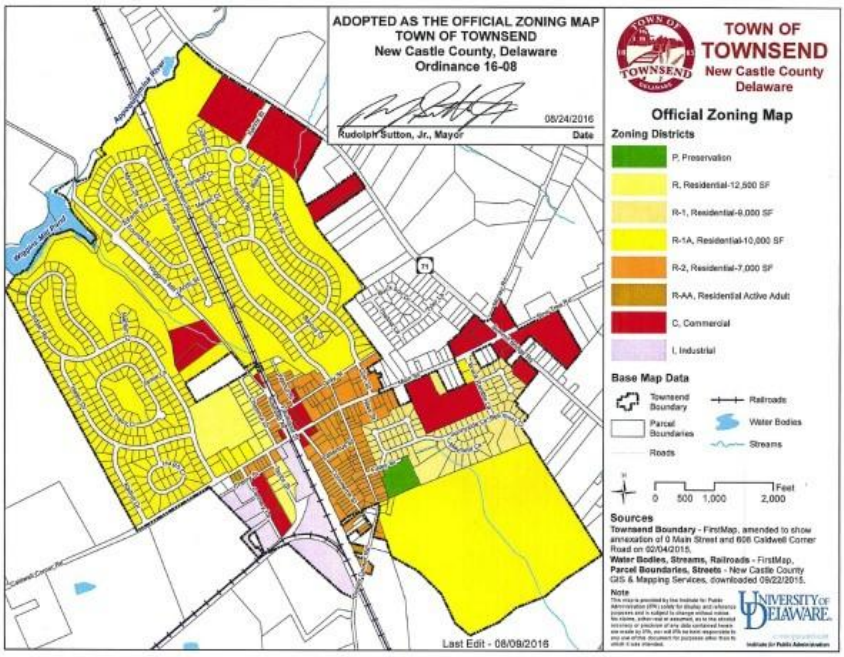
(UDC 2002, §§ 600–605)

24.12 Establishment Of Zoning Districts
24.12.010 Generally
24.12.020 Preservation District (P)
24.12.030 Residential District (R)
24.12.040 Residential District (R-1)
24.12.050 Residential District (R-1A)
24.12.060 Residential District (R-2)
24.12.065 Residential District (R-3)
24.12.070 Commercial District (C)
24.12.080 Industrial District (I)
24.12.090 Residential Active Adult District (R-AA)
24.12.100 Suburban Reserve (SR)

24.12.010 Generally

A. *Zoning Districts Divided*. The town is hereby divided into zoning districts of such number and character as are necessary to achieve compatibility of uses within each district, to promote the comprehensive plan for the town, and to serve the other purposes of this chapter described in TMC 24.04.040. The town is hereby divided in to the following districts: Preservation (P), Residential (R), Residential 1 (R-1), Residential 1A (R-1A), Residential 2 (R-2), Residential 3 (R-3), Residential Active Adult (R-AA), Suburban Reserve (SR), Commercial (C) and Industrial (I).

B. *Map Of Zoning Districts*. Zoning districts established by this article are bounded and defined as shown on the official map of the town, which together with all explanatory materials thereon is hereby made a part of this Code. The location and boundaries of zoning districts are set forth and indicated on said map or maps, entitled "Official Zoning District Map of Townsend."



C. *Interpretation Of Zoning District Map*. In interpreting the official zoning map of the town, the following shall apply:

1. A district name or letter on the zoning map indicates that the regulations pertaining to that district designated by the name or letter extend throughout the entire area of the town bounded by the district boundary lines within which the name or letter is indicated, except as otherwise provided by this article.

2. Where uncertainty exists with respect to the boundaries of various districts as shown on the zoning map, the following rules shall apply:

    a. Boundaries shown following, or approximately following, streets, alleys, or right-of-way easements shall be construed to follow the centerline of such street or right-of-way easements.

    b. Boundary lines shown as following, or approximately following, lot lines, section lines, survey or other property lines, or municipal boundaries shall be construed as co-terminus to said lines.

    c. Where a zoning boundary divides a property and less than 50 feet of that property is in a different zoning district, the entire property shall be considered to be within the district containing the largest area of the parcel.

    d. Boundaries shown as following or approximately following the centerline of streams, rivers, or other continuously flowing watercourses shall be construed as following the channel centerline of such watercourses. In the event of a natural change in the location of such streams, rivers or other watercourses, the zoning boundary shall be construed as moving with the channel centerline.

(UDC 2002, §§ 300–302)

HISTORY
Amended by Ord. 16-08 on 8/24/2016
Amended by Ord. 17-06 on 12/20/2017
Amended by Ord. 18-02 on 4/4/2018
Amended by Ord. 2020-004 on 6/3/2020

24.12.020 Preservation District (P)

A. *Purpose*. The purpose of this district is to preserve undeveloped areas including but not limited to open space, natural areas and woodlands, agricultural lands and areas of special environmental, historic, cultural importance or potential recreational value. It is the intention of this district to preserve such areas to conserve and protect the natural beauty of the town and to enhance the local quality of life and the health and welfare of residents by providing access to natural vistas, open space and the natural environment and opportunities for active and passive recreation.

B. *Permitted Uses.*

1. In a Preservation (P) District no building, structure or land shall be used for any purpose except for one of the following:

    a. General agricultural, including the cultivation of field crops, orchard groves or nurseries for the propagation of plants, turf, trees and shrubs.

    b. Passive recreational uses, whether public or private.

2. The following uses may be permitted as when authorized by a special exception by the board of adjustment:

    a. Accessory farm buildings, including barns, stables, sheds, tool rooms, ships, bins, tanks and silos.

    b. Active public and private recreational uses, including unlighted ball parks, parks, playing fields, and playgrounds. This paragraph shall not be interpreted to permit commercial theme parks, carnivals or similar activities.

    c. Swimming pools or game courts, including structures for keeping and storing of recreational and related maintenance equipment, and those structures necessary for proper operation of recreational lands, parks and open spaces, including concession stands.

    d. Single-family detached dwelling unit provided such dwelling unit is used as a residence in conjunction with a farm or the cultivation of field crops.

3. The uses permitted in paragraph B,2 may be approved only when the following requirements are met:

    a. The proposed use will result in no negative impacts nor materially reduce the quality of any adjoining open spaces, passive recreation areas or lands zoned preservation.

    b. When applicable a land development plan, as herein defined, shall be submitted.

c. The proposed use does not violate any town ordinances and otherwise conforms to the requirements of this section.

4. Area and bulk regulations and requirements for buffer yards, offstreet parking, loading and signs are contained in 24 Appendix A and other sections of this chapter.

(UDC 2002, §§ 401, 402)

24.12.030 Residential District (R)

A. *Purpose*. The purpose of this district is to establish and maintain residential areas together with residentially compatible neighborhood uses, such as schools, churches, community centers, recreational areas and accessory uses incidental to and compatible with residential neighborhoods.

B. *Permitted Uses And Regulations*.

1. In a Residential (R) District, no building, structure or lands may be used except for one of the following purposes:

a. Single-family detached dwelling unit.

b. Garden, orchard or nursery, but not commercial greenhouse.

c. Public utility uses except electrical substations, relay stations, treatment plants and pumping stations.

d. Public and private elementary, junior and senior high schools.

e. Park, playground and athletic field, recreation building and community center when operated on a noncommercial basis for public recreation purposes.

2. In a Residential (R) District the following uses are permitted when accessory to a principal use permitted in paragraph B,1:

a. Garden houses, tool houses, playhouses, or greenhouses incidental to a residential use.

b. Private, noncommercial swimming pools and game courts for the use of occupants and guests.

c. Private garages and detached workshops.

d. Storage of boats trailers, motor homes and recreational vehicles when not stored in a front yard, when owned by the occupant.

e. The keeping of not more than six domestic animals, or nonvenomous insects and reptiles outdoors and only for noncommercial use.

3. In a Residential (R) District the following uses are permitted when approved as a special exception by the board of adjustments pursuant to the following requirements:

a. Home occupations when the following conditions are met:

(1) A member of the family residing in the dwelling will carry out the occupation or profession contained in the home.

(2) The occupation or profession shall be carried out wholly within the

principal building or a structure accessory thereto already existing on the property.

(3) Not more than one non-family member is employed.

(4) Not more than 25 percent of the dwelling may be utilized for the home occupation.

(5) No customers visit the subject property.

(6) No signs of any kind identifying the home occupation may be displayed.

(7) Deliveries are provided by vehicles no larger than a step van or panel type truck.

(8) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced by the home occupation.

(9) The proposed occupation or profession does not violate any town ordinances and otherwise conforms to the requirements of this section.

b. Residential professional offices when the following conditions are met:

(1) A residential professional office shall be permitted for a recognized professional occupation.

(2) A land development application and plan must be submitted.

(3) The proposed residential professional office shall result in no negative impacts upon the local community, especially with regard to on-street parking, traffic congestion, refuse, noise, vibration, dust, odor, heat or glare.

(4) The proposed occupation or profession does not violate any town ordinances and otherwise conforms to the requirements of this section.

c. Home daycare when the following conditions are met:

(1) The maximum number of children (exclusive of children living in the home and related to the caregiver by blood, marriage or legal adoption) permitted to be cared for in any single home day care facility shall be six, unless further restrictions by other codes.

(2) The caregiver shall be registered or licensed by the state.

(3) There shall be no structural change to the exterior of the dwelling to accommodate the day care use unless normal revisions to a typical dwelling.

(4) There shall be a minimum of 40 square feet of floor space per child, inclusive of space occupied by furniture and equipment but exclusive of closets, halls, bathrooms, kitchens and related areas, which shall be on the first floor of the single-family dwelling.

(5) A minimum of 100 square feet of outdoor space per child shall be available on the same lot.

(6) A driveway shall be available to provide safe and convenient offstreet drop-off and pick-up.

d. Churches when the following conditions are met:

(1) A land development application and plan must be submitted.

(2) The proposed church shall result in no negative impacts upon the local community, especially with regard to on-street parking, traffic congestion, refuse, noise, vibration, dust, odor, heat or glare.

(3) The proposed church does not violate any town ordinances and otherwise conforms to the requirements of this section.

4. When subdivision and/or land development process is considered, pursuant to the requirements of TMC 24.20.100 in a Residential (R) District a minimum of ten percent of the gross tract area shall be dedicated to public use as open space for the purpose of active and passive recreation.

5. Area and bulk regulations and requirements for buffer yards, offstreet parking, loading and signs are contained in 24 Appendix A and other sections of this chapter.

(UDC 2002, §§ 405, 406)

HISTORY
Amended by Ord. 15-03 on 3/4/2015

24.12.040 Residential District (R-1)

A. *Purpose*. The purpose of this district is to establish and maintain a single family district with modestly sized lots, together with compatible neighborhood uses such as schools, churches, community centers, recreational areas and accessory uses incidental and compatible with residential neighborhoods.

B. *Permitted Uses And Regulations*. In Residential (R-1) Districts the permitted uses and regulations shall be same as those contained in TMC 24.12.030 paragraph B.

(UDC 2002, §§ 408, 409)

24.12.050 Residential District (R-1A)

A. *Purpose*. The purpose of this district is to establish and maintain a single family district, together with compatible neighborhood uses such as schools, churches, community centers, recreational areas and accessory uses incidental and compatible with residential neighborhoods.

B. *Permitted Uses And Regulations*. In Residential (R-1A) Districts the permitted uses and regulations shall be same as those contained in TMC 24.12.030 paragraph B.

(UDC 2002, §§ 411, 412)

24.12.060 Residential District (R-2)

A. *Purpose*. The purpose of this district is to establish and maintain a single-family residential

district with lot sizes reflecting the average lot in the section of the town existing at the time of the original adoption of the zoning ordinance for the town, together with compatible neighborhood uses such as schools, churches, community centers, recreational areas and accessory uses incidental to and compatible with residential neighborhoods.

B. *Permitted Uses And Regulations*. In Residential (R-2) Districts the permitted uses and regulations shall be same as those contained in TMC 24.12.030 paragraph B.

(UDC 2002, §§ 414, 415)

24.12.065 Residential District (R-3)

A. *Purpose*. The purpose of this district is to accomplish the same objectives as in the R, R-1, R1-A and R2 districts while affording a greater variety of dwelling and lot types. The purpose of this district is to establish and maintain a multi-family residential district with lot sizes reflecting the average lot in the section of the town existing at the time of the original adoption of the zoning ordinance for the town, together with compatible neighborhood uses such as schools, churches, community centers, recreational areas and accessory uses incidental to and compatible with residential neighborhoods.

B. *Permitted Uses And Regulations*.

1. In Residential (R-3) Districts the permitted uses and regulations shall be same as those contained in TMC 24.12.030 paragraph B.

2. Townhomes meeting the following requirements.

a. Minimum Yard Requirements:

(1) Minimum lot area: 2,200 sq. ft.

(2) Minimum lot width: 20 ft.

(3) Minimum lot depth: 110 ft.

(4) Maximum height: 40 ft.

(5) Minimum front yard setback, principal dwelling 20 ft.

(6) Minimum front yard setback, open front porch, steps 6 ft.

(7) Minimum side yard setback: 12 ft. (20 ft for corner lot)

(8) Minimum rear yard setback: 20 ft.

(9) Maximum lot coverage: N/A

(10) Maximum of 7 units within a building footprint

3. Building scale and character standards:

a. To maintain Townsend's small-town character through building design guidelines that address the overall appearance of townhouse dwellings through facade design elements, all exterior design elements shall form an integrated development and ensure that large buildings reduce their apparent mass and bulk on elevations visible from the street or pedestrian routes to ensure that buildings are based on human scale (i.e., the relationship of the size of the building's features to the people that use the building).

4. The following requirements shall apply to all townhouse dwellings:

    a. Building length of individual building facades defined as the continuous horizontal distance, measured from end-wall to end-wall, shall not exceed 180 feet.

    b. Primary pedestrian entrances shall be facing and visible from the primary street and a porch, covered stoop, or similar entry feature shall be located at the ground floor exterior entrance of each townhouse dwelling unit to offer overhead protection and provide shelter from inclement weather. Entrance doors are encouraged to include architectural detailing such as contrasting paint color(s) and decorative trim.

    c. All townhouse buildings shall incorporate design elements that will break up large expanses of uninterrupted building surfaces (blank walls). Along the facade of all townhouse buildings, design elements shall occur at a minimum interval of 20 feet.

5. The following design elements shall be included:

    a. Varying roof lines and forms:

        (1) Roof lines shall be varied through combinations of roof heights and styles that create variation and visual interest.

        (2) Guidelines:

            (A) Provide offsets or breaks in roof elevations of two (2) feet or greater in height.

            (B) Incorporate the roof pitch and materials of adjacent buildings into carport or garage roofs.

    b. Building facade colors and materials:

        (1) At least two variations in color and materials shall be used in the treatment of the building facade.

        (2) Guidelines:

            (A) Decorative patterns on exterior materials may include scales/shingles, wainscoting, ornamentation, and similar features.

    c. Bays, porches or balconies:

        (1) Guidelines:

            (A) Incorporate smaller-scale forms such as bays, recessed or projecting balconies or porches and dormers into the design to visually reduce the height and scale of the building and to emphasize the definition of individual units.

    d. Wall offsets.

        (1) A wall offset is defined as a projection or recess of a facade wall of at

least two feet in depth. Wall offsets shall be incorporated onto those building facades having a length of at least 20 feet or greater. Wall offsets shall be a minimum of six feet in length.

e. Windows.

(1) Decorative window features, such as arched windows, transoms, decorative pediments, and/or window shutters that are sized appropriately and proportionally to the window shall be required on those facades fronting on streets.

(2) Guidelines:

(A) Windows of varied shape, size, and placement are encouraged.

(B) The use of recessed windows, moldings, decorative trim and wood frames to add three-dimensional quality and shadow lines to the facade.

f. Front yards.

(1) Landscaped front yards offer a welcoming and safe transition from public to private space, define property lines, create a unique identity, buffer noise and provide visual screening. A minimum of 50 percent of the open areas in the front yard shall be landscaped with flowering or evergreens shrubs and shall not exceed a maximum of three feet in height at maturity. All grassed areas shall be sodded with a drought-resistant grass.

g. A four-foot wide walkway constructed of concrete or decorative pavers shall extend from the sidewalk to the exterior entrance of each townhouse dwelling unit.

h. Off-street parking required minimum 2 spaces per unit. Ref to Division 3 guidelines. Additional parking in the amount 0.25 per unit must be provided for overflow parking in the development.

Illustration 1



Illustration – Example of Building Scale & Character Standards

Illustration 2



Illustration – Example of Building Scale and Character Standards

Illustration 3



Illustration – Example of Building Scale & Character Standards

Illustration 4



Illustration – Example of Building Scale and Character Standards

C. *Parking for Apartments and Townhomes.*

1. No on-street parking permitted.
2. All parking spaces, aisles, and turning areas shall be located entirely within the served property's lot lines and shall not encroach on any road, driveway, or other public right-of-way. No parked vehicle shall overhang any road, sidewalk, access driveway, or public right-of-way.
3. When the number of required off-street parking spaces results in a fractional space, the fractional space shall be counted as one (1) parking space. If several uses occupy a single parcel or building, the off-street parking and loading requirement shall be the additive total for all these parcel's or building's uses;
4. In regard to parking requirement for apartments the following shall mandate available spaces: 1.5 per 1 bedroom dwelling unit, 2 per 2 or 3 bedroom dwelling unit, 3.25 per 4 bedroom dwelling unit, 4.5 per 5+ bedroom dwelling unit; 1 additional guest parking space per 5 dwelling units.

(UDC 2002, § 414)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.12.070 Commercial District (C)

A. *Purpose*. The purpose of this district is to provide sufficient land area in appropriate locations for a variety of commercial activities providing a diversity of goods and services to meet both the needs of the local community as well as adjacent areas of the county. These areas should be concentrated primarily along certain existing thoroughfares where a general mixture of commercial and service activities already exist. The Commercial (C) Districts of the town are not to be characterized by extensive warehousing, frequent or heavy truck traffic, open storage of materials or other nuisances such as excessive noise, odor and dust normally associated with manufacturing and heavy industry. Land uses, businesses and buildings and structures constructed to support the permitted use in the Commercial (C) Districts should be developed to preserve, conserve and enhance the small town, pedestrian-oriented character of the town's

center areas.

B. *Permitted Uses And Regulations*.

1. In a Commercial (C) District, no building or premises shall be used and no building erected or altered which is to be arranged, intended or designed to be used except for one or more of the following uses:

    a. Churches or other places of worship.

    b. Public and private elementary, junior and senior high schools.

    c. Park, playground, athletic field, recreation buildings and community centers operated on a noncommercial basis.

    d. Child and daycare centers, nursing homes, convalescent homes and rest homes.

    e. Medical or health clinic, medical office building, doctors' office and dentists' office.

    f. Public and private lodges and organizations, public and governmental buildings or uses including town offices, fire stations and police stations.

    g. Public utility structures and uses, such as electrical substations, relay stations, sewage treatment plants and pumping stations.

    h. Undertaker and funeral parlors.

    i. A single-family detached dwelling unit, when such unit is associated with a permitted office or business or commercial use and occupied by the proprietor or an employee of the said business.

    j. A multifamily dwelling is permitted on any floor above the first floor in accordance with the regulations of this section pertaining to required area and bulk regulations and other requirements of a residential district, provided that the first floor is used in its entirety for a permitted office, business, or commercial use.

    k. Offices for professional services and administrative functions.

    l. Financial institutions, banks and loan companies.

    m. Barbershops and beauty parlors.

    n. Retail food stores such as bakeries, restaurants, coffee shops, candy, convenience grocery stores, meat market, and delicatessens, excluding the preparation of goods for sale off the premises.

    o. Drive-in restaurants and fast food establishments.

    p. Retail stores, which shall be limited to the sale of gifts, antiques, flowers, jewelry, newspapers, hobbies, stationary, art supplies, consumer electronics, hardware, clothing, drug stores, beverage or liquor stores, and books, excluding adult bookstores and adult entertainment centers.

    q. Repair and servicing, indoors or off-site, of any article for sale which is permitted in this district.

    r. Hotels, motels, bed and breakfasts, and motor lodges and tourist homes.

s. Animal hospital, veterinary office, or enclosed kennel, provided that such facility is at least 300 feet from a residential district boundary.

t. Painting shop, upholstering shop (but not furniture manufacturing), furniture sales, tire sales and service.

u. Automobile, truck, motorcycle or bus sales, service storage and repairs (but not junk or salvage yards) and provided that major repair or storage of damaged vehicles shall be inside a completely enclosed building.

v. Wholesale establishments.

2. In a Commercial (C) District the following uses are permitted when accessory to a principal use permitted in TMC 24.12.060 paragraph B:

a. Any accessory use permitted in a residential district.

b. Storage of merchandise, equipment or office supplies normally carried in stock in connection with a permitted business establishment.

3. Area and bulk regulations and requirements for buffer yards, offstreet parking, loading and signs are contained in 24 Appendix A and other sections of this chapter.

4. *Buffer Yards*.

a. Whenever a commercial building, land use or district adjoins a residential dwelling, land use or district a planted landscaped buffer shall be provided along all property lines which adjoin the residential dwelling, land use or district.

b. The depth of the buffer yard shall be no less than 25 feet.

c. The buffer yard shall contain a combination of native plant material and, at a minimum, contain the following:

(1) Deciduous canopy trees, not less than 3 1/2 inches in caliper at the time of planting, at a maximum spacing of 30 feet on center.

(2) Evergreen trees, not less than six feet in height at the time of planting, planted in a double staggered row of ten feet on center between plantings in the same row and five feet on center between plantings in adjacent staggered rows.

(3) Groupings of appropriate understory plantings in the form of deciduous and evergreen ornamental and flowering shrub plantings, not less than 36 inches in height and planted at a maximum spacing of three feet on center. Shrub plantings may be provided in the form of a hedge row or in informal groupings, however, in either case, the total number of plantings may not be less than the length of the buffer yard divided by the required spacing.

(UDC 2002, §§ 417, 418)

HISTORY
Amended by Ord. 12-01 on 2/1/2012

24.12.080 Industrial District (I)

A. *Purpose*. The purpose of this district is to provide sufficient land area in appropriate locations for certain types of businesses and manufacturing uses that must be separated from other land uses because of negative impacts and externalities that cannot be made compatible with other uses. Industrial parks, which contain modern and well-maintained buildings that are extensively landscaped, are the type of development which is encouraged by Industrial (I) District zoning. In order to reserve lands for appropriate future industrial development and to avoid conflicts with other uses, residential uses in this district are proscribed.

B. *Permitted Uses And Regulations*.

1. *Permitted Principal Uses*. In an Industrial (I) Zoned District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following purposes:

    a. Manufacturing, assembling, converting, finishing, cleaning, cooking, baking, or any other manufacturing or industrial processing of goods, and devices provided that fuel used for such processing or manufacturing shall be oil, gas, or electricity.

    b. Any process involving cleaning, distribution, manufacturing, processing, production, warehousing, or testing, except for the following: Manufacture of concrete asphalt materials, corrosive acids, pigments, dyes, abattoir, storage of oil, fuel such as coke, coal or petroleum products, storage in bulk of illuminating or natural gas, freight terminal, radio broadcasting towers, ice manufacture or storage, agricultural uses, raising of minks or foxes, airport facilities, automobile service stations or public garage, paint or body shop, auction, automobile reclamation, salvage yard, explosives including dynamite, fireworks or explosive powder, gelatin, paint, oils, fertilizer, linoleum, cork products, alcohol, bleaching compounds or soap, tanning or curing of hides, crude oil refining, rubber treatment or manufacture, ore smelting, blast furnace, garbage or offal reduction or dumping, asphalt manufacturing or refining, junk storage, toxic water or radioactive waste storage or dumping, automobile wrecking or animal rendering.

    c. Printing, publishing, binding, packaging, storage, warehousing, transshipment and distribution and trucking of material, subject to other provisions of this section.

    d. Business, professional or administrative offices.

    e. Public utility uses and structures including electrical substations, relay stations, sewage treatment plants and pumping stations.

    f. Bottling works, cleaning works or commercial laundry.

    g. Research, design, testing and development laboratories, except those involving infectious and hazardous substances (as defined by the EPA or state and local officials).

    h. Building materials, sales and storage yards provided they are stored inside a fully enclosed building.

2. *Permitted Accessory Uses*. In an Industrial (I) District the following uses are permitted when accessory to a principal use permitted in TMC 24.12.070 paragraph A,1:

    a. Food service facilities incidental to, and located within any of the permitted uses within this district, primarily for service to employees of such permitted

uses, provided:

(1) There shall be no entrance directly from the street to such facility.

(2) No sign relating to such facility shall be visible from outside the building.

(3) Facilities shall be so located and constructed to protect occupants of such buildings from noise, traffic, odors, and interference with privacy.

b. Recreation facilities intended primarily for the use of the employees of such uses permitted in this district.

3. *Area And Bulk Regulations*. Area and bulk regulations and requirements for buffer yards, offstreet parking, loading and signs are contained in 24 Appendix A and other sections of this chapter.

4. *Buffer Yards*.

a. Whenever an industrial building, land use or district adjoins a residential dwelling, land use or district, a planted landscaped buffer shall be provided along all property lines which adjoin the residential dwelling, land use or district.

b. The depth of the buffer yard shall be no less than 50 feet.

c. The buffer yard shall contain a combination of native materials and, at a minimum, contain the following:

(1) Deciduous canopy trees, not less than 3 1/2 inches in caliper at the time of planting, at a maximum spacing of 30 feet on center.

(2) Evergreen trees, not less than six feet in height at the time of planting, planted in a double staggered row of ten feet on center between plantings in the same row and five feet on center between plantings in adjacent staggered rows.

(3) Appropriate understory plantings in the form of deciduous and evergreen ornamental and flowering shrub plantings, not less than 36 inches in height and planted at a maximum spacing of three feet on center. Shrub plantings may be provided in the form of a hedge row or in informal groupings, however, in either case, the total number of plantings may not be less than the length of the buffer yard divided by the required spacing.

(4) A permanent opaque screening fence or wall to be erected behind the required plantings in the buffer yard on the industrially zoned side of the buffer yard.

5. *Special Regulations*. Notwithstanding any other subsequent requirements pertaining to this district the following special regulations shall also apply:

a. The parking of motor vehicles associated with the industry within 75 feet of a residential district is prohibited.

b. No building in which manufacturing or processing operations take place shall be located closer than 150 feet to a residential district boundary line. This requirement shall not apply to administrative or office buildings, or other

buildings which do not include processing or manufacturing operations.

c. All uses permitted within this district shall comply with the limitations and requirements set forth by the following performance standards including expansion of existing industrial uses:

(1) *Humidity, Glare Or Heat*. Any operation producing excessive humidity in the form of steam or moist air, or producing intensive glare or heat, shall be performed within an enclosure and in such manner as not to be perceptible at or beyond any lot line. Exposed sources of light shall be shielded so as not to create a nuisance across lot lines.

(2) *Vibration*. Any industrial operation or activity, which shall cause, at any time and at any point, perceptible earth borne vibration along the nearest adjacent property line, is prohibited. Vibrations shall be measured using the most current methods and techniques available.

(3) *Radioactivity Or Electromagnetic Disturbance*. No activities shall be permitted which emit dangerous radioactivity at any point, or electromagnetic disturbance affecting the operation at any point of any equipment other than that of the creator of such disturbance.

(4) *Liquid Or Solid Wastes*. No discharge shall be permitted at any point into any public sewer, private sewage disposal system or stream, or into the ground except in accord with standards approved by the State Department of Natural Resources and Environmental Control or standards equivalent to those approved by such department for similar uses, or any materials of such nature or temperature as to contaminate any other supply or otherwise cause the emission of dangerous or offensive elements.

6. *Performance Standards Procedures*. An application for a building permit or a certificate of zoning compliance for a use subject to performance standards shall be submitted to the board of adjustment in duplicate and shall be referred by the board of adjustment to the town council. The applicant shall submit in duplicate a plan of the proposed machinery operations and products in accordance with rules prescribed by the town council specifying the type of information required in such plans and an affidavit by the applicant acknowledging the understanding of the applicable performance standards and agreement to conform with same at all times. No applicant will be required to reveal any secret processes and any information requested will be treated as confidential. The fee for such application shall include the cost of special reports required to process the applications as described below.

7. *Expert Consultation*. If there is any reasonable doubt as to the conformance with performance standards, the board of adjustment shall refer the application for investigation and report to the town council for one or more expert consultants qualified to advise whether such proposal will conform to the applicable performance standards specified herein. Such consultant shall make such report to the town council within 30 days after the receipt of said application. A copy of the report shall be furnished to the applicant.

8. *Decision Of The Board Of Adjustment*. At the next regular meeting of the town council, but in no event more than 30 days after submission of the consultants report, the board of adjustment shall decide to authorize or deny the issuance of a building permit or certificate of zoning compliance based upon the report concerning compliance with

performance standards of this section. Such decision shall be in the form of a written report. The issuance of a building permit or certificate of zoning compliance shall be conditioned on the applicant's installation and operations conforming to the applicable performance standards and the applicant's payment of fees for service of the consultant deemed reasonable and necessary by the town council.

(UDC 2002, §§ 420, 421)

24.12.090 Residential Active Adult District (R-AA)

A. *Purpose*. The purpose of this district is to establish and maintain a residential district that would permit townhouses and condominiums, as well as single family homes, for active adult and assisted living facilities. All property in a Residential Active Adult (R-AA) District shall be subject to deed restrictions that comply with applicable federal law.

B. *Permitted Uses.*

1. In a Residential Active Adult (R-AA) District, no building, structure or land may be used except for one of the following purposes:

    a. Detached single-family dwelling units.

    b. Condominiums.

    c. General-purpose community centers, recreation areas, clubhouses and related facilities.

    d. Assisted living facilities.

    e. Open spaces, conservation areas and facilities.

    Any such use shall be deed-restricted in accordance with all applicable laws and regulations to provide for an age-restricted, active adult community such that each residential unit shall be owned or operated or lived in by at least one resident who is 55 years or older.

2. All provisions of the Federal Fair Housing Act (42 USC 3601 et seq.) shall be complied with by the applicant to the satisfaction of the town.

3. The form and wording of the proposed deed restrictions shall be submitted to the town for review, as part of the application for preliminary site plan and/or subdivision approval. The wording shall be reviewed, modified as necessary, and finally approved by the town and incorporated within a developer's agreement between the developer and the town as a condition of any approval granted by the town for an active adult, age restricted housing development.

4. All dwelling units that are to be part of the age restricted community shall be deed-restricted to contain all necessary living arrangements on the first floor. This shall include at least one bedroom and full sanitary facilities, including shower/tub installation, on the first floor of the dwelling.

5. Notwithstanding the minimum lot size requirements set forth in other provisions of this Code, an active adult community shall be permitted a density of up to six dwelling units per acre.

6. Area and bulk regulations and requirements for buffer yards, off-street parking, loading and signs are contained in 24 Appendix A and other sections of this chapter.

(UDC 2002, §§ 423, 424)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.12.100 Suburban Reserve (SR)

A. *Purpose.*

1. This district is intended to be served with sewer and water in the future and rezoned when the sewer construction is imminent. The district is also designed to permit limited development that does not foreclose ultimate sewering of the area. The preservation of large amounts of open space and agricultural land is encouraged in this district and such land may be used for spray irrigation as permitted by this Chapter.
2. The countryside character of this district is designed to facilitate residential and agricultural use. Should land develop before sewers are provided, it should be accomplished in a manner which preserves available farmland and consolidates development in such a way as to minimize the impact on the land.
3. Incentives shall be developed for open space development to preserve land that can be farmed.
4. A number of special provisions apply to this district that are intended to be an incentive for agriculture to continue, even as residential development occurs, by maximizing the contiguous farmland and providing farm operators additional revenue sources.

HISTORY
Adopted by Ord. 2020-004 on 6/3/2020

24.16 Vacant, Deteriorated Structures
24.16.010 Findings
24.16.020 Definitions - Vacant, Deteriorated Structures
24.16.030 Authorization
24.16.040 Emergency Situation
24.16.050 Costs Of Improvements Or Demolition To Be Lien And A Debt
24.16.060 Expenditure Of Public Funds
24.16.070 Securing Open Areas Of Buildings And Structures
24.16.080 Unlawful Actions

24.16.010 Findings

Vacant structures constitute blight that effects the quality of life of the citizens of the town as well as being public health and safety hazards.

(UDC 2002, § 425)

24.16.020 Definitions - Vacant, Deteriorated Structures

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Blighted property" means a structure is deemed blighted if it has been permitted to degrade to a point that is detrimental to the safety, health, welfare or general aesthetics of the surrounding neighborhood.

"Emergency situation" means a property or structure is in such condition as to cause an immediate danger to the public health and safety of the community.

"Vacant" means no one resides in it for a period of 45 days. A commercial or industrial structure is deemed vacant if it is not used for the commercial or industrial use to which was previously utilized or for any other permissible use for a period of 45 days.

(UDC 2002, § 425A)

24.16.030 Authorization

A. The town is authorized to initiate the making of improvements to the exteriors of vacant buildings or structures in accordance with this section. Furthermore, the town also has the authority to order the demolition of a vacant building in the event that the structure is not salvageable and poses a risk to safety. The town may also authorize work on a vacant structure if the appearance has a substantial impact on the property values of other buildings or structures within the vicinity of such vacant building or structure.

B. Exterior improvements, authorized herein, may include, but are not limited to: Repairs to or replacement of any of the structural components of such building or structure, sidewalks in the right-of-way or on the lot which this building or structure is located, steps, porches, railing, columns, windows, doors, exterior painting, brick pointing and roofing, and any other repairs or replacements deemed appropriate to protect and secure the structural integrity of the building or structure and to prevent further damage that would render the building or structure unsafe. In the event that the building is not salvageable and/or poses a safety risk, the town has the authority to order the demolition of the building. The costs incurred by the town shall be recorded by lien in accordance with these provisions.

C. When exterior improvements have been authorized by the town council, the town shall provide notice to the record owner of the subject building or structure and to any record lienholder that such exterior improvements will be undertaken and the date of commencement of the same. For purposes of this paragraph, the mailing of a certified letter, return receipt requested, at least 30 days prior to the commencement of the exterior improvements, to the last known address of the record owner or lienholders and notifying same of the address of the property to be improved, the tax parcel number, the condition of the property and the legal right of the town to obtain a judgment against the owner and a lien against the property after completion of the exterior improvements, shall be deemed to be sufficient notice. In the event that the owner makes no attempt to remedy the situation in 30 days after sending the notice, the town then has the right to exercise its authority to perform exterior improvements and/or demolition to said building. After 30 days has expired all costs generated by the town, including legal fees, engineering fees, and construction costs by the town's contractor for the exterior work on the vacant house shall be recorded by lien in accordance with these provisions and will be the direct responsibility of the owner.

D. The town has the option of filing an action in a justice of the peace court to compel the owner to make the necessary improvements to the property or to demolish the structure. This action can be brought 30 days after notice as set forth in paragraph B. All costs of such a proceeding including court costs, legal fees, engineering fees and expert witness fees shall be the responsibility of the owner and shall be entered as a lien on the property.

E. Liens are recorded in a lien book maintained by the town. Liens may be transferred to the superior court of the state.

(UDC 2002, § 425B)

24.16.040 Emergency Situation

If there exists an emergency situation the town has the authority to initiate the necessary improvements to eliminate the emergency or to demolish the property without prior notification to the owner before commencing improvements or demolition. The town shall make reasonable efforts to notify the owner as soon as possible. The town shall advise the owner of the nature of the work performed and its costs within a reasonable period of time.

(UDC 2002, § 425C)

24.16.050 Costs Of Improvements Or Demolition To Be Lien And A Debt

A. Whatever expenses are incurred in relation to authorized exterior improvements and/or demolition pursuant to this paragraph shall be paid by the town out of funds in the treasury, and the owner shall be jointly and severally liable to the town for the full amount so expended. Whenever exterior improvements costs have been incurred as aforesaid, the expenditure of public funds for exterior improvements or demolition to any building or structure deemed to be unsafe, following notice to the owners, the costs so incurred, with interest to be levied at a rate of 18 percent accrued annually from the date of expenditure, shall be reimbursed to the town, on demand, by the person who were the owner of such building or structure at the time such work of exterior improvement or demolition commenced.

B. The town may maintain an action of law in debt against the owner to recover the sums of money so expended, plus interest at a rate of 18 percent accrued annually, costs and legal fees.

(UDC 2002, § 425D)

24.16.060 Expenditure Of Public Funds

A. When the town expends public funds for the purpose of exterior improvements and/or demolition to any vacant building or structure deemed unsafe and after such notice has been given, the town may enter a lien for the amount so expended in a lien book maintained by the town. The lien may be transferred to the superior court of the state.

B. The amount of the lien shall include the total cost of the improvements, all court costs, all legal fees, and engineering fees, and all interest accrued thereon, on the lands and premises on which such work of exterior improvements and/or demolition was performed.

(UDC 2002, § 425E)

24.16.070 Securing Open Areas Of Buildings And Structures

A. *Violations.* It shall be unlawful for any owner, agent, or person in control of any building or structure which is vacant and open or otherwise unsafe to fail to secure and board up the open areas of any such building. If, after a reasonable time, the building or structure is not secured, but rather it remains vacant and open otherwise, unsafe, an authorized agent or employee of the town may enter upon the premises, building or structure and secure or board up the open areas of such building or structure, or cause the same to be done. If the authorized agent or employee of the town is denied entrance to the premises, building or structure for purposes of securing and boarding up the open areas of such building or structure, he may, upon a showing of probable cause, obtain a warrant from a justice of the peace for purposes of entering and securing and boarding up the subject building or structure.

B. *Cost Incurred.* The owner of the subject building or structure shall be jointly and severally liable to the town for the full amount so expended in securing and boarding it up. The owner, agent or

person in control of such building or structure shall reimburse the town for all costs incurred by the town in so securing or boarding up such building or structure. The town may maintain an action of law in debt or assumpsit's against such owner to recover the amount of money so expended, plus lawful interest, costs and legal fees.

C. *Reimbursement Of Town At Time Of Sentencing Of The Violator.* When any persons are found guilty, whether by trial or by admission, of violating provisions of this section, in instances in which such person, at the time of sentencing for such violation, also has not reimbursed the town for costs incurred by the town in securing and boarding up the open areas of any building or structure regarding which such person shall be found guilty, the justice of the peace shall order such person to make full restitution to the town for such costs in addition to and not in lieu of any fine which the court may impose.

(UDC 2002, § 425F)

24.16.080 Unlawful Actions

A. It shall be unlawful to permit a building or structure to be vacant and boarded up for a period exceeding 45 days.

1. A first offense shall be punishable by a fine not less than $200.00 nor more than $500.00 or by a term of imprisonment of not more than 30 days or both.
2. A subsequent like offense shall be punishable by a fine of not less than $500.00 nor more then $1,000.00 or by a term of imprisonment of not more than 60 days or both.
3. Each day a building or structure is vacant and boarded up for a period in excess of 45 days constitutes a separate offense.

B. It shall be within the discretion of the town to grant an extension of time to permit a vacant building to remain boarded up in excess of 45 days, but no more than six months, if active rehabilitation of the structure is on going and the following requirements are met:

1. The owner of the property must submit a written letter to the town stating specific work taking place or to take place, including a time table of each aspect of the rehabilitation.
2. All necessary building permits must be acquired, or if previously acquired, must be active.
3. The work being performed must be continual throughout the entire period the building remains boarded.

(UDC 2002, § 425G)

24.20 Design Standards

24.20.010 Streets And Rights-Of-Way
24.20.020 Parking Requirements
24.20.030 Loading Requirements
24.20.040 Stormwater Management
24.20.050 Grading And Erosion Control
24.20.060 Utilities
24.20.070 Landscaping
24.20.080 Fences
24.20.090 Lighting
24.20.100 Open Space

24.20.010 Streets And Rights-Of-Way

A. *Street Design Objectives.*

1. New streets constructed as a part of a subdivision or land development proposal or extensions and reconstruction of existing streets shall be designed to achieve the following objectives:

    a. Support the current and future need for safe and convenient vehicular circulation.

    b. Support the current and future need for safe, convenient and accessible pedestrian circulation.

    c. Integrate new streets into the town's existing street network by extending and, respecting the existing grid character of the town's historic street pattern.

    d. Limit the need for excessive grading, stormwater management and disturbance of environmentally sensitive areas.

2. Street Network.

    a. Whenever possible, new development shall incorporate the extension of the town's existing streets and rights-of-way.

    b. Where topography, site size and shape permits, new development shall to the greatest extent possible utilize a grid system of streets, consisting of a formal block layout, right-angled intersections and through streets to expand upon the town's historic street pattern. Dead-end streets shall be avoided whenever possible.

    c. Where dead-end streets cannot be avoided, the right-of-way of such streets shall be extended to the property boundary to support future extension.

    d. All developments shall include a minimum of two access points to a collector or arterial street.

    e. When a vehicular connection is not provided, because of physical or environmental restraints, between residential developments, a pedestrian connection must be provided.

B. *Cul-De-Sac Streets.*

1. Cul-de-sac streets may be used only when, due to physical or environmental constraints, a thru street connection cannot be achieved.

2. In any case, a cul-de-sac street may provide access for no more than five dwelling units.

3. Cul-de-sacs shall not exceed two hundred and fifty (250) to five hundred (500) feet in length depending on the density and topography. Length by density is to be approved by the Town Engineer. Inside diameter of cul-de-sacs is to be no less than 100' with grass or landscaping in center.

C. *Right-Of-Way And Cartway Widths.*

1. The minimum right-of-way width and cartway widths for new streets shall be according to the following schedule:

Street type	Right-of-way width	Cartway width
Arterial	Pursuant to DelDOT Requirements	Minimum 28 feet
Collector	Pursuant to DelDOT Requirements	Minimum 32 feet
Local (Cul-de-sac)	Pursuant to DelDOT Requirements	See paragraph B,3

2. When a subdivision or land development obtains frontage on a street possessing insufficient right-of-way or cartway width the applicant shall be required to dedicate one-half of the necessary additional right-of-way or cartway width, measured from the existing centerline of the street, to meet the ultimate right-of-way and cartway width requirements of paragraph C,1.

    a. Turnarounds, independent of the parking bay areas, must be provided at the end of the streets to permit maneuvering of service and emergency type vehicles. Circular turnarounds are preferred; alternate designs reflecting the number of dwelling units and length of street must have the Planning Commission's approval.

    b. The number of dwelling units on any non-collector street shall not exceed 50.

    c. Any subdivision greater than 35 dwelling units must be designed in a manner to provide a collector street system. Collector streets will be designed in accordance with the following:

        (1) A collector street serving a community of 35 or more dwelling units shall have a minimum right-of-way width of sixty (60) feet and a street width of 30 feet, gutter line to gutter line.

        (2) A collector street serving a community of 300 dwelling units or more shall not have lots fronting on it.

D. *Street Alignment.*

1. *Horizontal Alignment*. To ensure adequate sight distance, the minimum centerline radii for horizontal curves shall be as follows:

    a. Local street: 150 feet.

    b. Collector street: 300 feet.

    c. Arterial street: 500 feet.

2. *Vertical Alignment*. Vertical curves shall be utilized at changes of grade exceeding one percent and shall be designed to provide the following minimum sight distance:

    a. Local street: 100 feet.

    b. Collector street: 200 feet.

c. Arterial street: 400 feet.

E. *Street Grades*.

1. The minimum centerline grade for all streets shall be one half of a percent (0.5%).
2. The maximum centerline grade for local streets shall be ten percent. The maximum centerline grade for collector of arterial streets shall be six percent.
3. Where the grade of any street at the approach to an intersection exceeds seven percent, a leveling area shall be provided having not greater than four percent grade for a distance of 25 feet measured from the nearest right-of-way line of the intersecting street.

F. *Intersections*.

1. Streets shall be laid out to intersect as nearly as possible at right angles. No street shall intersect another at an angle of less than 60 degrees.
2. Multiple intersections involving the junction of more than two streets are prohibited.
3. Clear sight triangles of 75 feet measured along street centerlines from their point of intersection shall be provided at all street intersections and no buildings or structures shall be permitted within said sight triangle.
4. To the fullest extent possible, intersections shall be located not less than 800 feet apart, measured centerline to centerline.
   Streets entering opposite of another street shall be laid out directly opposite one another or with a minimum off-set of 150 feet between their centerline.
5. The minimum curb radii at street intersections shall be 15 feet for intersections involving only local streets and 25 feet for intersection involving collector roads and radii as deemed suitable by DelDOT for arterial roadways.

G. *Driveways*.

1. Driveways may be constructed no closer than 50 feet from any intersection.
2. The maximum width of any driveway shall be 30 feet.
3. Sites with a frontage of 50 feet or less shall have no more than one driveway for every street on which the site obtains frontage. In no case shall a site have more than two driveway openings on any street.

H. *Sidewalks*.

1. All streets in the town shall be equipped with sidewalks on both sides of the street.
2. Sidewalks shall be a minimum of five feet in width. Sidewalks in the town center, in areas of high pedestrian traffic, adjacent to schools and churches, places of public assembly and along major streets shall be of greater width, as directed by the town engineer.
3. Developers shall be required to install new sidewalks or repair damaged sidewalks along all roadways upon which their development obtains frontage.
4. All street intersections, driveways or other interruptions of sidewalks s be complaint with the Americans with Disabilities Act (ADA).

I. *Street Construction*. All streets, sidewalks, driveway aprons, depressed curbs, handicap ramps, curbs and gutters shall be constructed according to DelDOT standards and specifications.

J. *Street Names*. The selection of subdivision and street names shall be coordinated with the post office and the New Castle County Department of Public Safety and Emergency Communications to avoid possible duplication. All street names shall be subject to the review and approval of the Planning Commission. All street names must be submitted pursuant to TMC 24.08.030 paragraph E in digital format.

(UDC 2002, §§ 500A–500K)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.020 Parking Requirements

A. *General Parking Provisions*.

1. Parking spaces shall be provided for all new development, including new construction and expansion of existing buildings, structures, or uses according to the requirements of this article. Parking areas shall be paved with a durable all-weather surface and provided on the same lot as the use for which they are intended to serve. Adequate vehicle access and maneuvering areas shall be provided for all parking areas. Areas reserved for parking space, drive aisles and access ways shall not be used for any other purpose. All parking spaces shall be clearly striped, except for parking spaces designated for single-family detached or semidetached dwellings.

2. The collective provision of parking areas for two or more buildings or uses shall not be less than the total parking required for the individual buildings or uses calculated separately.

3. All parking areas and driveways serving commercial and industrial uses shall be adequately illuminated during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided for nonresidential parking lot lighting to protect adjacent residential districts from glare of such lights and from automobile headlights.

4. For the purpose of these regulations, an parking area shall be a minimum of nine feet wide and 18 feet long, exclusive of drive aisles. All parking spaces shall be connected to a public street or alley by an all-weather driveway with a durable surface. Vehicular drive aisles and access ways shall be sufficiently designed to afford vehicle access and maneuvering without requiring another automobile to be moved. Drive aisles shall be a minimum of 24 feet in width for two-way traffic and 18 feet for one-way traffic.

5. Parking spaces shall be adequately drained to eliminate standing water and prevent stormwater run-off to adjoining properties, public streets and alleys (driveways in residential districts excluded). Parking shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and shall not be used for sales, repairs, dismantling or servicing of any vehicles, or storage of equipment or suppliers.

6. All parking must be off-street or a parking lot be provided.

B. *Parking Areas In Residential Districts*. All parking spaces, aisles, and turning areas shall be located entirely within the served property's lot lines and shall not encroach on any road, driveway, or other public right-of-way. No parked vehicle shall overhang any road, sidewalk,

access driveway, or public right-of-way.

1. The establishment of any parking areas having the capacity of four or more automobiles shall be subject to the following restrictions:

    a. Parking areas shall be used solely for the periodic parking of private passenger automobiles (noncommercial).

    b. Parking areas shall not extend into any required front yard areas, except, for driveways.

    c. Parking areas shall be attractively landscaped.

2. No boat or recreation vehicle or utility trailer parking shall be allowed in front yards.

C. *Parking Areas In Commercial And Industrial Areas*.

1. Parking shall be effectively screened from any residential district pursuant to the requirements of paragraph E.

2. Parking areas may be located in any yard, but shall not be closer than 15 feet to any street line or property line.

3. Driveways used as means of ingress or egress for nonresidential parking areas shall be not less than 20 feet or more than 30 feet in width. No curb cut shall be located closer than 75 to the intersection of two public streets measured by extending the curblines to the point of intersection. Only one driveway shall be permitted for lots of less than 100 feet in width. One additional driveway shall be permitted for each additional 100 feet of lot width.

4. All parking spaces, aisles, and turning areas shall be located entirely within the served property's lot lines and shall not encroach on any road, driveway, or other public right-of-way. No parked vehicle shall overhang any road, sidewalk, access driveway, or public right-of-way.

D. *Parking Requirements*.

1. *Residential*. 2 parking spaces off-street.

2. *Commercial (office)*.

    a. Bank/financial: four spaces for each 1,000 gross square feet.

    b. General: 4 1/2 spaces for each 1,000 gross square feet.

    c. Government: four spaces for each 1,000 gross square feet.

    d. Medical: 4 1/2 spaces for each 1,000 gross square feet.

3. *Commercial (retail/service)*.

    a. Auto, boat, truck and heavy machinery sales: five spaces minimum + one space for each 1,000 square feet of floor area and ground floor area devoted to sales, service and display.

    b. Bed and breakfast: one per guest room.

    c. Fitness/health club: one space for each 1,000 gross square feet.

d. Funeral homes: eight spaces for each 1,000 gross square feet.

e. Furniture and carpet stores: five + one per 1,000 gross square feet.

f. General: four spaces for each 1,000 gross square feet.

g. Hardware, paint and home improvements: four per 1000 gross square feet.

h. Hotel/motels: one per room + spaces for restaurants, lounges, meeting rooms, banquet facilities, etc.

i. Motor vehicle service: four spaces for every bay + one/employee.

j. Personal service: four spaces per 1,000 gross square feet.

k. Restaurants: nine space for each 1,000 gross square feet.

l. Restaurants (fast-food/take-out) 15 spaces for each 1,000 gross square feet.

m. Roadside stand: one space per 250 square feet. of sales and display area.

n. Shopping center: 4 1/2 spaces for each 1,000 gross square feet.

o. Veterinary/pet grooming: 3 1/2 spaces per 1,000 gross square feet.

p. Building materials: two for each 1,000 gross square feet. (five space minimum).

4. *Industrial Uses*.

a. Warehousing/storage: five spaces + one-half spaces/1,000 gross square feet.

b. Industrial/manufacturing: one space for each employee on largest shift of employment + one-half spaces/1,00 gross square feet.

5. *Institutional/governmental Uses*.

a. Clubs and associations: (with no food service) six spaces for each 1,000 gross square feet (with food service)/ten spaces for each 1,000 gross square feet.

b. Day care, kindergarten, pre-school: 3 1/2 spaces for each 1,000 gross square feet.

c. Fire station: four spaces for each bay + ten spaces for each 10,000 gross square feet of assembly areas.

d. Government offices: four spaces for each 1,000 gross square feet.

e. Library/museum: 3 1/2 spaces for each 1,000 gross square feet.

f. Nursing home: 33 spaces for bedroom.

g. Places of public assembly and churches: one space for each four seats or ten spaces for each 1,000 gross square feet whichever is greater.

h. Police station: four spaces for each 1,000 gross square feet.

i. Post office: five spaces for each 1,000 gross square feet.

j. Schools, elementary and junior: two spaces for each classroom and spaces + one space for every five seats or 7 1/2 spaces for each 1,000 gross square feet whichever is greater, for assembly areas.

k. High school and post-secondary institutions: ten spaces for each classroom + one space for every five seats or 7 1/2 spaces for each 1,000 gross square feet whichever is greater, for assembly areas.

l. Group homes, institutional uses residential monasteries and convents: one space for each three-fourths bedroom.

6. *Recreation Uses.*

a. Bowling alleys: four spaces for each lane + two per pool table.

b. Skating rinks: one space for each 100 square feet of floor area.

c. Theaters: one space for every four seats or ten per 1,000 square feet gross square feet whichever is greater.

E. *Buffering And Landscaping Requirements For Parking Areas*. All parking areas containing five or more spaces shall be buffered from street views and from adjoining residential areas by planted landscaped buffer and shall contain additional interior landscaping as specified below:

1. A continuous hedge, consisting of evergreen plantings a maximum of three feet on center and 36 inches in height.

2. Deciduous shade trees, not less than 3 1/2 inches in caliper, planted on the perimeter of parking areas at a maximum of 30 feet on center.

3. Deciduous shade trees, not less than 3 1/2 inches in caliper distributed throughout.

(UDC 2002, §§ 501A–501E)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.030 Loading Requirements

A. *Required Number Of Loading Bays.*

1. For retail stores, shopping centers, supermarkets, restaurants, and storage warehouses, the number of off-street loading spaces shall be as follows:

a. One bay for buildings with 3,500--8,000 gross square feet.

b. Two bays for buildings with 8,001--20,000 gross square feet.

c. One additional loading bay for each additional 20,000 gross square feet not exceeding a maximum of four loading bays.

2. For office buildings, automobile dealerships, motels, and hotels, the number of loading bays shall be provided as follows:

a. One bay for buildings with 8,000--20,000 gross square feet.

b. One additional bay for each additional 50,000 gross square feet, not to exceed a maximum of three bays.

3. For manufacturing and industrial uses, the applicant shall document the number of bays

required.

4. Dimensions as follows:

    a. Each outdoor loading bay area's minimum dimensions shall be twelve (12) feet wide and sixty (60) feet long. At no time shall any part of a truck or van be allowed to extend into a public thoroughfare or right-of-way while the truck or van is being loaded or unloaded. If the outdoor loading area is covered, but not totally enclosed, the minimum height of the outdoor loading bay area shall be fourteen (14) feet.

    b. *Maneuvering Space*. Adequate off-street truck maneuvering space shall be provided on lot and not within any public street right-of-way or other public lands.

B. *Screening*. All off-street loading areas shall be completely and effectively screened from street views and residential areas by means of planted landscaped buffers and/or walls.

(UDC 2002, §§ 502A, 502B)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.040 Stormwater Management

A. *Plan*.

1. A development resulting in a net increase of impervious surface or disturbance greater than 5,000 sq. ft. on any lot shall be required to prepare and submit a stormwater management plan, indicating the methods and means by which post-development rate of stormwater runoff from the site will be reduced to the pre-development run-off condition.

2. The developer may utilize on-site detention or retention systems constructed above or below ground or may install such off-site improvements necessary to accommodate the increase in run-off.

    a. High density developments with post-development impervious surfaces of 50% or more must include half of the total impervious area(s) with pervious surfaces, such as permeable pavers.

3. All stormwater management facilities shall be designed in accordance with the State of Delaware Sediment and Stormwater Regulations and will be subject to the review and approval of the Town Engineer.

4. Storm sewers.

    a. All storm sewer piping, inlets, catchbasins, culverts and manholes shall be designed and constructed pursuant to DelDOT standards and specifications.

    b. Storm sewers shall be constructed within public rights-of-way or within an appropriate easement.

5. Digital copies of the stormwater plans must be submitted to the Town.

(UDC 2002, § 503A)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.050 Grading And Erosion Control

A. *Grading Plans*. All proposals for development shall be accompanied by a grading plan, indicating existing contours at a minimum of two-foot intervals, proposed grading, finished floor elevations and spot elevations sufficient to describe the extent of all grading activities as well as existing and proposed drainage patterns on the site.

B. *Grading Design*.

1. Site grading shall be accomplished in a manner so as not to disrupt existing drainage patterns. Site grading shall seek to provide positive drainage away from buildings and vehicular and pedestrian circulation routes while avoiding the creation of architectural barriers and areas of ponds and standing water.

2. In addition to the requirements of TMC 24.20.010 paragraph E, development proposals shall be designed to be consistent with the following design standards:

    a. Minimum grade for paved surfaces shall be one half of a percent (0.5%).

    b. Maximum grade for parking areas shall be five percent.

    c. Maximum grade for residential driveways shall be ten percent.

    d. Minimum slope of drainage swales shall be between one and two percent depending on the inclusion of an underdrain, and the design must be approved by the Town Engineer.

    e. Minimum slope of lawn areas shall be two percent.

    f. Maximum slope for lawn areas shall be 3:1.

3. Site grading which exceeds a 3:1 slope shall be protected by temporary erosion control matting and planted with an appropriate ground cover.

4. Site grading shall be designed in accordance with the regulations of the Americans with Disability Act Accessibility Design Guidelines (ADAAG).

C. *Retaining Walls*.

1. Grading plans shall indicate the top-of-wall and bottom-of-wall elevations for all retaining walls.

2. Design calculations and construction details must be submitted for retaining walls over three feet in height.

D. *Erosion Control*. All grading plans shall contain appropriate soil erosion and sediment control measures in accordance with the applicable regulations of the State of Delaware Sediment and Stormwater Regulations.

(UDC 2002, §§ 504A–504D)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.060 Utilities

A. *Sanitary Sewer*. All proposed sanitary sewer systems shall be designed in accordance with the standards and specification of the county.

B. *Water*. All proposed water systems shall be designed in accordance with the standards and specifications of the local water provider.

(UDC 2002, §§ 505A, 505B)

24.20.070 Landscaping

A. *Landscape Plan*. When required pursuant to the requirements of TMC 24.12.060 paragraph B, TMC 24.12.070 paragraph B,4, TMC 24.20.020 paragraph E, TMC 24.20.030 paragraph B or paragraph B, a landscape plan, prepared by a landscape architect licensed in the state, must be submitted indicating the location, species (common and botanical names), size and condition of all proposed plantings.

B. *Street Shade Trees*.

1. All development proposals shall be required to plant street shade trees along all proposed streets in the town. The provisions shall apply for both residential and nonresidential development.
2. When development occurs on an existing street, where currently no shade trees exist, the provisions of this paragraph shall also apply.
3. Street shade trees shall be planted at a maximum spacing of 40 feet on center and shall be a minimum caliper of 3 1/2 inches.
4. Street shade trees shall be planted in an appropriate manner as approved by the Town Engineer. When an adequate tree lawn is not provided, shade trees may be planted behind the sidewalk.
5. The use of Delaware native species for street shade tree is required. Recommended species include the following:

Acer rubrum	Red maple
Acer sacrum	Sugar maple
Celtis occidentalis	Common hackberry
Carpinus caroliniana	American hornbeam
Crataegus crusgalli "inermis"	Thornless cockspur hawthorn
Gleditsia triacanthos "inermis"	Thornless honey locust
Platanus acerifolia	London plane tree
Quercus rubra	Northern red oak
Quercus shumardii	Shumard oak
Tilia Americana	Linden
Betula lenta	Birch
	Hickory
Juniperus virginiana	Cedar

Magnolia grandiflora	Magnolia

C. *Buffer Yards*. The use of native species for buffer yards and landscaping for all parking and loading areas is required.

D. *Scenic Corridors*. Major subdivisions and land development plans shall be required to provide a scenic corridor along all arterial and collector roads, and along roads designated as scenic. Scenic corridors shall be comprised of open space and shall meet the following criteria:

Scenic Corridor Standards	
Buffer Width	**Landscape Requirements**
50'	Existing forest to be preserved
100' to 150'	6 plant units per 100 linear feet of street frontage
151' to 200'	5 plant units per 100 linear feet of street frontage
201' to 400'	3 plant units per 100 linear feet of street frontage
400' or greater	1 plant unit per 100 linear feet of street frontage
600' or greater	Minimum of 30 acres preserved for agricultural use (no landscaping required)

(UDC 2002, §§ 506A, 506B)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.080 Fences

A. *Regulations.*

1. An ornamental fence or wall not more than four feet in height may project into or enclose any front or side yard to a depth no to encroach the right of ways.
2. Ornamental fences or walls may project into or enclose other required yards, provided such fences and walls do not exceed a height of six feet.
3. Razor wire, barb wire or similar fence material is prohibited in the town.

(UDC 2002, § 507)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.20.090 Lighting

A. *Street Lighting.*

1. All new streets constructed as part of development proposal shall be equipped with streetlights.
2. When development occurs on an existing street, where currently no street lighting exists, the provisions of this paragraph shall also apply.
3. Street lighting shall be provided pursuant to DelDOT standards and specifications.
4. All new streetlights shall only light the area that needs it. Fixtures that shield the light source to minimize glare and light trespass and use a low-color-temperature bulb but facilitates better vision at night shall be used when possible.

B. *Parking Area Lighting.*

1. All driveways, parking areas, pedestrian and vehicular circulation routes shall be adequately illuminated during the hours that a particular site is occupied or in operation.
2. Average illumination levels in parking areas, driveways, pedestrian and vehicular circulation levels should not fall below one foot candle.
3. All exterior lighting shall be oriented and shielded to protect adjacent residential areas.
4. All new street lights shall only light the area that needs it. Fixtures that shield the light source to minimize glare and light trespass and use a low-color-temperature bulb, but facilitates better vision at night shall be used when possible

(UDC 2002, §§ 508A, 508B)

HISTORY
Amended by Ord. 15-05 on 5/20/2015
Amended by Ord. 2020-004 on 6/3/2020

24.20.100 Open Space

A. *Requirements.*

1. All major subdivisions shall contain open space designated as community area open space. In designating community area open space or landscaped surfaces as part of a subdivision or land development plan, the following criteria and standards shall be adhered to by the applicant:
    a. All residential development proposals containing ten or more dwellings shall be required to dedicate to public use a minimum of ten percent of the gross tract area for the purpose of passive and active recreation.
    b. Active open space shall be separate parcels of land exclusive of streets, turn-arounds, residential lots, wetlands, wildlife habitats and migration corridors, and stormwater management.
    c. Except for recreation activities, open space shall be substantially free of structures and paved areas.
    d. A landscape plan/open space management plan specifying the landscaping/open space management requirements shall be required for all subdivisions involving the creation of community area open space. Narrow or

fragmented small open spaces shall be avoided unless necessary for a practical function.

e. A minimum of 50 percent of the required open space shall be suitable for active recreation purposes as herein defined. The open space dedication shall be designed either as a single consolidated parcel or as a system of open spaces and whenever possible shall be interconnected with open space parcels contained in adjoining development. Active open space lots shall be a minimum of one-acre contiguous lot exclusive of connective paths.

f. Open spaces dedicated to the public under the provisions of this division shall be made open and accessible to all residents of the town.

g. Pursuant to the desire of the town council and subject to the review and approval of the town solicitor, ownership and maintenance responsibility of the open space may be transferred in fee simple to the town or to a maintenance organization or homeowners' association.

h. The design of recreation facilities contained in an open space area shall be subject to the review and approval of the Town Engineer.

(UDC 2002, § 509)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.24 Sign Regulations
24.24.010 Purpose
24.24.020 Sign Specifications And Types
24.24.030 Applicability
24.24.040 Administration
24.24.050 General Sign Regulations Applicable In All Districts
24.24.060 Signs Permitted In Preservation And Residential Districts
24.24.070 Signs Permitted In Commercial And Industrial Districts
24.24.080 Dimensional Standards
24.24.090 Nonconforming Signs

24.24.010 Purpose

Signs perform the important functions of identifying properties, businesses, services, residences, events and other matters of interest of the public. However, it has been determined that it is necessary to control signs in the town to promote the health, safety and welfare of the residents of the town by:

A. Limiting hazards to pedestrian and vehicular traffic;

B. Preserving property values;

C. Preventing unsightly and detrimental development that has a blighting influence upon residential, business and industrial areas;

D. Controlling the size of signs to prevent one sign from obscuring another;

E. Specifying certain sign design requirements in an effort to maintain the rural/small town character of the town.

(UDC 2002, § 700)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.020 Sign Specifications And Types

A. *Sign Area.*

1. The area of a sign shall mean the area of all lettering, wording, and accompanying designs, logos and symbols, together with the background on which they are displayed (whether such background is open or enclosed), but excluding any supporting framework and bracing which are solely incidental to display itself providing the same do not contain any letters, designs or symbols.

2. Where the sign consists of individual letters, designs or symbols attached to a building, awning, wall or window, the area shall be that of the smallest rectangle which encompasses all of the letters, designs or symbols.

3. Where a sign consists of an identical double-face, only one side shall be considered in the calculation of sign area, but if the interior angle formed by the two faces is greater than 45 degrees, then both sides of the sign shall be considered in the calculation of sign area.

B. *Sign Height.* The distance from the highest portion of the sign to the average grade at the base of the sign.

C. *Sign Types.*

1. *Advertising Sign*. An off-premises which advertises or otherwise directs attention to a commodity, business, industry, home professional office, or other similar activity which is sold, offered, or conducted elsewhere than on the lot upon which the sign is located.

2. *Animated Sign.* A sign with action or motion, flashing, or color changes requiring electrical energy, but not including window displayed computer monitors or wind-actuated elements such as flags banners, or novelty items.

3. *Awning Sign*. A sign painted on, printed on, or attached flat against the surface of an awning.

4. *Business Sign.* An on-premises sign which advertises or otherwise directs attention to a business, commodity, service, industry, or other activity which is sold, offered, or conducted, other than incidentally, on the premises upon which a sign is located, or to which it is affixed.

5. *Directory Sign.* A sign on which the names and location of the occupants or the use of a building is given, including office building and church directories.

6. *Freestanding.* A self-supporting sign resting on, or supported by means of poles or standards, erected on the ground.

7. *Identification Sign.* A sign whose copy is limited to the name of the building, institution, or person and/or to the activity or occupation being identified.

8. *Incidental Sign.* A directional sign of a public service nature which contains no advertising.

9. *Marquee Sign.* Any sign attracted to or supported by a marquee structure.

10. *Off-premises Sign.* A sign structure advertising an establishment, merchandise, service, or entertainment, which is sold, produced, manufactured, or furnished at a place other than on the property on which said sign is located; a sign which advertises or otherwise directs attention to an activity not on the same lot where the sign is located, e.g. billboards, outdoor advertising, subdivision directional sign.

11. *On-premises Sign.* A sign which advertises or otherwise directs attention to an activity on the same lot where the sign is located.

12. *Painted Wall Sign*. Any sign which is applied with paint or similar substances on the face of the wall.

13. *Parallel Wall Sign.* A sign mounted parallel to a wall or other vertical building surface, but does not extend beyond the edge of any wall, roof line, or other surface to which it is mounted, and does not project more than ten inches from the surface to which it is mounted.

14. *Projecting Wall Sign.* Any sign mounted to a wall or other vertical surface other than a parallel sign, but does not project more than seven feet from the surface to which it is mounted, nor project above the wall, roof line, or surface to which it is mounted, nor in any way interfere with normal pedestrian or vehicular traffic.

15. *Revolving Sign.* A sign which revolves 180 degrees or more.

16. *Roof Sign.* A sign erected upon or above a roof or parapet wall of a building, and which does that building wholly or partly support.

17. *Temporary Sign.* A sign that advertises community or civic projects, construction projects, real estate for sale or lease, or other special events on a temporary basis. The following types of signs shall be considered temporary signs:

    a. *Banner Sign.* A temporary sign intended to be hung either with or without framing, possessing characteristics, letters, illustrations or ornamentation applied to paper, plastic, or fabric of any kind. National flags, flags of political subdivisions, and symbolic flags of any institution or business shall not be considered banners for the purpose of this article.

    b. *Construction Sign.* Any sign giving the name of principal contractors, subcontractors, architects, engineers and lending institution responsible for construction on the site where the sign is placed.

    c. *Development Sign.* An on-premises sign on a building or lot which announces the nature, purpose, or name of the prospective building/enterprise.

    d. *Political sign.* A temporary sign used in connection with a local, county, state, or national election or referendum.

    e. *Portable Sign.* Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs, umbrellas used for advertising; signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in normal day-to-day.

    f. *Real Estate.* Temporary sign that advertise the sale, lease, or rent of the property on which the sign is placed. Open house signs for property that is for sale shall be considered real estate signs.

g. *Special Event Signs*. On-premises window signs, banners, or commemorative flags which advertise a grand opening or other special event.

h. *Street Banner Sign.* Any banner sign which is stretched across and hung over a public right-of-way.

i. *Subdivision Sign*. An on- or off-premises directional sign advertising to the public the name of the subdivision project and the nature of the product offered.

j. *Window Sign*. Any sign affixed to or visible through a window and intended to be viewed from the outside.

(UDC 2002, § 701)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.030 Applicability

Any sign erected after the effective date of the ordinance from which this section is derived shall conform to the following regulations.

(UDC 2002, § 702)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.040 Administration

A. *Sign Permits.* It shall be unlawful to erect, construct or significantly alter any sign which requires a building permit without first filing with the town an application in writing to obtain a formal permit.

B. *Signs Not Requiring Sign Permits*:

1. Government signs (i.e. traffic signs, parking signs, etc.).
2. Legal notices.
3. Public monument, plaque, historic identification sign erected by a governmental agency.
4. Government flag or insignia.
5. Public service and information signs advertising the availability of public restrooms, telephones, or similar public conveniences, not exceeding three square feet in area.
6. Address signs, not exceeding two square feet.
7. Name plates and identification signs provided that characters do not exceed three inches in height and the area does not exceed two square feet.
8. Vending machine signs, where a product name is an integral component of the vending machine, provided that the machine is not placed in the front yard of a property.
9. Incidental signs, provided that the aggregate area of incidental signs on a property does not exceed four square feet; incidental sign area in excess of four square feet shall be included in the calculation of a property's permitted sign area.
10. Home security signs, not exceeding one square foot.

11. Temporary political signs.
12. Real estate signs.

C. *Sign Permit Review*. The building inspector or zoning officer shall either approve or deny the application, or refer the application back to the applicant in any instance where insufficient information has been submitted.

D. *Fees.* All applicants for permits for the erection, construction or alteration of signs shall, at the time of making application, be paid to the town, in accordance with the respective fee schedule adopted by the town from time to time.

(UDC 2002, § 703)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.050 General Sign Regulations Applicable In All Districts

A. *Prohibited Signs.*
1. Animated signs.
2. Beacon lighting.
3. Flashing, moving or reflective signs.
4. Illuminated temporary sings.
5. Revolving or rotating signs.
6. Roof signs.
7. Trailer signs.
8. Vehicular signs.
9. Billboards.

B. No sign shall be placed in such a position as to endanger traffic on a street by obscuring a clear view or by confusion with official street signs or signals.

C. No sign shall be placed in such a position as to obstruct or endanger pedestrian using the public sidewalk.

D. No sign, other than official street signs, street banner signs (when authorized by town council) or political signs may be erected within any public right-of-way unless authorized by town council.

E. No sign shall be erected or maintained so as to prevent free ingress and egress to or from any door, window or fire escape.

F. Property owners shall assume the cost of relocating any sign within the ultimate right-of-way of a street that is widened.

G. All signs shall be constructed of durable materials in good condition and repair at all times.

H. *Illuminated Signs.*
1. Signs may be illuminated, unless otherwise specified herein. Floodlighting of any sign

shall be so shielded that the source of the light shall not be visible from any point off the property on which the sign is erected and so that only the sign is directly illuminated. No more than one-half foot-candle of light shall be detectable along the boundary of any adjacent property. Illumination of signs shall be subject to the national electrical code.

2. Translucent covers must conceal the source of light.

I. *Sign Location Requirements.*

1. *Yard requirements.* No portion of any freestanding sign, business sign or advertising sign may be located within the side or rear yard setback or within the required buffer zone when located in a commercial or industrial zone adjoining a residential district.
2. *Public use areas.* No portion of any freestanding business sign or advertising may be located within the side or rear yard setback or with the required buffer zone in a commercial or industrial district adjoining a residential district.
3. No sign may be located within 660 feet of the right-of-way edge along the Harriet Tubman Underground Railroad Byway, or any other scenic byway.

J. Political signs may be erected no earlier than 30 days before the date of election. All political signs shall be removed within seven days after the election date.

K. Any sign that does not so conform to the provisions of this section at the time of adoption of the ordinances from which this section is derived is hereby declared a nonconforming sign.

L. *Removal Of Signs.*

1. The town shall have the authority to require the removal and/or demolition of signs under the following circumstances:
    a. When it is determined that the sign has deteriorated to the point of becoming a danger to the public.
    b. When a sign is erected without an approved building permit.
    c. When a sign is erected which does not comply with the requirements of this section.
    d. A nonconforming sign which has not been removed or brought into conformity.
2. In all of the above circumstances the removal procedure will be initiated by a letter to the owner or lessee by the building inspector requiring removal within 30 days.
3. Owner or lessee's remedial action for each circumstance:
    a. Deteriorated/hazardous sign: rehabilitation/repair of sign within 30 days.
    b. No sign permit: obtain a permit within 30 days.
    c. Prohibited sign or nonconforming sign: sign brought into conformity within 30 days.

(UDC 2002, § 704)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

Amended by Ord. 09-04 Revised on 12/2/2009
Amended by Ord. 2020-004 on 6/3/2020

24.24.060 Signs Permitted In Preservation And Residential Districts

A. *Official Signs.* Official street and traffic signs, and any sign required by law.

B. *Professional Home Office Signs*. Professional home office name signs, located on the same property as the home office, indicating the name, profession or activity of the occupant of the dwelling, provided that the area of any one side shall not exceed two square feet, and provided that not more than one such sign shall be erected on each permitted use or dwelling.

C. *School Signs.* Signs for schools, churches and hospitals, clubs or other institution of a similar nature, on the same lot therewith, for the purpose of displaying the name of such institution and its activities or services, provided that the areas on any one side of such freestanding sign shall not exceed 20 square feet and ten feet in height, and provided that not more than one such sign shall be erected on any street frontage. In addition to the aforementioned freestanding sign, each institutional building is permitted one wall sign for purposes of identification not exceeding ten square feet.

D. *Residential Signs.* For residential developments containing more than ten dwelling units, one freestanding identification sign per external street frontage not exceeding 15 square feet in area and ten feet in height. The sign shall be aesthetically compatible with the structures.

E. *Trespassing Signs.* Trespassing signs and signs indicating private ownership of roadways or other property on the same premises therewith, provided that the total area of any one side of such sign shall not exceed four square feet.

F. *Real Estate Signs.* Real estate signs as follows:

1. For advertising the sale or rental of the premises upon which the sign is erected, provided that the total area on any one side of such signs on any one street frontage of any property in single or separate ownership shall not exceed nine square feet.

2. For advertising on the premises the sale or development of homes within a subdivision, provided that the area of any one side of any such sign shall not exceed 35 square feet, and provided that not more than two such signs shall be erected within any such subdivision.

G. *Temporary Contractor Signs.* Temporary signs of contractors, mechanics, painters and artisans erected and maintained on the premises where the work is being performed during the period in which such work is being performed, provided that the area of any one side of such sign shall not exceed 12 square feet, and provided that not more than one such sign shall be erected on any property in single and separate ownership, and provided that such sign shall be removed upon completion of work.

H. *Open House Signs (on- and off-premises).* There shall be a maximum of one on-premises open house sign for each property.

1. Signs shall not exceed four square feet per side, and not be illuminated.

2. Signs shall not exceed four feet in height.

I. *Public Auction, Disposal Signs.* Signs which advertise public auctions for disposal of real estate, property, or merchandise.

1. Signs shall not exceed nine square feet in area, at a maximum height of four feet, and

shall be placed only on the property where the stated auction is being conducted.

2. Signs may be erected not earlier than 30 days prior to the advertised auction, and shall be removed within five days of the auction.

J. *Political Signs*. Political signs pursuant to TMC 24.24.060 paragraph J.

(UDC 2002, § 705)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.070 Signs Permitted In Commercial And Industrial Districts

For any one lot located in the Commercial or Industrial districts, the following number and type of signs are permitted:

A. One freestanding business or identification sign per street frontage. Gas stations are permitted one additional freestanding sign per street frontage for advertising gas prices only.

B. One of the following types of signs for each side of a building which faces a street or a parking lot located on the same property:

1. Awning sign.
2. Identification sign.
3. Marquee sign.
4. Painted wall sign.
5. Parallel window sign.
6. Permanent window sign.
7. Projecting wall sign.

C. Incidental signs for the convenience and safety of the public (for example, signs identifying parking areas, telephones, restrooms, etc.) not to exceed four square feet in size and containing no advertising.

D. One of the following types of temporary signs for a given 30 day period only:

1. Portable signs.
2. Special event signs.

E. Real estate signs, which shall be removed within seven days after the sale or lease of the property.

F. Other signs permitted in Residential districts according to the regulations in TMC 24.24.060.

G. Sandwich board signs may be used in the Commercial (C) District only. The following regulations shall apply:

1. The maximum dimensions shall be four feet in height and two feet in width.
2. The sign cannot create an obstruction to pedestrians or traffic sight distances.

3. Signs may be illuminated.
4. Signs are only allowed during business hours or daylight hours, whichever is shorter.
5. Signs must be removed at the end of each day.
6. A permit is required in which the owner assumes liability for the sign.

H. Billboards, as defined in this article, are specifically excluded from the town.

(UDC 2002, § 706)

HISTORY
Amended by Ord. 09-04 on 12/2/2009
Amended by Ord. 09-04 Revised on 12/2/2009

24.24.080 Dimensional Standards

A. Freestanding signs shall not exceed 35 square feet in area (16 square feet for signs advertising gas prices), and must be setback a minimum of ten feet from the curbline of the frontage street or outside edge of the cartway. In no case may a freestanding sign be located within a public right-of-way. The maximum height for freestanding signs, including supports, is 12 feet. Multi-use or multi-tenant buildings where the freestanding sign is to be shared by two or more uses or tenants, the maximum sign area calculated in paragraph A may be increased by 25 percent for each additional use/tenant in excess of one use/tenant.

B. The maximum area of a marquee sign, painted wall sign, parallel wall sign or awning sign shall be 100 square feet. However, the total area of painted wall signs, parallel wall signs, signs affixed to awnings and any signs affixed to the inside or outside of windows, may not exceed 25 percent of the area of the wall, including windows and floor area and cornices, to which they are attached.

C. The maximum area of a projecting sign shall be 30 square feet.
1. The sign shall not project more than seven feet from the surface to which it is mounted, nor project over the wall, roof line, or surface to which it is mounted.
2. The outer-most portion of a projecting sign shall project no closer than five feet from a curbline or shoulder of a public street.
3. There shall be a minimum clearance of ten feet between the bottom of the projecting sign and a public sidewalk or walkway.

D. Special event signs, banners, portable signs or commemorative flags for businesses announcing a grand opening, going out-of-business sale or other special promotional event shall comply with the following standards.
1. The area of the special event sign, banner, portable sign or commemorative flag shall not exceed 25 square feet.
2. The property or business shall display only one special event sign, banner, portable sign or commemorative flag at any one time.
3. A special event sign, portable sign, banner or commemorative flag for a business shall be displayed no more than eight times during the calendar year for periods of time not exceeding three weeks.
4. Special event signs or banners for public or quasi-public events shall comply with the

following standards:

a. Such banners shall be affixed to a building or some other appropriate sturdy structure.

b. The permitted size of any street banner shall be determined on a case-by-case basis by the town council.

c. If the banner is to be strung across a state-owned road, the sponsoring organization must receive necessary approvals from the state department of transportation.

d. Signs or banners shall not be posted earlier than one month prior to the advertised event and must be removed within five days after the day of the event.

(UDC 2002, § 707)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.24.090 Nonconforming Signs

A. Signs legally in existence at the time of the adoption of the ordinance from which this section is derived which do not conform with the requirements of this article shall be considered nonconforming signs.

B. All such nonconforming signs shall be removed or altered so as to be in conformity with the standards contained herein at such time when:

1. The town receives an application for a sign permit in cases where the nonconforming sign is to be significantly altered. Changes to the sign copy or the replacement of a sign panel of an existing establishments nonconforming sign shall not be considered a significant alteration. If more than 50 percent of a sign is damaged, it shall be repaired to conform with this article.

2. The property in which the nonconforming sign is located submits a subdivision or land development application requiring municipal review and approval.

3. The property in which the nonconforming sign is located undergoes a change of land use requiring the issuance of either a certificate of occupancy.

C. To determine the legal status of existing signs, in each of the three cases listed in paragraph B the applicant shall submit the following information to the town building inspector:

1. Type of existing sign located on the property.

2. The area and height of all signs.

3. For freestanding signs, the distance of the outermost portion of the sign is setback from the curbline or shoulder.

4. Type of sign illumination.

5. The material of which the sign is constructed.

6. The building length along public street frontage.

D. Prior to the events listed in paragraph B, nonconforming signs may be repainted, repaired up to 50 percent, the sign copy may be changed, or sign panels may be replaced, provided that such actions do not increase the dimensions of the existing sign, nor in any way increase the extent of the sign's nonconformity.

E. Under the following conditions, nonconforming signs shall be exempt from the provisions of paragraph B:

1. The nonconforming sign possesses documented historic value.
2. The nonconforming sign is of a unique nature or type of virtue of its architectural value or design.
3. For a change of use when a business name is retained.

(UDC 2002, § 708)

HISTORY
Amended by Ord. 09-04 on 12/2/2009

24.28 Permitted Modifications
24.28.010 Height Modifications
24.28.020 Variances
24.28.030 Temporary Uses

24.28.010 Height Modifications

The height regulations of this article shall not apply to flagpoles, silos, church spires, belfries, chimneys, cupolas and domes not used for human occupancy.

(UDC 2002, § 800)

24.28.020 Variances

The board of adjustments shall have the power to grant the following variances:

A. A modification in the area and bulk requirements in any district so as to relieve practical difficulties or particular hardships in cases where by reason of size, shape or narrowness of a parcel of property or by other exceptional or extraordinary situation or condition the use or development of the property would not conform to strict application of the regulations set forth in this article. Such grant of variance shall conform as nearly as possible with the spirit, intent and purpose of this article. Only for reasons of demonstrable and exceptional hardship upon the owner of such property will such modifications be permitted.

B. Modifications in parking and loading requirements of this article may be permitted whenever the character or use of any building is such as to make the full provision of parking and loading facilities unnecessary.

(UDC 2002, § 801)

24.28.030 Temporary Uses

A. It is recognized that it may be in the interest of the town and in accordance with the purpose of this article to permit temporary activities for a limited period of time, which activities may not be

permitted by other provisions of this article. If such uses are of such a nature and are so located that at the time of application they will:

1. In no way exert a detrimental effect upon use of land and activities normally permitted in the zoning district in question.
2. Contribute materially to the welfare and well being of the public or to the lawful improvement or development of land.

B. Upon proper application to and favorable finding by the town council, the board of adjustment may be directed to issue a permit for such a period of time specified by the town council.

(UDC 2002, § 802)

24.32 Land Development Requirements
24.32.010 Inspection Fee Escrow
24.32.020 Performance Guaranty
24.32.030 Sunsetting Provision Of Recorded Subdivision Of Land Development Plans

24.32.010 Inspection Fee Escrow

A. Prior to the construction of any improvements approved by the town and prior to final approval of major subdivision or site plan or approval of minor subdivision or minor site plan, the applicant shall deposit and maintain with the town a fund of not less than five percent of the estimated cost of the required on- and off-site improvements, as determined by the town engineer, to cover costs of inspection of improvements. The minimum escrow deposit required at any one time shall be $200.00.

B. If at any time during the inspection of the construction of said improvements it becomes evident that the escrow deposit is or will be insufficient to cover the costs thereof, the applicant shall make such additional deposits in amounts to be determined by the town engineer based upon the estimated costs required to properly review and inspect the on- and off-site improvements.

C. The engineering, legal and planning escrows as set forth in the aforesaid provisions are minimum amounts representing an estimate of the anticipated costs for such services based on the hourly rates of the respective professional. The hourly rates to be charged each applicant for the services of such professionals shall be the same as those set forth in the contracts between the town and said professionals. All legal, engineering and planning review fees set forth under the applications for use and bulk variances, appeals, interpretations and miscellaneous applications are nonrefundable minimums. In all other cases, if the actual cost is less than the minimum, the applicant shall receive a refund of the difference for all development applications; if actual costs for such proposed services exceed the minimum deposits, the applicant shall be responsible to pay to the town the difference between the actual amount and the amount deposited.

(UDC 2002, § 1000)

24.32.020 Performance Guaranty

A. *General Requirements.*

1. No final application for development (whether for an entire tract or a section thereof) shall be approved by the board until the satisfactory completion and performance of all required improvements have been certified by the town engineer. As a condition of final approval for any application for development, all applicants shall submit a performance guarantee, and upon completion and approval of the improvements, a two-year

maintenance guaranty for all required on- and off-site improvements. The form and amount of the aforementioned guaranties must meet the satisfaction of the town solicitor and engineer.

2. A performance guaranty estimate shall be prepared by the applicant's engineer and submitted to the town engineer for review and approval, setting forth all requirements for improvements and their estimated cost. The performance and maintenance guaranties shall conform to such approved estimate in the manner calculated below.

B. *Calculation Of Guaranty.* The owner shall present the performance guaranty, in an amount equal to 120 percent of the approved performance guaranty estimate required above. The guaranty must then receive the approval as to form, amount and execution by the town engineer as a condition to approval of the application. No plans will be signed or approval given by the town until the required performance guaranty has been approved.

C. *Bonding And Cash Requirements.* The performance guaranty shall be made payable and deposited to the town and shall be in the form of cash, irrevocable letter of credit or certified check or a performance bond in which the owner shall be principal. The bond or letter of credit to be provided must be issued by an acceptable surety or banking company licensed to do business in the state. The town shall issue its receipt for such deposits and shall cause the same to be deposited in the name of the town to be retained as security for completion of all requirements and to be returned to the owner on completion of all required work or, in the event of default on the part of the owner, to be used by the town to pay the cost and expense of obtaining completion of all requirements.

D. *Inspection And Tests.*

1. All site improvements and utility installations for both site plans and subdivisions shall be inspected during the time of their installation under the supervision of the town engineer to ensure satisfactory completion. The obligor shall reimburse the municipality for all reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements, provided that the municipality may require of the developer a deposit for all or a portion of the reasonably anticipated fees to be paid to the municipal engineer for such inspection. The municipal engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. The project may be immediately shut down by the municipal engineer if sufficient fees for inspections have not been deposited in accordance with this section.

2. In no case shall any paving work be done without permission from the town engineer. At least two working day's notice shall be given to that town engineer prior to any construction so that the engineer or a qualified representative may be present at the time the work is to be done.

3. Streets should not be paved with a wearing course until all heavy construction is completed. Shade trees shall not be planted until all grading and earthmoving is completed. The seeding of grass and the placing of surveyor's monuments shall be among the last operations.

4. The town engineer's office shall be notified prior to each of the following phases of work so that they or a qualified representative may inspect the work:

    a. Road subgrade.

    b. Curb and gutter forms.

    c. Curbs and gutters.

d. Road paving.

e. Sidewalk forms.

f. Sidewalks.

g. Drainage pipes and other drainage construction.

h. Street name signs.

i. Monuments.

j. Stormwater basins.

k. Topsoil, seeding and planting.

5. Any improvement installed contrary to the plan or plat approval by the town shall constitute just cause to void the municipal approval.

6. Any improvement installed without notice for inspection shall constitute just cause for:

   a. Removal of the uninspected improvement;

   b. The payment by the developer of any costs for material testing;

   c. The restoration by the developer of any improvements disturbed during any material testing; and/or

   d. The issuance of a stop-work order by the town engineer pending the resolution of any dispute.

7. Inspection by the town of the installation of improvements and utilities shall not operate to subject the town to liability for claims, suits or liability of any kind that may arise because of defects or negligence during construction or at any time thereafter, it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owner and his contractor, if any.

E. *Conditions And Acceptance Of Improvements.* The approval of any application for development and release of guaranty by the town shall in no way be construed as acceptance of any street or drainage system or any other improvement, nor shall such approval obligate the town in any way to exercise jurisdiction over such street or drainage system or other improvement. No improvement shall be accepted by the governing body unless and until all of the following conditions have been met:

   1. The town engineer shall have certified, in writing, that the improvements are completed and that they comply with the requirements of this chapter.

   2. The final application for development shall have been approved by the town.

   3. The owner shall have filed with the town a maintenance guaranty in an amount equal to and not more than 15 percent of the cost of installing the improvements. The maintenance guaranty shall run for a period of two years from final acceptance of the improvement. The procedures and requirements for acceptance and release governing such maintenance guaranty shall be identical to the procedures and requirements for a performance guaranty set forth in this chapter.

An as-built plan and profiles of all utilities and roads three black-and-white prints plus a Mylar copy to be

sent to the town engineer, with certification signed and sealed by a state licensed professional engineer as to the actual construction as approved by the town engineer, shall be provided.

(UDC 2002, § 1001)

24.32.030 Sunsetting Provision Of Recorded Subdivision Of Land Development Plans

The following regulations concerning expiration of recorded and approved plans are applicable to major subdivisions, minor subdivisions, and land development plans.

A. Plans recorded after adoption of these regulations. Construction of development or improvements shown on an approved record plan for a major subdivision or major land development shall commence within five (5) years of the date of recordation of the first record plan for the subdivision or land development plan.

B. Plans recorded before the adoption of these regulations. Construction of development or improvements shown on a record plan for a major subdivision or major land development shall commence within five (5) years from the 3rd of June, 2020; except that

    1. The sunsetting provisions shall apply to all major and subdivision and major land development plans; except that:

        a. Any major subdivision or major land development plan that was unbuildable immediately prior to the adoption of these regulations for any reason; and,

        b. Any re-subdivision plan and any minor subdivision or minor land development plan that was approved in reliance upon a major subdivision or major land development plan that was unbuildable immediately prior to the adoption of this section, shall remain unbuildable and shall remain exempt from the application of this section.

        c. Land disturbances of less than one thousand (1,000) square feet and not involving any building or structure, buffer yard, resource, or conservation area, are exempt from this section.

C. The applicant shall bear the burden of providing evidence to the Town Manager establishing that construction had commenced within the five (5) year period.

D. Construction has not commenced within five (5) years, the record plan shall be resubmitted and reviewed by the Planning Commission to determine if the conditions of approval of the original record major subdivision or land development plan have changed or have been altered by the subsequent adoption of, or amendments to, this Chapter. The Planning Commission shall either:

    1. Reapprove the record plan, and give written notice to the owner of reapproval. Such approval shall allow the issuance of building permits subject to the provisions of the original record major subdivision or land development plan and/or any recorded resubdivision plans. The owner shall then have five (5) years from the date of such notice of reapproval to obtain building permits and commence construction.

    2. Disapprove the record plan and give written notice to the owner of the specific areas of noncompliance. The modifications necessary to bring the plan into compliance with this Chapter shall be incorporated into a revised exploratory plan and resubmitted. Upon approval of a revised exploratory plan, a new major subdivision or land development plan may be submitted for approval. The new plan approved and recorded pursuant to this Section shall have the effect of superseding the original record major subdivision or land development plan. The owner shall then have five (5) years from the date of notice made

pursuant to this subsection to obtain building permits and commence construction.

3. If a rezoning of the property occurred simultaneously with the approval of the preliminary record plan and the Planning Commission has determined that a new revised record plan is required, the zoning of the property shall revert to the previous zoning district. The processing of the revised record plan shall require full compliance with the then current rezoning procedures.

HISTORY
Adopted by Ord. 2020-004 on 6/3/2020

24.36 Environmental Protection Regulations

24.36.010 Intent
24.36.020 Definitions - Environmental Protection Regulations
24.36.030 Open Space Regulations And Allowable Uses
24.36.040 Floodplains And Floodways
24.36.050 Wetlands
24.36.060 Riparian Buffer Areas (RBA)
24.36.070 Steep Slope Protection
24.36.080 Drainageways
24.36.090 Critical Natural Areas (CNA)
24.36.100 Water Resources Protection Areas (WRPA)
24.36.110 Wellheads Class A
24.36.120 Recharge Areas
24.36.130 Boundary Determination For WRPA
24.36.140 Uniform Standards And Criteria
24.36.150 Environmental Impact Assessment Report
24.36.160 Clearing
24.36.170 Reforestation Requirements
24.36.180 Roads, Parking Lots And Utilities

Field Code Changed
Field Code Changed
Field Code Changed

24.36.010 Intent

The intent of this section is to provide clarification on the environmental constraints and requirements for development in environmentally sensitive areas.

(UDC 2002, § 1100)

24.36.020 Definitions - Environmental Protection Regulations

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Applicant" means a person, firm or government agency who executes the necessary forms to obtain approval or a permit for any zoning, subdivision, land development, building, land disturbance, or other activity regulated by this Code.

"Aquifer" means a body of rock (crystalline, sand or gravel) that contains sufficient saturated permeable material to conduct groundwater springs or to yield economically significant quantities of groundwater to wells.

"Best management practices" means that combination of conservation measures, structures, vegetation or management practices, that reduces or avoids adverse impacts of development on adjoining site's land, water, or waterways and waterbodies.

"Buffer" means a designated area between two uses deemed incompatible with each other, or along the perimeter of a natural feature to be protected from an incompatible use, or along the perimeter of that use, which will absorb otherwise preclude such incompatibility by some combination of construction design, vegetative plantings, fences, and/or maintenance practices which shall be permanently maintained.

"Buffer, riparian" see *riparian buffer area.*

"Caliper" means the diameter of new landscape plantings measured six inches aboveground.

"Canopy tree" see *tree, canopy*.

"Clean fill" means a nondecomposable, environmentally inert solid, such as rock, soil, gravel.

"Clearcutting" means the practices of wholesale complete removal of all trees, disturbing shrubs, or other vegetation in the process. This definition does not include the selective removal of trees on a building pad or normal maintenance of vegetation.

"Critical natural area (CNA)" means any site listed in the state natural areas inventory, as administered by the State Office of Nature Preserves, Division of Parks and Recreation, or the Delaware Department of Natural Resources and Environmental Control.

"Critical natural areas report" means a report analyzing the impact of a development or subdivision proposal on a CNA located on the site, which shall include the following elements:

A. A statement that an entire lot or parcel is included in the critical natural areas investigation or a description of a smaller area which is subject to the critical natural areas investigation;

B. A scaled plan of the site accurately depicting critical natural area boundaries. The CNA boundary lines shall be identified with a metes and bounds description prepared by and bearing the seal of a professional land surveyor registered in the state, or a professional engineer with a background in civil engineering registered in the state. Where many survey traverses are necessary to accurately describe the CNA boundary, the developer may have the surveyor or engineer identify and prepare a metes and bounds description for the smallest polygon that contains all the critical natural areas identified on the site. In such instances, however, the limits of the polygon will be considered the CNA boundaries for plan review purposes;

C. A narrative description of the extent to which the subdivider or developer proposes land disturbing activities within any critical natural areas which are shown on the scaled plan; and

D. Any measures that will be taken to minimize or mitigate the disturbance of critical natural areas.

"De minimis" means, with respect to a disturbance, a disturbance so minor in extent and duration that is does not measurably reduce the extent, function or habitat value of the resource affected.

"Detention/retention basin" means a natural or manmade structure designed as a temporary holding basin for water. Water may be detained to minimize flooding downstream, or retained to increase aquifer recharge.

"Drainage" means the process by which surface water (usually from rainfall) moves across the land surface. See *stormwater management.*

"Drainage areas" means the delineated areas that currently contribute or are proposed to contribute runoff to a specific location or point.

"Drainage facility" means any system of artificially constructed drains, including open channels and separate stormwater sewers, used to convey stormwater, surface water, or groundwater, either continuously or intermittently, to natural watercourses.

"Drainageway" means a minor watercourse, seasonally or continually available for the passage of water, of

which functions include, but are not limited to: flood control, groundwater recharge, drainage, and sedimentation and erosion control. The presence of a drainageway is determined by one or more of the following three conditions:

A. The presence of certain specific soil types, (such as Codorus silt loam (Co), Comus silt loam (Cu), Hatboro silt loam (Ha), Johnston loam (Jo), or Mixed alluvial land (Mv));

B. The land on either side of and within 50 feet of the centerline of any intermittent or perennial stream shown on the United States Geological Survey (U.S.G.S.) 7.5 minute quadrangle sheets;

C. The land on either side of and within 25 feet of the centerline of any swale identified by the U.S.G.S. 7.5 minute quadrangle sheet as having an upstream drainage area of five or more acres.

"Environmental report" means any study, report or application required by this Code, such as critical natural areas, floodplains, riparian buffers, steep slopes, water resource protection areas and wetlands.

"Filling" means the depositing on land, whether submerged or not, of sand, gravel, earth or other materials. Biodegradable materials and other materials subject to decomposition or significant settling (such as garbage and other organic matter) shall not be considered filling.

"Flood fringe" means those portions of the floodplain, outside the floodway, subject to inundation by the 100 year recurrence interval flood and generally associated with standing or slowly moving water, rather than rapidly flowing water. Flood fringe is determined by detailed study data and profiles found in the FEMA flood insurance study.

"Flood protection elevation" means a point two feet above the water surface elevation of the 100-year flood.

"Floodplain" means a relatively flat or low-lying land area adjoining a river, stream, or watercourse which is subject to periodic partial or complete inundation. Specifically, those areas identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate maps (FIRM) as being subject to periodic inundation by a 100-year storm, including the floodway, flood fringe and areas for which no base flood elevations area available as depicted in the FEMA flood insurance rate maps (community no. 10585) dated April 17, 1996 or as later amended.

"Floodway means the portion of the floodplain district required to carry and discharge the waters of the 100-year flood without increasing the water surface elevation at any point more than one foot above existing conditions as demonstrated in a flood insurance study.

"Forest" means an area covered by a canopy of woody plants (trees) that qualifies as mature and/or young. It may also be a woodland, woodlot, grove, or stand of trees meeting the specifications of the forest type.

"Forest, mature" means an area or stand of trees whose total combined canopy covers an area of one acre or more composed of canopies of trees having a DBH of at least 18 inches or greater covering at least 75 percent of that area. Also, any stand or grove consisting of eight or more individual trees having a DBH of at least 18 inches whose combined canopies cover at least 50 percent of the area encompassed by the grove.

"Forest, young" means an area or stand of trees whose total combined canopy covers an extra of one acre or more, with canopy trees having a DBH of six inches and covering at least 60 percent of the area. However, no trees kept or grown for commercial purposes shall be considered a young forest.

"Forest management practices" means that combination of generally accepted methods for preserving,

promoting and protecting silviculture, which may include selective cutting, burning and removal of trees.

"Grading" means the excavating, filing (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

"Groundwater" means a portion of the subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

"Hydric soils" means soils which in their natural, undrained state are wet frequently enough at or near the surface to periodically produce anaerobic conditions, thereby influencing plant species composition and/or growth.

"Infiltration" means the passage or movement of water through the soil profile.

"Land grading" see *grading.*

"Landscape plan" means a plan associated with a subdivision, land development or parking facility plan indicating the placement of trees, shrubs, growth cover and affiliated structures and improvements, including specifications, species, quantities and installation as prepared by a state registered landscape architect.

"Landscaping" means the design and installation of plant material such as lawns, groundcover, trees, bushes, etc.

"Mitigation" means any action taken to lessen the specified undesirable impacts of a proposed land use or land disturbance activity, including those which would adversely affect the health or longevity of a natural feature, pose a visual intrusion or conflict, or otherwise be deemed incompatible with surrounding properties.

"National geodetic vertical datum (NGVD)" means elevations referenced to mean sea level datum of the 1929 or 1988 U.S. Geological Survey.

"Nondelineated floodplain" means an area subject to a 100-year flood, adjacent to a watercourse that is identified by a blue line on the current U.S. Geological Survey (U.S.G.S.) topographic maps of the county or in the detailed maps of the N.C.C. Soil Survey for which FEMA has delineated a floodplain.

"Project boundary" means the entire area of the parcel, are the subject of an application, including all parcels included in a single annexation request, without regard to the proposed limit of disturbance.

"Public water supply well" means a well from which the water is used to serve a community water system by section 22.146 (public water systems) in the Delaware State Regulations Governing Public Drinking Water Systems.

"Qualified Professional" means a person holding State certification or registration in the applicable environmental discipline or, where no certification or registration exists in that discipline, a person having not less than three (3) years of substantial practice in the field at issue or a related field.

"Recharge areas" means the recharge water resource protection areas are designated as having the best potential for groundwater recharge. They were delineated using methodology described in a report prepared by the Delaware Geological Survey entitled "Delineation of Ground-Water Recharge Resources Protection Areas in the Coastal Plain of New Castle County, Delaware," dated January 1993 ("recharge resource area").

"Reforestation" means the replanting or planting of forest plant materials.

"Restoration" means the reasonable rehabilitation of the affected land for useful purposes and the protection of the natural resources of the surrounding area, including surface water and groundwater.

"Riparian buffer area (RBA)" means where a parcel of land is adjacent to a perennial, lake, tidal wetland or area draining greater than ten acres forming a transition zone between the aquatic and the terrestrial environments is proposed for development or redevelopment, a RBA shall be designated. The RBA shall include the waterbody and the adjacent area within at least 100 feet from the top of bank of the waterbody. The RBA shall also include the floodplain or nontidal wetland plus the adjacent area within a minimum of

50 feet of the resource.

Identification and calculation.

A. Streams (perennial, intermittent, mapped, and unmapped) with identifiable banks and beds, lakes, and tidal wetlands or areas which drain greater than ten acres are subject to the regulations of this section.

B. Initial identification of the watercourses/waterbodies shall be made using the U.S. Geological Survey quadrangle maps or more accurate information, as available. Field verification to determine evidence and location of channelized flow is required for a specific determination.

C. The width of existing impervious area such roadways, parking lots, structures, sidewalks, etc., shall not count towards the RBA measurements.

Exceptions. An RBA shall not be designated along industrial ponds, sewage lagoons, manmade irrigation ditches, stormwater management basins and other artificial features with a similar water quality or storage function.

One hundred (100) feet on either side of perennial and intermittent streams, lakes, and tidal wetlands;

A. All of a nontidal wetland greater than twenty thousand (20,000) square feet in area, plus an additional one hundred (100) feet of adjacent land;

B. A riparian buffer area shall not be designated along industrial ponds, sewage lagoons, manmade irrigation ditches, stormwater management basins and other artificial features with a similar water quality or storage function.

"Runoff" means that portion of precipitation or snow melt that has not evaporated or infiltrated into the soil, but flows on land surface.

"Sanitary sewage disposal, on-lot" means a system in which sanitary sewage and wastewater is collected from a single use or dwelling unit, by a system of pipes, and carried to a septic tank and tile disposal field located within the boundaries of an individual lot.

"Septic system, individual" see *sanitary sewage disposal, on-lot.*

"Septic tank" means a multiple compartment, watertight receptacle which receives sewage from a building and is designed and constructed so as to permit settling of solids from the sewage, digestion of the organic matter and discharge of the liquid portion into a disposal area.

"Slope, steep" means the vertical change in elevation divided by the horizontal distance over which that vertical change occurs. The steep slope area consists of two areas which are delineated and defined as follows:

A. *"Prohibitive slope"* means prohibitive slopes of greater than 25 percent slope as based on a site survey, where such slope exists in any continuous horizontal increment of 50 feet or more.

B. *"Precautionary slope"* means precautionary slopes of 15 to 25 percent slope as based on a site survey, where such slope exists in any continuous horizontal increment of 50 feet or more.

These definitions do not include manmade steep slopes resulting from the implementation of an approved plan.

"Stormwater management" means the mitigation of the hydrologic impacts of lost natural runoff storage by

the use of constructed storage facilities.

A. For water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

B. For water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

"Surface water" means natural or artificial bodies of water greater than one acre in extent at the normal annual water level, as depicted on U.S.G.S. topographic quadrangles and/or as determined by on-site surveys by a registered surveyor, landscape architect or engineer. Excluded from this definition are retention basins or other stormwater management facilities, farm ponds or other facilities associated with agricultural operations, sewage lagoons and other facilities for which normal maintenance and repair is necessary.

"Top of bank" means a point above the mean water surface of a watercourse that defines the maximum depth of channel flow in the watercourse. It is either determined visually or computed as an elevation using the peak rate of runoff from a two year storm event.

"Townsend Greenbelt" means the tracts of land located around the perimeter of Townsend Proper consisting of undeveloped properties and agricultural land. Refer to figure 11-11.1 in TMC 24.36.120 for the exact mapped boundary designation.

"Townsend Proper" means the area of the town that is considered the downtown or center of town that consists of the businesses, commercial facilities, industrial areas, and residential housing developments previously constructed and in existence in the town prior to January 2000. Refer to figure 11-11.1 in TMC 24.36.120 for the exact mapped boundary designation.

"Tree, canopy" means a tree whose leaves would occupy the upper level of a forest in a natural ecological situation. These trees are also called shade trees, and typically reach heights of 50--100 feet at maturity.

"Tree, understory" means a tree whose leaves would occupy the intermediate level of a forest in a natural ecological situation. They are also found as dominant species in old field succession. These trees are also called ornamental trees.

"Variance" means relief from the standards of this section.

"Water resource protection area" means water resource protection areas are wellheads class A and recharge areas. All such areas are as depicted on the three-map series "Water Resource Protections areas for the City of Newark, City of Wilmington, New Castle County, Delaware," prepared by the water resources agency for the county that is dated 1993, or as amended.

"Water table" means the level below the surface at which the ground is saturated by water.

"Waterbody" means any watercourse, tidal wetland or lake defined by a bank or shore in which water can be found.

"Watercourse" means a stream channel (perennial, intermittent, mapped or unmapped) with banks and a bed within which concentrated water flows.

"Wellhead" means the wellhead water resource protection areas are surface and subsurface areas surrounding public water supply wells or wellfields where the quantity or quality of groundwater moving toward such wells or wellfields may be adversely affected by land use activity. Such activity may result in

a reduction of recharge or may lead to introduction of contaminants to groundwater used for public supply ("wellhead"). Class A: The wellhead zone shall include the area within a 300 foot radius circle around all public water supply wells which are classified as community water systems, as defined by section 22.157 (public water systems), in the State of Delaware Regulations Governing Public Drinking Water Systems.

"Wetland" means those areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; or areas that are defined and delineated in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" dated January 10, 1989, and as may be amended from time to time; or as further defined and delineated by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the Delaware Department of Natural Resources and Environmental Control.

"Wetland Delineation and Report" means an on-site method or process for identifying wetlands as described in the Corps of Engineers Wetland Delineation Manual, Technical Report: Y-87-1, from 1987 and as amended. The report shall be prepared by a person with professional experience and knowledge in wetlands identification and shall analyze a site for the existence and extent of wetlands.

(UDC 2002, § 1101)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.36.030 Open Space Regulations And Allowable Uses

Table 11-2.1 lists uses that may be permitted in open space. Any use not listed shall be considered prohibited.

(UDC 2002, § 1102)

24.36.040 Floodplains And Floodways

A. *Intent.* This section shall detail the requirements, allowable disturbances, and permitted construction practices within all floodplains and floodways within the town.

B. *Boundary Interpretation.* Where there appears to be a conflict between a mapped boundary and actual field conditions, a determination of the exact boundary of the area subject to inundation by the base flood shall be made using the 100-year flood elevation information provided in the flood insurance study for the flood fringe portions of the floodplain and using the best 100-year floodplain elevation information available for general floodplain areas. For the floodway portion of the floodplain the exact boundaries shall be determined by scaling the distances shown on the floodway map and by utilizing the data in the applicable flood insurance study (FIS) for the area. Where the boundary of the floodplain is disputed, the burden of proof shall be on the applicant.

C. *Floodway; Flood Fringe*. There are two areas within the floodplain, the floodway and the flood fringe.

    1. No structure shall intrude into the floodway or floodplain except for piers needed to support bridges, erosion control structures, dams for flood control or water supply, and utility crossings.

    2. No filling is permitted in floodways or floodplains.

    3. No structures designed for human habitation are permitted.

D. *Standards For Beneficial Uses In Floodplains.* All new construction, reconstruction, subdivision

proposals, substantial improvements or repairs, prefabricated structures and other developments shall be prohibited except where approved as essential to the beneficial use of property. Refer to table 11-2.1 for permitted beneficial uses. Approval shall be at the discretion of the town.

Table 11-2.1

USES IN REQUIRED OPEN SPACE

Y = Permitted N = Prohibited L = Limited Use I = Environmental Impact Assessment Report (see TMC 24.36.150)									
Use	**General Open Space**	**Floodway**	**Floodplain**	**Wetland**	**Riparian Buffer**	**Drainageways**	**Wellhead/Recharge Areas**	**Steep Slopes**	**Forests**
Agricultural									
Apiaries	Y	N	N	N	Y	Y	Y	Y	Y
Clearing	L	N	N	N	N	L	L	L	N~~L~~
Game farms/fish hatcheries	Y	L	L	I	L	L	N	N	N
Field crops	Y	L	L	N	L	Y	L	N	N
Orchards	Y	N	Y	N	L	Y	L	Y	N
Pasture	Y	L	L	N	L	N	N	Y	N
Stables	Y	N	N	N	N	N	N	N	L
Nursery	Y	N	L	N	L	Y	Y	Y	N
Recreation and Amusement: Outdoor Recreation									
Ball fields	Y	N	L	N	N	Y	Y	N	L
Day camps	N	N	L	N	L	Y	L	N	L
Fishing areas	Y	Y	Y	Y	Y	Y	L	L	L
Hunting areas	L	L	L	L	L	L	L	L	L
Natural area	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nature center	Y	N	N	N	N	Y	Y	Y	Y
Picnic area/playground	Y	N	L	N	L	Y	Y	Y	Y
Pools/co	Y	N	N	N	N	Y	Y	N	L

urts									
Shooting and Archery ranges	L	L	L	N	L	L	L	N	L
Trails	Y	Y	Y	Y	Y	Y	Y	Y	Y
Water dependent Use	N	L	L	L	L	Y	N	N	N
Industrial Uses: Utilities, Community/Region									
Public/private roads	Y	N	N	L	I	Y	L	L	L
Parking lots	L	N	N	N	N	L	N	N	N
Essential access	Y	I	I	L	I	L	L	L	L
Sewer/water/Utilities	Y	I	I	L	I	Y	Y	Y	L
Sewage and water Treatment Plants/pumping Stations/dams	N	I	I	N	I	N	N	N	N
Detention/retention basins	Y	N	N	N	L	Y	L	N	N
Temporary Uses									
Public interest Event	Y	N	N	N	N	Y	Y	N	L

(UDC 2002, § 1103)

24.36.050 Wetlands

~~A. Wetland mitigation shall be that for which a permit has been issued by the United States Army Corps of Engineers. Permits from the state may also be required.~~

~~B. It is permissible to construct utility and access crossings within wetlands where no other recourse is available. The proposed use must be authorized by the town and meet the requirements of this Code, Army Corps of Engineers regulations, and the DNREC. No other forms of construction are permitted in areas designated as wetlands.~~

~~C. Any work in buffer areas shall meet the requirements of this Code, Army Corps of Engineers regulations, and the DNREC.~~

A. **Protection Level.** All wetlands shall be protected at 100 percent. The entire area of the resource shall be preserved as open space and shall remain undisturbed. This protection level shall be met within any development.

B. **Reduction Upon Federal Permit.** The protection level established in paragraph A may be reduced only where a permit from the United States Army Corps of Engineers has been issued for filling or disturbance of the wetland. In addition, any mitigation approved by the United States Army Corps of Engineers is also subject to approval by the town before any mitigation may occur. Such approval shall be granted by the town council. Issuance of a federal permit shall not by itself authorize disturbance under this chapter.

C. **Wetlands Not Subject To Federal Jurisdiction.** Where the United States Army Corps of Engineers declines jurisdiction over a wetland, determines that a wetland is not a water of the United States, or does not require a permit for its disturbance, the protection level established in paragraph A shall continue to apply as a requirement of this chapter. A determination by any State or federal agency that it lacks jurisdiction over a wetland shall not be treated as a finding that no wetland is present.

D. **Man-Made And Isolated Wetlands.** Wetlands that are man-made or hydrologically isolated shall be delineated and reported in the same manner as all other wetlands. Where disturbance of such a wetland is proposed and the disturbance is more than de minimis, mitigation shall be required in accordance with TMC 24.36.150.

E. **Delineation.** All wetlands within a project boundary shall be delineated by a qualified professional and shown on the exploratory plan and on every subsequent plan submission, without regard to whether any wetland is subject to federal or State jurisdiction. An application that states an area of wetlands as undelineated shall not be deemed complete for review. The town may cause the delineation to be verified at the applicant's expense as an application fee established by resolution of the town council.

F. **Crossings.** Utility and access crossings may be permitted where no other recourse is available, subject to authorization by the town, the regulations of the United States Army Corps of Engineers, and the Delaware Department of Natural Resources and Environmental Control, and only at the minimum width necessary.

G. **Construction Otherwise Prohibited.** Except for the utility and access crossings permitted by paragraph F, no other forms of construction are permitted in areas designated as wetlands. Nothing in paragraph B shall be construed to authorize any form of construction prohibited by this paragraph.

H. **Buffer Areas.** Any work in buffer areas shall meet the requirements of this Code, Army Corps of Engineers regulations, and the Delaware Department of Natural Resources and Environmental Control.

(UDC 2002, § 1104)

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24.36.060 Riparian Buffer Areas (RBA)

A. *Intent.* This section shall detail the requirements, allowable disturbances, and permitted construction practices within all riparian buffer areas within the town.

B. *Waterbody Buffers.* The waterbody buffers shall meet the following standards which are intended to preserve and enhance existing vegetation and to re-vegetate disturbed areas. All riparian buffer shall be mapped to delineate the resource. No vegetation shall be removed in the RBA and existing native vegetation shall be preserved to the maximum extent possible. RBA shall extend a minimum of 100 feet past each top of bank for all waterbodies or 50 feet past the floodplain or nontidal wetland line (whichever is greater). All RBA areas shall be classified as old field, disturbed land, or meadow, and planted in accordance with this section where native vegetation is not present. The mapping of RBA's shall be supplied with an exploratory plan and at subsequent plan submissions to meet the standards of this section.

C. *Surface Waterbodies.*

1. No septic systems shall be allowed within an RBA.
2. All developments shall maximize the drainage amount conducted in natural swales rather than storm sewers. A stormwater system's discharge to streams or watercourses shall be by sheet flow through grassland or discharged from a stormwater management facility having a wetland or aquatic bench.
3. Stormwater runoff from all parking areas shall be directed to a stormwater management facility before it is discharged into an RBA.

(UDC 2002, § 1105)

24.36.070 Steep Slope Protection

A. *Intent.* The intent of this section is to protect hillsides and their related soil and vegetative resources, thereby minimizing adverse environmental effects (refer to TMC 24.36.020 for all applicable definitions). Specific objectives include the following:

1. Conservation and protection of precautionary and prohibitive slopes from inappropriate development such as excessive grading, land-form alteration and extensive vegetation removal.
2. Avoidance of potential hazards to life and property and the disruption of ecological balance that may be caused by increased runoff, flooding, soil, erosion and sedimentation, blasting and ripping of rock and landslide and soil failure.
3. Protection of the entire town from uses of land that may result in subsequent expenditures for public works and disaster relief and adversely affect the economic well-being of the town.
4. Encouragement of the use of precautionary and prohibitive slopes for open space and other uses that are compatible with the conservation and protection of natural resources.

B. *Applicability And Scope.* This regulates the circumstances in which any use may occur on areas

of precautionary and prohibitive slopes.

C. *Permitted Uses In Areas Of Precautionary And Prohibitive Slopes.* The following uses and no other are permitted in areas of precautionary and prohibitive slopes:

1. Agricultural uses not requiring cultivation or structures.
2. Game preserve, wildlife sanctuary, woodland preserve or similar conservation uses not requiring structures.
3. Passive recreation.
4. Water supply wells with the approval of the town engineer and consistent with the DNREC regulations.
5. Other uses within these areas may be permissible upon approval of the town via a conditional use or variance application.

D. *Prohibited Uses In Areas Of Precautionary And Prohibitive Slopes.* The following uses and activities are specifically prohibited and shall not be subject to variance:

1. Structures.
2. Cut and fill.
3. Soil, rock or mineral extraction.
4. Removal of topsoil.
5. On-site sewage disposal systems.
6. Roads, driveways and parking lots.

E. *Conditional Uses In Areas Of Prohibitive Slopes.* The town is authorized to grant conditional uses in the form of variances for the following uses, subject to recommendations of the town engineer.

1. Agricultural cultivation and agricultural uses requiring structures.
2. Conservation uses requiring structures.
3. Passive recreation uses requiring structures.
4. Utility easements and rights-of-way.
5. Accessory structures.
6. Individual driveways accessory to single-family detached dwellings only if the town determines that no practicable alternative alignments exist.

F. *Conditional Uses In Areas Of Precautionary Slopes.* The town is authorized to grant conditional uses in the form of variances for the following uses, subject to recommendations of the town engineer.

1. District in which the property is located.
2. Recreation use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas and golf courses, when permitted in the district in which the property is located. Not to include enclosed structures except toilet facilities, but permitting small shelters usually found in developed outdoor recreational areas. Any toilet facilities provided shall be connected to central water and sewage systems.

3. Stormwater management facilities.
4. Roads, driveways and parking lots.
5. Central sanitary sewer systems.
6. Accessory uses and structures.

G. *Standards For Variances.* The town, in considering a variance, shall consider the following:

1. Degree of modification proposed to the topographic, soil and vegetation resources.
2. Techniques and extent of mitigation proposed to offset potential adverse environmental effects.
3. Effects on adjacent and neighboring properties.

H. *Additional Standards For Variances.* An affirmative decision shall not be issued by the town for a variance unless there is evidence that:

1. Development is being proposed on areas of precautionary or prohibitive slopes only because no other alternative location is practicable.
2. Earthmoving activities and vegetation removal will be conducted only to the extent necessary to accommodate the proposed uses and structures and in a manner that will not cause excessive surface water runoff, erosion, sedimentation and unstable soil conditions.
3. Mitigation techniques will be utilized, including but not limited to retaining walls, tree wells, the establishment of ground covers and/or low spreading shrubs and the use of erosion control fabric.
4. Proposed structures will be of sound engineering design and footings will be designed in response to the site's slope, soil and bedrock characteristics.

I. *Application Procedures For Variances.* An application for a permit shall be filed with the town who shall make an initial determination on the application. For a use other than those permitted in this section, an application seeking approval for a variance shall be forwarded to the town, as appropriate, along with required studies or information. The application for a variance shall be accompanied by the following:

1. Plans drawn to a scale of at least one inch equals 50 feet depicting the following:
    a. Location, dimensions and elevation of the property.
    b. Existing and proposed uses and development.
    c. Existing and proposed contours at two-foot intervals.
    d. Location and boundaries of steep slopes and very steep structures.
    e. Cross-sections and elevations of the property and proposed structures.
    f. Existing and proposed land cover characteristics of that portion of the property within the area of precautionary or prohibitive slopes, indicating wooded areas, open areas, groundcover types, any areas with impervious surfaces and subsurface soil types.
2. Photographs showing existing uses, vegetation and topography of areas of

precautionary and prohibitive slopes.

3. Narrative report describing the slope, soil and vegetation characteristics of that portion of the property within the area of the precautionary or prohibitive slopes. Such report shall also describe:

    a. Proposed types of structures and methods of construction, types of foundation system to be employed and proposed landscaping, sewage disposal and water supply.

    b. Sediment and erosion control measures.

    c. Engineering and conservation techniques intended to alleviate adverse environmental effects that may be created by the proposed use.

(UDC 2002, § 1106)

24.36.080 Drainageways

A. In addition to the open space protection, the drainageway area protected shall be kept open to provide continuous drainage corridors. Positive surface drainage in these areas shall be preserved. The protected area may be regraded and reshaped to provide for stormwater management and drainage.

B. The following standards shall govern the design of stormwater management or surface drainage systems in drainageways in conjunction with the Delaware Department of Natural Resources and Environmental Control (DNREC):

    1. The drainage shall be designed to slow the time of concentration on the site and retain maximum ground infiltration.

    2. Where flows permit, the channels shall be designed as grassed swales, wetlands, or mesic grasslands encouraging sheet flow, except in forests.

    3. All permanent pool stormwater management ponds shall be designed to have aquatic benches planted approved plant materials.

(UDC 2002, § 1107)

24.36.090 Critical Natural Areas (CNA)

~~The applicant is required to contact the DNREC for the determination of all potential CNA and shall follow the state guidelines for developmental procedures.~~

A. Identification. The location and extent of Critical Natural Areas shall be as depicted in the State natural areas inventory maintained by the Delaware Department of Natural Resources and Environmental Control, as most recently updated on the date the application is filed. The applicant shall contact the Delaware Department of Natural Resources and Environmental Control for a determination of all potential Critical Natural Areas and shall follow the State guidelines for developmental procedures.

B. Delineation And Verification. The applicant shall delineate all Critical Natural Areas identified under paragraph A on the exploratory plan and on every subsequent plan submission, and shall submit a critical natural areas report meeting the requirements of TMC 24.36.020. The delineation shall be prepared and sealed by a qualified professional. The town may cause the delineation to be verified at the applicant's expense as an application fee established by resolution of the town council, and the verified delineation shall control. The burden of proof shall be on the applicant. No plan shall be deemed complete for review until the delineation required by this paragraph has been submitted.

C. Protection Level. All Critical Natural Areas shall be protected at 100 percent. The entire area of the resource shall be preserved as open space and shall remain undisturbed. This protection level shall be met within any development and shall not be reduced except as provided in paragraph G.

D. Extent Of The Resource. For purposes of calculating the protection level under paragraph C, the extent of

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the Critical Natural Area shall be considered is its extent as identified under paragraph A and delineated under paragraph B. Disturbance occurring before application or without a required approval shall not reduce the area subject to this section.

E. Aggregation. All parcels included in a single application or a single annexation request, and successive phases of a single development, shall be treated as one project boundary. No subdivision, conveyance or sequencing of applications shall reduce the area subject to this section.

F. Uses Within A Critical Natural Area. Land preserved under paragraph C shall remain open space, shall remain undisturbed, and shall not be used for any purpose except passive recreation and the crossings permitted by this paragraph. Stormwater management facilities, sediment and erosion control facilities, staging or storage areas, borrow or spoil areas, active recreation facilities, and required landscaping or buffer plantings shall not be located within a Critical Natural Area and shall not be counted toward satisfying any requirement of this chapter. Utility and access crossings may be permitted only at the minimum width necessary and only where the Town Engineer finds in writing that no other recourse is available. Land preserved under paragraph C shall be credited toward the open space dedication required by TMC 24.20.100 as passive open space. Notwithstanding TMC 24.20.100 paragraph A.1.e, such land shall not be counted in determining the required open space that must be suitable for active recreation. Where land is within a Critical Natural Area, this section shall control over the permitted and special exception uses of the district in which the land is located, including TMC 24.12.020.

G. Variance. A variance from the protection level established in paragraph C may be sought only in accordance with TMC 24.36.195. If a variance is granted, mitigation shall be required at a ratio of four to one (4:1) to replace habitat, and the replacement habitat shall be geographically contiguous with the impacted Critical Natural Area. No variance shall be granted with respect to habitat of a species listed as endangered or threatened by the State or the federal government. No variance shall reduce the protection level below 80 percent of the Critical Natural Area within the project boundary.

H. Preapplication Notice. Where a development is proposed in whole or in part within a Critical Natural Area, the town shall notify the applicant at the preapplication conference. The application for an exploratory plan shall include a report indicating how the plan meets the standards of this chapter, together with the comments of the Delaware Department of Natural Resources and Environmental Control on the plan. Where the applicant can preserve greater areas of open space without losing density, the town may require that greater preservation on the advice of that Department.

I. Application Upon Annexation. This section applies to any land annexed to the town upon the effective date of annexation, and to any subsequent development of that land, without regard to the zoning district assigned at annexation and without regard to any standard applicable to the land before annexation.

J. Independent Town Requirement. The protection level established in paragraph C is a requirement of the town and applies independently of any State or federal program. The State natural areas inventory is used in this section only to identify the location and extent of Critical Natural Areas. The protection level applies whether or not the Critical Natural Area is also subject to a State or federal permit requirement, a recorded conservation easement, dedication under 7 Del. C. Chapter 73, or any other State or federal protection. A determination by a State or federal agency that it lacks jurisdiction over the resource, or the expiration or denial of any State or federal application, shall not reduce the protection level established by this section.

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(UDC 2002, § 1108)

24.36.100 Water Resources Protection Areas (WRPA)

Water resource protection areas are wellheads class A and recharge areas. All such areas are as depicted on the three-map series "Water Resource Protections Areas for the City of Newark, City of Wilmington, New Castle County, Delaware," prepared by the water resources agency for the county that is dated 1993, or as amended. These areas shall be protected as required by the following sections to protect the town's water resources from contamination and pollution.

(UDC 2002, § 1109)

24.36.110 Wellheads Class A

A. Areas within 300 feet of the well shall be 100 percent open space.

B. The protection area around the well may be reduced to a 150 foot radius provided a hydrogeolocial report, prepared by a state registered geologist and submitted to the satisfaction of the Delaware Geological Survey and the DNREC, is prepared. The report must certify that:

1. The minimum 60-day time of travel from a point to the public water supply well is maintained; and

2. The well draws from a confined aquifer.

C. The natural runoff flowing into wellhead areas shall be allowed and all new stormwater run-off shall be diverted around the wellhead protection areas wherever practical.

D. The stormwater system's discharge to wellhead WRPA's shall be by sheet through grassland or discharge from a stormwater management facility having a wetland or aquatic bench. Stormwater runoff from all parking areas shall be directed to a stormwater management facility before it is discharged into a wellhead WRPA.

E. Within the wellhead area, impervious surfaces shall be limited to the buildings and access associated with the well and distribution and treatment facilities and their maintenance.

F. The minimum lot area for a proposed public water supply well and related facility drawing from a confined aquifer shall be one acre and the minimum lot area for a public well drawing from an unconfined aquifer shall be two acres.

G. This section does not apply to wellheads constructed prior to August 2001. All existing wellheads constructed prior to this date are considered as being "grandfathered" and the regulations of the section do not apply.

(UDC 2002, § 1110)

24.36.120 Recharge Areas

Recharge areas are those areas with high percentages of sand and gravel that have "excellent" potential for recharge as determined through a stack unit mapping analysis performed originally by the Delaware Geological Survey.

A. *Within Townsend Proper.* Development within the environs of downtown (Townsend Proper, as defined in TMC 24.36.020) may occur provided the gross percent impervious cover of the parcel within the recharge area is either 50 percent or as dictated under 24 Appendix A of this Chapter for maximum lot coverage (whichever is most stringent). In situations where the existing impervious cover of a property is over 50 percent and the applicant desires to re-develop the property, the gross impervious cover shall be equal to or less than the original impervious cover percentage of the original site. In areas zoned as either Commercial (C) or Industrial (I) within Townsend Proper, the applicant can seek relief by submitting an environmental study and report certified by a state registered professional geologist or professional engineer with a background in hydrogeology that indicates that additional development would not endanger the public or the environment.

B. *Within Townsend Greenbelt.* New development within the environs outside of Townsend Proper (Townsend Greenbelt, as defined in TMC 24.36.020) may occur provided the gross percent impervious cover of the entire parcel and/or development within the recharge area to be constructed is 30 percent or less.

C. *Underground Storage Tanks*. No underground storage tanks containing petroleum or any chemicals shall be permitted in a designated recharge area.

D. *Underground Recharge Systems.* For all new construction, all structures shall be required to discharge all roof drains into underground recharge systems. No aboveground discharge is permitted in recharge areas by roof drains.

E. *Figure 11-11.1*. Refer to figure 11-11.1 for the town boundaries of the areas designated as "Townsend Proper" and "Townsend Greenbelt."

Figure 11-11.1



(UDC 2002, § 1111)

HISTORY
Amended by Ord. 2020-004 on 6/3/2020

24.36.130 Boundary Determination For WRPA

A. All subdivision and land development plans depicting development or land disturbance submitted

for town review shall be evaluated for the existence of water resource protection areas by scaling for distances shown on the water resource protection area map. If existing, the boundaries of the areas shall be delineated on the plan by the applicant's engineer.

B. When there appears to be a conflict between the mapped boundary and actual site conditions, the applicant may engage the services of professional practitioners set forth in this section to prepare a report intended to determine more accurately the precise boundary of the water resource protection area, which report shall be submitted to the town with the detailed findings necessary to indicate the location of the boundary.

C. The plan showing the boundary conflict should indicate the following:

1. A detailed topographic layout of the subdivision and/or area to be developed prepared by a land surveyor or engineer;

2. For floodplain and erosion-prone slopes boundary determinations, a revised surface soils map of the subdivision and/or area prepared by a DNREC-licensed soil scientist including a written report of the on-site field inspection and test boring data;

3. For reservoir watershed, wellhead and recharge boundary determinations, a site-specific geological and hydrogeological analysis shall be performed by a state-registered professional geologist or engineer with a background in hydrogeology and shall be based upon through site investigation and testing; and

4. Evidence derived from a site-specific investigation which may include aquifer testing, test borings, test pits, observation wells, groundwater elevations and topography surveys as appropriate for the type of water resource protection area to clearly demonstrate that the area in question does not meet the definition of a water resource protection area as defined in this section.

D. The applicant is permitted to make a submission to the county with the advice of the Delaware Geological Survey and the water resources agency, to adjust the boundary or area designation based thereon. Such adjustments shall have the effect of exempting the subject parcel from the use regulations of this section and shall have the effect of amending the limits of the water resource protection area. The applicant will then be required to provide a notification sent by the county indicating that they concur with the amended boundary location in order to be exempted from the requirements of this section.

(UDC 2002, § 1112)

24.36.140 Uniform Standards And Criteria

The following standards and criteria shall be applicable to any limited use, special use or other use requiring an environmental impact assessment permitted pursuant to this division. stormwater management facilities shall be designed and constructed in accordance with DNREC "Delaware Sediment and Stormwater Regulations," dated January 23, 1991 or as later revised.

(UDC 2002, § 1113)

24.36.150 Environmental Impact Assessment Report

If a proposed use requires an environmental impact assessment report, the applicant shall have such a report certified by a professional engineer, geologist or other certified professional in the applicable environmental discipline. Mitigation cannot be used where the conflict can be avoided or minimized. The report shall contain the following criteria, given in order of preference:

A. *Site Character.* The report shall identify all potential on-site sensitive environmental concerns.

B. *Avoidance.* Alternative sites or routes shall be identified that would not damage the resource or result in less resource damage. Reasons shall be provided explaining why using these sites is impossible or infeasible versus that proposed.

C. *Minimization.* The applicant shall demonstrate that the plan minimizes the impact of the activity, route, or use on the resource. The applicant shall also demonstrate that the areas impacted shall be lowest quality and result in the least damage to the resource.

D. *Mitigation.* A mitigation plan shall be submitted indicating mitigation activities. On-site replacement is the most acceptable form of mitigation. However, mitigation can include restoration and enhancement after the use is abandoned. Mitigation by replacement on another site shall be at a ratio of 2:1. Mitigation may also include enhancement; this ratio shall be 4:1. Final town approval is required for all other forms of mitigation not consistent with this section.

Paragraphs E through H state additional required contents of the report and are not part of the order of preference established by paragraphs A through D.

E. **Resource Mitigation.** In addition to the ratios established in paragraph D, mitigation for impacts to a Critical Natural Area shall be at a ratio of four to one (4:1) and shall be geographically contiguous to the impacted Critical Natural Area. The mitigation plan shall describe the site conditions of the area to be mitigated, the required size of the mitigation area, the mitigation area boundaries, and detailed plans for monitoring and long-term maintenance.

F. **Conservation Design.** Any use proposed within natural resource area open space shall demonstrate how the principles of conservation design will be implemented and how the proposed use will be addressed in the open space management plan.

G. **Endangered Species.** The applicant shall prepare an inventory of federal and State threatened and endangered plant and animal species, and candidates for such designation, located on the site and within five hundred (500) feet of the site, a determination of the proposed development's impact, and identification of any mitigation.

H. **Cultural And Scenic Resources.** The applicant shall prepare an inventory of federal, State or locally identified irreplaceable historical, archaeological, paleontological or scenic resources located on the site and within five hundred (500) feet of the site, a determination of the proposed development's impact, and identification of any mitigation.

24.36.155 Forest Protection.

A. **Habitat Assessment Required.** Where a forest exists within a project boundary that will be disturbed by development or construction activity, a Forest Habitat Value Assessment shall be required. The assessment shall be conducted by a qualified professional landscape architect, forester, arborist, botanist, plant or wildlife ecologist, or other qualified professional, and shall be submitted with the exploratory plan.

B. **Priority For Preservation.** The forested areas containing the highest habitat value, as determined by the Forest Habitat Value Assessment, shall be given the highest priority for preservation.

C. **Protection Level.** Not less than 60 percent of the forest within a project boundary shall be preserved as open space and shall remain undisturbed. Forest located within a Critical Natural Area shall be protected at 100 percent in accordance with TMC 24.36.090 and shall not be counted toward satisfying this paragraph.

D. **Mitigation.** An applicant may be permitted to reduce the protection level established in paragraph C to not less than 50 percent, provided that mitigation is provided at a ratio of one and one-half acres planted to one acre disturbed (1.5:1), and that the area to be reforested is located on the same parcel or on an adjoining parcel. Reforestation shall meet the requirements of TMC 24.36.170. Any reduction under this paragraph shall require the approval of the town council upon the recommendation of the Planning Commission.

E. **No Increase In Density.** In no case shall a reduction under paragraph D result in an increase in the density otherwise permitted for the site.

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~~D.~~

(UDC 2002, § 1114)

24.36.160 Clearing

With all natural resources, clearing shall be permitted only under the following conditions:

A. To prepare land for a use permitted by this chapter;

B. As a reforestation measure, or to enhance to improve the quality of existing vegetation or as a means to eliminate dead, diseased, or hazardous tree stands;

C. Where a clearcutting operation is deemed permissible for one of the reasons stated in this paragraph, it shall be consistent with the terms of TMC 24.36.170 and in accordance with the State Department of Agriculture Division of Forest Services.

D. **Clearing, including earth moving, logging or burning, shall require a permit issued by the town.** Such permit shall be issued only as part of an approved land development plan with an approved resource protection plan, or upon submission of a resource protection plan and analysis demonstrating that the protection levels established by this chapter are met, including a record of the property's original conditions. Agricultural uses are exempt from this paragraph, except that agricultural uses shall submit an approved State Forestry Plan, which shall be used to determine the extent of forest on the site for purposes of TMC 24.36.155.

~~C.~~E.

(UDC 2002, § 1115)

24.36.170 Reforestation Requirements

All open spaces to be reforested shall be planted according to the plant species listed in Table 11-16. The area around each tree shall be mulched. The entire area may be mulched or seeded in a perennial grass mix with a minimum 30 percent indigenous herbaceous forest, or grassland species. Canopy trees shall be selected to provide a diversity of native plants. Plantings shall include a minimum of four species. Where more than 100 canopy trees are required, a minimum of six species shall be provided; no one species shall have less than five or more than 30 percent of the total trees.

A. *Protected Resources*. Protected resources shall not be disturbed with roadways, parking lots or utility lines. The applicant must demonstrate no possible alternative to crossing the resource exists and the route selected must be the least disruptive.

B. *Riparian Buffer Areas*. Stormwater outfall shall be permitted, provided that the discharge velocity from the terminal end of the pipe or the associated energy dissipation practice does not exceed two feet per second (fps) for the two year frequency storm event. In addition, best management practices methods shall be used to convert concentrated flow to uniform, shallow sheet flow, filter sediments, and control erosion.

Table 11-16

REFORESTATON REQUIREMENTS PER ACRE

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No. of Plants	Types of Plants
1	4" caliper canopy
4	3" caliper canopy
10	1 1/2" caliper canopy
6	1 1/2" caliper or 5–6 ft. understory trees
50	6 ft. whip canopy
30	bare root shrubs or 1 gallon pots

(UDC 2002, § 1116)

24.36.180 Roads, Parking Lots And Utilities

A. *Protected Areas.* Protected resources shall not be disturbed with roadways, parking lots or utility lines. The applicant must demonstrate no possible alternate to crossing the resource exists and the route selected must be the least disruptive.

B. *Riparian Buffer Areas.* Stormwater outfall shall be permitted, provided that the discharge velocity from the terminal end of the pipe or the associated energy dissipation practice does not exceed two feet per second (fps) for the two year frequency storm event. In addition, best management practice methods shall be used to convert concentrated flow to uniform, shallow sheet flow, filter sediments, and control erosion.

~~B.~~

24.36.195 Environmental Variance Procedure.

A. **Applicability.** This section applies to any application for a variance from a resource protection standard established by this chapter. A variance application shall be filed with the town and shall be heard by the Board of Adjustment at a public hearing noticed in the same manner as required by TMC 24.08.030(C).

B. **Environmental Impact Assessment Required.** No such variance shall be granted unless the applicant has submitted an Environmental Impact Assessment Report meeting the requirements of TMC 24.36.150.

C. **Report Due With Application.** The Environmental Impact Assessment Report required by paragraph B shall be prepared and certified as required by TMC 24.36.150, at the applicant's expense, and shall be submitted with the variance application. A variance application shall not be deemed complete until the report has been submitted. The report shall be entered into the record of the public hearing.

D. **Findings Required.** In addition to the standards of TMC 24.08.020(B)(1)(c), a variance from a resource protection standard shall not be granted unless the Board of Adjustment makes written findings that the applicant has demonstrated avoidance and minimization in accordance with TMC 24.36.150, that the mitigation required by this chapter will be provided, and that the variance is the minimum necessary. The findings shall be entered in the record.

(UDC 2002, § 1117)

24.38 Light Pollution

24.38.010 Purpose
24.38.020 Definitions
24.38.030 General Requirements
24.38.040 Standards
24.38.050 Penalties
24.38.060 Applicability

24.38.010 Purpose

A. The purpose of this Act is to regulate outdoor lighting so as to:

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1. Permit reasonable uses of outdoor lighting for night-time safety, utility, security, productivity, enjoyment, and commerce.
2. Minimize adverse offsite impacts including light trespass, and obtrusive light.
3. Help protect the natural environment from the adverse effects of night lighting which threatens wildlife by disrupting biological rhythms and otherwise interfering with behaviors of nocturnal animals.
4. Conserve energy and resources to the greatest extent possible.
5. To decrease the expense of lighting.
6. Curtail light pollution and improve the nighttime environment for astronomy.
7. Improve the travel conditions for persons and vehicles on public ways by reducing glare.
8. To improve the aesthetics of the Town of Townsend in general while providing adequate

night-time safety, utility, and security.

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24.38.020 Definitions

A. The following words, terms and phrases, when used in this section hall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. Canopy structure: Any overhead protective structure which is constructed in such a manner as to allow pedestrians/vehicles to pass under.
2. Fixture: The assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and a refractor or lens.
3. Foot-candle: A unit of illumination produced on a surface, all points of which are one foot from a uniform point source of one candle.
4. Glare: Direct light emitted by luminaries that cause reduced vision or momentary blindness.
5. Luminance: The level of light measured at a surface.
6. Lamp: The component of a luminary that produces the light.
7. Light direct: Light emitted directly by a lamp, off a reflector, or through a refractor of luminaries.
8. Light emitting surface: Any part of a fixture (lamp, diffusers) which emits light rays.
9. Light pollution: unwanted light in public places and general sky glow caused by the scattering of artificial light in the atmosphere, much of which is caused by poorly designed luminaries.
10. Light shield: Any attachment which interrupts and blocks the path of light emitted from a luminaries or fixture.
11. Light trespass: Light emitted by luminaries that shines beyond the boundaries of the property on which the luminaries are located.
12. Lumen: A unit of measurement of luminous flux.
13. Luminaries: The complete lighting system, including the lamp and the fixture.
14. Luminaries' full cutoff: A luminaries that allows no direct light emissions above a horizontal plane through the luminaries' lowest light-emitting part.
15. Luminaries permanent outdoor: Any fixed luminaries or system of luminaries that is outdoors and this is intended to be used for seven (7) days or longer.
16. Outdoor light fixtures: Outdoor artificial illuminating devices, installed or portable, used for floodlighting, general illumination, or advertisement.
17. Roadway lighting: Permanent outdoor luminaries that are specifically intended to illuminate

roadways for automotive vehicles.

18. Efficacy - A measure of how much light a light source produces for the energy put into it.
19. CCT - Correlated Color Temperature; color temperature defines the color appearance of a white LED. CCT is defined in degrees Kelvin;-
    a. A warm light is approximately 2,700 K-
    b. Moving to neutral white at approximately 4,000 K-
    c. Cool white at 5,000 K or more

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24.38.030 General Requirements

A. Conformance with all applicable codes: All outdoor lighting shall be installed in conformance with the provisions of this Ordinance, applicable Electrical and Energy Codes, and applicable sections of the Building Code.

B. Applicability: Except as described below as exemptions, all outdoor lighting installed after the date of effect of this Ordinance shall comply with these requirements. This includes, but is not limited to, new lighting, replacement lighting, or any other lighting whether attached to structures, poles, the earth, or any other location, including lighting installed by any third party.

C. Exemptions: The following is not regulated by this Ordinance:

1. Lighting within public right-of-way or easement for the principal purpose of illuminating streets or roads. No exemption shall apply to any lighting within the public right of way or easement when the purpose of the lighting is to illuminate areas outside the public right-of-way or easement.
2. Lighting for public monuments and statuary.
3. Lighting solely for signs, temporary lighting for theatrical, television, performance areas and construction sites.
4. Underwater lighting in swimming pools and other water features.
5. Temporary lighting and seasonal lighting.
6. Lighting that is only used in emergency conditions.
7. Low voltage landscape controlled by an automatic device that is set to turn the lights off at one hour after the site is closed to the public or at a time established by the authority.
8. Lighting specified or identified in a specific use permit.
9. Lighting required by federal or state laws or regulations.
10. If no lighting recommendation or regulation applies, the minimum luminance adequate for the intended purpose is used, giving full consideration to safety, energy conservation, glare, and minimizing light trespass.
11. For roadway lighting, a determination is made that the purpose of the lighting installation or replacement cannot be achieved by installation of reflectorized roadway markers, lines,

warnings or informational signs, or other passive means.

12. Adequate consideration has been given to conserving energy and minimizing glare, light pollution, and light trespass.

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24.38.040 Standards

A. Applicable to all zoning districts:

1. All outdoor lighting must comply with these standards. 4.c, 4.f., and 4.h. must be in compliance within 60 days from the date of passage.
2. All lights which illuminate an outdoor area shall be shielded in such a way as to direct all light toward the Earth's surface and away from reflective surfaces.
3. All lights are required to utilize light shields.
4. Light Trespass: Light fixtures or lamps shall be shielded/shaded in such a manner as to direct incident rays away from all adjacent property.
5. Light pollution and trespass shall not exceed 0.05-foot candles.
6. All lights shall utilize shut-off controls.
7. Lights on poles shall not be taller than the building whose area they illuminate nor taller than fifteen (15) feet whichever is shorter.
8. Any facilities which may require floodlighting may not arrange the light in such a way that it will shine towards roadways, towards forests and wildlife habitat preservation areas, onto adjacent residential property or residential use property or into the night sky.
9. Except as stated elsewhere in these regulations, light levels will be limited to those published as recommendations by the Illuminating Engineering Society of North America.
10. All street lighting shall have no light emitted above 90 degrees.
11. All lighting designs shall be conducted in accordance with the Illuminating Engineering Society of America's recommended practices for Lighting for Exterior Environments and Parking lots.

B. For commercial, business, industrial and natural resource zones and any roadway adjacent to residential zones:

1. Any light fixture must be placed in such a manner that no light emitting surface is visible from any residential area or public/private roadway, walkway, trail or other public way when viewed at ground level.
2. Any Canopy structure used at a business location must have recessed lights with diffusers which do not extend below the surface of the canopy.
3. Any luminaries on a pole, stand or mounted on a building must have a shield, an adjustable reflector and non-protruding diffusers.

4. Installation and operation cost: The cost of installing and operating approved roadway lighting on any Town of Townsend public road shall be through a financial method approved by the Town of Townsend Town Council. The costs of all other lighting systems shall be borne by the developer/property owner.

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24.38.050 Penalties

Every person in violation of any provision of this Ordinance shall be punished in the following manner:

- 1st offense: A warning by written violation letter.
- Each additional offense: Fine in accordance with the Administration Fees and Fines under Fees in the Townsend Municipal Code with a penalty of $50 - $500.

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24.38.060 Applicability

The provisions of this Ordinance are hereby ordered to take effect sixty (60) days following adoption.

HISTORY
Adopted by Ord. 2023-001 Adopts Light Pollution Ordinance on 9/20/2023

24 - Appendices

24 - Appendix A Zoning District Regulations
24 - Appendix B Developmental Flowchart
24 - Appendix C Minor Subdivision Checklist
24 - Appendix D Major Subdivision Checklist

24 - Appendix A Zoning District Regulations

Appendix "A" Town of Townsend Zoning District Regulations										
	P Preservation	**R Residential**	**R-1A Residential**	**R-1 Residential**	**R-2 Residential**	**R-3 Residential**	**R-AA Residential**	**C Commercial**	**I General Industry**	**Residential Suburban**
Minimum lot area	43,560 sq. ft	12,500 sq. ft	10,000 sq. ft.	9,000 sq. ft.	7,000 sq. ft.	*	7,000 sq. ft.	5,000 sq. ft.	43,560 sq. ft	**
		13,500 sq. ft. (corner lot)	11,500 sq. ft. (corner lot)			*		6,000 sq. ft. (corner lot)		**
	100'	100'	85'	75'	50'	*	50'	50'	100'	**

Minimum lot width										
		110' (corner lot)				*				**
Minimum front yard	50'	25'	25'	25'	25'	*	25'	25'	50'	**
Minimum side yard	50'	10' each	10' each	10' each	10' each	*	10' each	10'	20'	**
	100' both	25' both	25' both	25' both	25' both	*	25' both	25' both	40' both	**
Minimum rear yard	40'	20'	20'	20'	20'	*	20'	10'	40'	**
Rear yard setback	40'	10'	10'	10'	10'	*	10'	10'	40'	**
Side yard setback	50'	10'	10'	10'	10'	*	10'	10'	20'	**
Maximum lot coverage	35%	35%	35%	35%	40%	*	35%	75%	80%	**
Maximum building height	35'	35'	35'	35'	35'	*	35'	35'	35'	**
Accessory Structure										
Rear yard setback	40'	5'	5'	5'	5'	*	10'	10'	40'	**
Side yard setback	50'	5'	5'	5'	5'	*	10'	10'	20'	**
Maximum lot cov.	35%	35%	35%	35%	40%	*	35%	75%	80%	**
Maximum building height	35'	12'	12'	12'	12'	*	35'	35'	35'	**

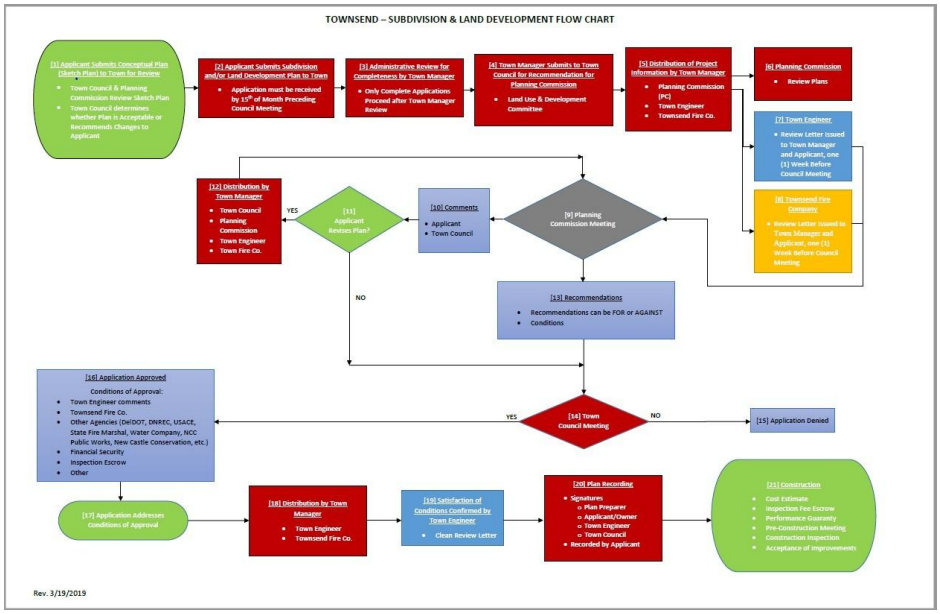
(Ord. of 04-05-2005, § 101)

HISTORY

Amended by Ord. 2020-004 on 6/3/2020
Amended by Ord. 2022-002 on 4/20/2022

24 - Appendix B Developmental Flowchart

Subdivision & Land Development Flow Chart



HISTORY
Adopted by Ord. 2020-004 on 6/3/2020

24 - Appendix C Minor Subdivision Checklist

Minor Subdivision or Land Development Submission Requirements

Name of subdivision or development	
Name and address of the owner and applicant	
Name and address of the engineer or surveyor who prepared the plan	
Written and graphic scale, not exceeding 1"=50'	
Sheet size of either 24" x 36" or 24" x 42"	
North arrow	
Plan legend	
Date of the original plan and all subsequent revision dates	

Sheet number, if multiple sheets are used	
A location map with a scale of no less than 1" = 500' indicating adjacent streets	
Certification of plan accuracy by engineer/surveyor	
Certification of ownership	
Certification of plan approval	
Tax parcel numbers	
Zoning district of the subject tract	
Source of title	
Survey datum and local benchmark	
Total site gross and net acreage	
Name of water supplier and the note "Water supply is subject to the State Department of natural Resources and Environmental Control and the Delaware Department of Health".	
Sanitary Sewage disposal method	
Number of existing and proposed lots or dwellings units	
Lot numbers for all existing and proposed lots	
Existing and proposed nonresidential gross floor area	
Location of existing and proposed building and structures	
The name, right-of-way width and cartway width of all adjoining streets	
Tie-in distances from subject property to the nearest street intersection	
Location of front, side, and rear yard setbacks and all required buffer yards	
Location and dimensions of all existing and proposed sidewalks	
Calculation of required off-street loading areas	
Location of all existing and proposed site accesses and driveways	
Location and design of all proposed off-street parking areas, indicating parking spaces and access aisle dimensions and directional arrows indicating proposed traffic circulation patterns	
Existing and proposed building coverage	
Existing and proposed impervious coverage	
Name and address, tax parcel numbers and zoning of all adjoining property owners	
Location of any water bodies and watercourses	

Location of any floodplains, including FEMA map panel number	
Location of any wetlands areas delineated during a time of seasonal high ground water tables. If no wetlands present on site, a letter of nonexistence for wetlands is required	
Location and identification of any historic structures	
Location of all significant natural or manmade structures	
Existing and proposed deed restrictions, easements or protective covenants	
Grading plan indicating existing contours (at two-foot intervals), proposed grading, spot elevations and finished floor elevations and top and bottom of wall elevations for any retaining walls over two feet	
Limit of existing tree masses and location, size and species of all individual trees over six-inch caliper. A limit of disturbance line	
A limit of disturbance line	
A soil erosion and sediment control plan	
Stormwater management plan	
Solid waste management plan	
Landscape plan	
A listing of all existing nonconforming buildings, uses or structures	
Digital copies of the submitted application packet. Once the plan has final approval, digital copies in CAD or other applicable engineering software must be submitted to the Town Clerk and the Town Engineer	
Final checklist requirements	

_____ _____

Signature of Town Engineer Date

HISTORY
Adopted by Ord. 2020-004 on 6/3/2020

24 - Appendix D Major Subdivision Checklist

Major Subdivision or Land Development Submission Requirements

Name of subdivision or development	
Name and address of the owner and applicant	
Name and address of the engineer or surveyor who	

prepared the plan	
Written and graphic scale, not exceeding 1"=50'	
Sheet size of either 24" x 36" or 24" x 42"	
North arrow	
Plan legend	
Date of the original plan and all subsequent revision dates	
Sheet number, if multiple sheets are used	
A location map with a scale of no less than 1" = 500' indicating adjacent streets	
Certification of plan accuracy by engineer/surveyor	
Certification of ownership	
Certification of plan approval	
Tax parcel numbers	
Zoning district of the subject tract	
Source of title	
Survey datum and local benchmark	
Total site gross and net acreage	
Name of water supplier and the note "Water supply is subject to the State Department of natural Resources and Environmental Control and the Delaware Department of Health"	
Sanitary Sewage disposal method	
Number of existing and proposed lots or dwellings units	
Lot numbers for all existing and proposed lots	
Existing and proposed nonresidential gross floor area	
Location of existing and proposed building and structures	
The name, right-of-way width and cartway width of all adjoining streets	
Tie-in distances from subject property to the nearest street intersection	
Location of front, side, and rear yard setbacks and all required buffer yards	
Location and dimensions of all existing and proposed sidewalks	
Calculation of required off-street loading areas	
Location of all existing and proposed site accesses and driveways Location and design of all proposed off-street parking areas, indicating parking spaces	

and access aisle dimensions and directional arrows indicating proposed traffic circulation patterns	
Existing and proposed building coverage	
Name and address, tax parcel numbers and zoning of all adjoining property owners	
Location of any water bodies and watercourses	
Location of any floodplains, including FEMA map panel number	
Location of any wetlands areas delineated during a time of seasonal high ground water tables. If no wetlands present on site, a letter of nonexistence for wetlands is required	
Location and identification of any historic structures	
Location of all significant natural or manmade structures	
Existing and proposed deed restrictions, easements or protective covenants	
Grading plan indicating existing contours (at two-foot intervals), proposed grading, spot elevations and finished floor elevations and top and bottom of wall elevations for any retaining walls over two feet	
Limit of existing tree masses and location, size and species of all individual trees over six-inch caliper. A limit of disturbance line	
A soil erosion and sediment control plan	
Stormwater management plan	
Solid waste management plan	
Landscape plan	
A listing of all existing nonconforming buildings, uses or structures	
Digital copies of the submitted application packet. Once the plan has final approval, digital copies in CAD or other applicable engineering software must be submitted to the Town Clerk and the Town Engineer	
A traffic impact study, including mitigation measures if deemed necessary by the study. The name, right-of-way width, cartway width, profiles, cross sections and grading for all proposed streets	
Type, location, size, material of construction, slope and profiles for all proposed utilities	
Location, size material of construction slope and profiles for all prosed storm sewers	
Location, grade elevation and invert elevation for all catch basins, inlets and manholes	

Location of all proposed fire hydrants	
Phasing lines for phased developments	
Sidewalk locations, pedestrian ways, bikeways, walkways	
Proposed passive and active recreation areas	
Listing of any required variances	
Wetland report	
Floodplain study	
Construction details for all proposed improvements (UDC 2002, §2003)	
Final checklist requirements	
DelDOT Pipe cover and lateral spreadsheet	

_____ _____

Signature of Town Engineer Date

HISTORY

Adopted by Ord. 2020-004 on 6/3/2020