

City of Lewes, DE
Wednesday, April 15, 2015

Chapter 197. Zoning

[HISTORY: Adopted by the City Council of the City of Lewes 7-9-1979; amended in its entirety 10-13-2011. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Amusement parks — See Ch. **56**.
Beaches — See Ch. **63**.
Building construction — See Ch. **70**.
Numbering of buildings — See Ch. **73**.
Docks — See Ch. **86**.
Dwelling units — See Ch. **90**.
Storage of gasoline — See Ch. **108**.
Junkyards — See Ch. **115**.
Massage parlors — See Ch. **125**.
Property maintenance — See Ch. **148**.
Subdivision and land development — See Ch. **170**.
Trailers and trailer parks — See Ch. **175**.

197a Table of Permitted Uses 

197b Table of Dim Regs for Zones 

197c Table of Dim Regs for R5 

197d Table of Dim Regs for Nonres 

197e Table of Dim Regs for Acc Bldgs 

197f Table of Permitted Projections 

Article I. General Provisions

§ 197-1. Title.

This chapter shall be known as the "Zoning Ordinance of the City of Lewes, Delaware."

§ 197-2. Authority.

This chapter has been made in accordance with the grant of power in Title 22, Chapters **3** and **7**, of the Delaware Code.

§ 197-3. Purposes.

A. Principal.

- (1) Pursuant to 22 Del. C. § 303, this chapter has been made in accordance with a Comprehensive Plan and is designed to accomplish the following:
 - (a) Lessen congestion in the streets.
 - (b) Secure safety from fire, panic and other dangers.
 - (c) Promote health and the general welfare.
 - (d) Provide adequate light and air.
 - (e) Prevent the overcrowding of land.
 - (f) Avoid undue concentration of population.
 - (g) Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
- (2) Pursuant to 22 Del. C. § 303, the regulations contained in this chapter have been made with reasonable consideration, among other things, of the following:
 - (a) The character of each district and its peculiar suitability for particular uses.
 - (b) Conserving the value of buildings.
 - (c) Encouraging the most appropriate use of land throughout the City of Lewes.

B. Implementation of the following core values of the City's Comprehensive Plan:

- (1) Lewes has a special and historic relationship with the sea.
- (2) Lewes is a community of diversity.
- (3) Lewes values its humane town scale and sense of face-to-face intimacy that is characteristic of its quality of life.
- (4) Lewes is a town of busy days and quiet nights.
- (5) Lewes recognizes and maintains its internal communities.
- (6) Lewes has unique historical origins and strives to highlight its heritage through design and architectural preservation.

C. Maintenance of important characteristics that help to define "Lewes," including, but not limited to:

- (1) Enhancing and preserving the intrinsic qualities of its scenic byways. (Intrinsic qualities can be scenic, historic, cultural, natural, recreational and archaeological.)
- (2) Maintaining Lewes' urban gateways and access corridors, including Savannah Road, Kings Highway and New Road.

- (3) Maintaining the historic character of the City.
 - (4) Preserving Lewes' open space.
- D. Where practicable and not in conflict with City codes, adherence to the following:
- (1) The principles of smart growth, as listed in the EPA's "Essential Smart Growth Fixes for Urban and Suburban Zoning Codes" (EPA, November 2009).
 - (2) Techniques to make use of green infrastructure for management of stormwater, as outlined in Chapter 9 of the EPA's "Essential Smart Growth Fixes for Urban and Suburban Zoning Codes" (EPA, November 2009).

§ 197-4. Applicability.

- A. This chapter shall apply to all land within the incorporated boundaries of the City of Lewes. It is intended that the extent of its applicability be automatically changed in accordance with the provisions of this chapter or provisions of state law which may affect its applicability.
- B. To avoid undue hardship, nothing in this chapter shall be deemed to require changes in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of the adoption of this chapter or prior to the effective date of the adoption of any amendment thereto and upon which actual building construction has been diligently carried on. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastening in a permanent manner, except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding the building, such demolition or removal shall be deemed to be actual construction, provided that the work shall be diligently carried on until completion of the building involved.

§ 197-5. Components.

- A. Text and map. This chapter consists of the regulations written herein and a map depicting zoning districts in the City.
- B. Tables. The tables contained herein are part of this chapter.
- C. Drawings and graphics. The drawings and graphics herein are part of this chapter unless otherwise indicated.

§ 197-6. Compliance required.

- A. Partition; combination; land development. Tracts, parcels, lots, or property shall be divided, partitioned, or combined, whether by metes and bounds, subdivision, or land development, in conformance with the provisions of this chapter. This provision also applies to land offered for sale or lease.
- B. Use. Buildings and land shall be used in conformance with the provisions of this chapter.
- C. Construction; reconstruction; alteration; relocation. Buildings and parts of buildings shall be erected,

reconstructed, converted, enlarged, moved, or structurally altered in conformance with the provisions of this chapter.

D. Yards and open space.

- (1) No structure shall be located; no existing structure shall be altered, enlarged, moved or rebuilt; and no open space surrounding any structure shall be encroached upon or reduced in any manner that does not conform with the yard, lot, area, and building location regulations designated for the zoning district in which such building or open space is located unless otherwise permitted.
- (2) A yard or other open space associated with a building on a lot shall not be considered as a required yard or open space for a building on any other lot.
- (3) All required yards and courts shall be open and unobstructed to the sky unless otherwise permitted.
- (4) All yards shall be maintained in good condition and, when required, landscaped.

E. Height of buildings and structures.

- (1) General. No building shall be erected, reconstructed, or structurally altered to exceed the height limits designated for the zone in which such building is located, except as otherwise permitted.
- (2) Sloping lot. On any sloping lot, stories in addition to the number permitted in the zone in which such lot is situated shall be permitted on the downhill side of any building erected on such lot, but the building height limit shall not otherwise be increased above the maximum permitted height for the zoning district.

§ 197-7. Provisions are minimum requirements.

The provisions of this chapter shall be the minimum requirements for the promotion of the public health, safety, morals, convenience, order, comfort, prosperity, or general welfare.

§ 197-8. References to other codes, ordinances, and regulations.

- A. References to titles, sections, subsections, and other parts of the Delaware Code, Administrative Code, and state regulations shall apply to the code/regulations as existing or amended subsequently.
- B. References to titles, sections, subsections, and other parts of the Code of the City of Lewes or the Lewes City Charter shall apply to the Code/Charter as existing or amended subsequently.
- C. References to titles, sections, subsections, and other parts of other codes, laws, regulations, or policies shall apply to the codes, laws, regulations, or policies as existing or amended subsequently.

§ 197-9. Interpretation of language.

- A. Certain words in the singular number shall include the plural number, and certain words in the plural number shall include the singular number, unless the obvious construction of the wording indicates otherwise.

- B. Words in the present tense shall include the past and future tenses, and words in the future tense shall include the present tense.
- C. The word "shall" is mandatory. The word "may" is permissive.
- D. The meaning of the word "used" shall include "designed" or "intended or arranged to be used."
- E. The meaning of the word "erected" shall include "constructed," "reconstructed," "altered," "placed," or "moved."
- F. The meaning of the terms "land use" and "use of land" shall include "building use" and "use of building."
- G. The meaning of the word "adjacent" shall include "abutting" and "adjoining."

[1]: *Editor's Note: See also § 197-106, Definitions.*

§ 197-10. Interpretation of Zoning Map.

- A. Zoning districts. The incorporated area of the City is divided into the zoning districts shown on the Zoning Map. This map and its accompanying notations are adopted by reference and are declared to be a part of this chapter.^[1]

[1]: *Editor's Note: The Zoning Map is on file in the City offices.*
- B. Land created by changing level of water bodies. Land hereafter created by the filling or changing of the level of water bodies shall assume the zoning district of the contiguous land.
- C. Uncertainty as to boundaries. Where uncertainty exists as to the boundaries of zoning districts as shown on the Zoning Map, the following rules shall apply.
 - (1) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
 - (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
 - (3) Boundaries indicated as approximately following City or county limits shall be construed as following City or county limits.
 - (4) Boundaries indicated as following railroad lines shall be construed to be midway between the main track(s).
 - (5) Boundaries indicated as following shorelines shall be construed to follow such shorelines. If the shoreline changes, the boundary shall be construed as moving with the actual shoreline.
 - (6) Boundaries indicated as approximately following the center lines of streams, lakes, or other bodies of water shall be construed as following such center lines.
 - (7) Boundaries indicated as parallel to, or extensions of, features described in this subsection shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.
 - (8) Where physical or cultural features existing on the ground differ from those shown on the Zoning Map, or in other circumstances not covered by this section, the Board of Adjustment shall interpret

the zone boundaries.

- D. Errors or omissions. If, because of error or omission, the Zoning Map does not show a property as being in a zoning district, such property shall be classified in the least-intense zoning district until changed by amendment.
- E. Parcels split by zoning districts. Where a zoning district boundary divides a lot, tract, parcel, or property, the location of the district boundary, unless the Zoning Map indicates its dimensions, shall be determined by applying the map scale shown on the Zoning Map scaled to the nearest foot.

§ 197-11. Interpretation of uses.

- A. A use not specifically listed as permitted in a zoning district is prohibited unless determined to be comparable with, analogous with, akin to, or like a use permitted in that zoning district.
- B. Standards for interpretation.
 - (1) The use closely resembles and contains the same characteristics as the uses in the zone to which it is to be added.
 - (2) The use does not create dangers to health and safety and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added.
 - (3) The use does not create traffic to a greater extent than do other uses listed in the classification to which it is to be added.
- C. The determination of similar uses shall not apply to off-street parking or signs.

§ 197-12. Relationship to subdivision and land development.

It is intended that the provisions of this chapter be used in conjunction with Chapter **170**, Subdivision and Land Development, of the Code of the City of Lewes.

§ 197-13. Relationship to prior zoning ordinances.

- A. Building permits.
 - (1) Where construction has begun in accordance with a building permit validly issued more than six months prior to the adoption of this chapter, such construction may be completed as long as it complies with the zoning or subdivision regulations in effect at the time the permit was issued.
 - (2) Where a building permit has been validly issued within six months prior to the adoption of this chapter, construction may be completed as long as it complies with the zoning or subdivision regulations in effect at the time the permit was issued and as long as construction begins within six months of the adoption of this chapter.
 - (3) Construction is begun when excavation and the piers or footings of at least one or more buildings

covered by the permit have been completed.

B. Lots.

- (1) Provision. Any lot which was legally recorded and was a buildable lot under the zoning or subdivision regulations in effect immediately prior to the effective date of this chapter is a buildable lot under this chapter and does not require a variance to construct a single-family dwelling.
- (2) Applicability.
 - (a) This provision applies to all zones.
 - (b) This provision permits construction of a single-family dwelling only if the owner of the substandard lot owned no adjoining vacant lot or parcel on the effective date of this chapter.

C. Plats. Any final subdivision plat, approved by the Lewes Planning Commission during the six months immediately prior to the adoption of this chapter, may be recorded. Any lot, shown on such plat, shall be a buildable lot even though it may contain less than the minimum required area for any residential zone. However, the plat containing such a lot must be recorded within six months following the adoption of this chapter.

§ 197-14. Relationship to other regulations.

- A. In general. Where this chapter imposes a standard that differs from a standard imposed by other statutes, resolutions, ordinances, rules, regulations, easements, covenants, or agreements, the stricter standard shall govern.
- B. Conflict with other laws. Pursuant to 22 Del. C. § 307:
 - (1) Wherever the regulations contained in this chapter require a greater width or size of yards or courts, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations in this chapter shall govern.
 - (2) Wherever any other statute, local ordinance or regulation requires a greater width or size of yards or courts, or a lower height of building or a lesser number of stories, or a greater percentage of lot to be left unoccupied, or imposed other higher standards than are required by the regulations in this chapter, such statute, local ordinance or regulation shall govern.
- C. Compliance with other applicable regulations. Compliance with the standards prescribed in this chapter does not relieve an applicant from compliance with other applicable statutes, resolutions, ordinances, rules, regulations, easements.

§ 197-15. Relationship to private agreements.

It is not intended that this chapter invalidate or annul any easements, covenants, or other private written agreements between parties.

§ 197-16. Annexation.

Land hereafter annexed to the City of Lewes shall be placed in an appropriate zone as a part of the annexation proceedings.

§ 197-17. Severability.

- A. The Mayor and City Council hereby declares that the sections, paragraphs, sentences, clauses, and phrases of this chapter can be separated from one another.
- B. Should a court decide that any section or provision of this chapter is unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any part other than the part judged unconstitutional or invalid.

Article II. Administrative Responsibilities

§ 197-18. Planning commission.

- A. Established. See the Code of the City of Lewes, Chapter **33**, § **33-1**.
- B. Composition; qualifications; appointments. See the Code of the City of Lewes, Chapter **33**, §§ **33-2** through **33-7**.
- C. Responsibilities. See the Code of the City of Lewes, Chapter **33**, § **33-8**.

§ 197-19. Board of adjustment.

- A. Established.
 - (1) A Board of Adjustment is hereby established pursuant to 22 Del. C. § 321.
 - (2) It shall be known as the Lewes Board of Adjustment and shall be referred to as the Board of Adjustment in this chapter.
- B. Organization.
 - (1) Qualifications. Pursuant to 22 Del. C. § 322(d)(1):
 - (a) Members shall be residents of the City.
 - (b) At the time of appointment and throughout the term of office, a member shall not be a candidate for, a candidate-elect to, or incumbent in any elected political office or a City employee.
 - (c) Members shall have knowledge of and experience with the problems of rural and urban development.
 - (2) Term of office. Pursuant to 22 Del. C. § 322(d)(2):
 - (a) Each member of the Board of Adjustment shall serve a three-year term or until a successor takes

office.

- (b) The terms shall be staggered so that generally no more than two members are appointed or reappointed each year.
- (3) Appointments. Pursuant to 22 Del. C. § 322(d)(1):
 - (a) The Mayor shall appoint members of the Board of Adjustment.
 - (b) The Mayor and City Council shall confirm the appointments by majority vote.
- (4) Officers. Pursuant to 22 Del. C. § 322(d)(2):
 - (a) Members shall elect a Chairperson and a Secretary from among themselves.
 - (b) Members shall elect a Vice Chairperson to assume the Chairperson's duties when the Chairperson is unable to serve.
- (5) Vacancies. Pursuant to 22 Del. C. § 322(d)(3):
 - (a) A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term in the same manner as a member appointed to a full term.
 - (b) The person appointed to complete an unexpired term shall have the same qualifications as members appointed to full terms.
- (6) Removal. Pursuant to 22 Del. C. § 322(d)(3), the Mayor and City Council may remove a member for cause after a hearing by majority vote.
- (7) Staff support. The Mayor and City Council may assign appropriate staff to the Board of Adjustment.
- (8) Compensation. Members shall serve without compensation but may be reimbursed for expenses related to duties as members of the Board of Adjustment.

C. Responsibilities.

- (1) Administrative review: hear and decide appeals where an error is alleged in any order, requirement, decision, determination, interpretation, or denial of an application by any administrative official in the administration or enforcement of this chapter as authorized in 22 Del. C. § 327(a)(1) and in accordance with § **197-91** of this chapter.
- (2) Special exceptions: hear and decide special exceptions to the terms of the chapter as authorized in 22 Del. C. § 327(a)(2) and in accordance with § **197-93** of this chapter.
- (3) Variances: authorize variance from the strict application of the provisions of this chapter as authorized in 22 Del. C. § 327(a)(3) and in accordance with § **197-92** of this chapter.

D. Meetings and hearings.

- (1) Pursuant to 22 Del. C. § 323, meetings and hearings of the Board of Adjustment shall be scheduled and conducted as follows:
 - (a) Schedule. The Board of Adjustment shall hold meetings and hearings at the call of the Chairperson and as the Board may determine.
 - (b) Meetings of the Board of Adjustment shall be open to the public.

- (c) Conduct of meetings.
 - [1] The Board of Adjustment shall adopt rules for the transaction of business.
 - [2] The Chairperson or, if the Chairperson is absent, the Acting Chairperson:
 - [a] May compel the attendance of witnesses.
 - [b] May administer oaths.
 - [c] Shall afford all parties an opportunity to be heard.
 - (d) Minutes.
 - [1] The Board of Adjustment shall keep minutes of its examinations and other official actions, including resolutions, transactions, findings, and determinations.
 - [2] The minutes shall record the vote of each member on each item considered by the Board of Adjustment. The minutes shall also record when a member is absent or fails to vote on any item.
 - (e) Action.
 - [1] A majority of those present and voting is required to take official action.
 - [2] All official actions of the Board of Adjustment shall be in writing.
 - (f) Pursuant to 22 Del. C. § 327(b), the Board may reverse or affirm, wholly or partly, 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 the powers of the officer from whom the appeal is taken.
 - (g) Records maintenance. The Board's examinations and official actions shall be
 - [1] A public record.
 - [2] Filed immediately in the Office of the Board of Adjustment, which shall be located in the same place as the City's official office.
- (2) The Board of Adjustment shall adopt any additional rules of procedure as deemed necessary.

§ 197-20. Historic Preservation Commission.

- A. Established: See Article **VI**, § **197-57**.
- B. Composition; qualifications; appointments: See Article **VI**, § **197-57**.
- C. Responsibility: See Article **VI**, § **197-57**.

§ 197-21. Commercial Architectural Review Commission.

- A. Established: See the Code of the City of Lewes, Chapter **70**, § 70-58A.

- B. Composition; qualifications; appointments: See the Code of the City of Lewes, Chapter **70**, § 70-58B and C.
- C. Responsibility: approval of construction, alteration, reconstruction, moving, or demolition of commercial structures that would affect the exterior appearance of a structure visible or intended to be visible from an adjacent public way pursuant to the Code of the City of Lewes, Chapter **70**, § **70-60**.

§ 197-22. Building Official.

The Building Official, appointed pursuant to Chapter **70**, § **70-7**, of the Code of the City of Lewes, shall be responsible for the administration of, interpretation of, and securing compliance with the provisions of this chapter.

§ 197-23. Mayor and City Council.

- A. Administrative responsibilities.
 - (1) Approval of conditional use applications pursuant to Article **XIII**.
 - (2) Establishing fees and charges from time to time.
- B. Legislative responsibilities.
 - (1) Adopting changes to the text and map of this chapter pursuant to 22 Del. C. §§ 304 and 305.

Article III. Zoning districts (zones)

§ 197-24. Open Space Zone.

- A. Symbol: OS.
- B. Purposes:
 - (1) Preserve the physical diversity and the harmonious relationship of the City with its natural environment by providing an opportunity to preserve lands from urban development.
 - (2) Provide for open space lands, in recognition of the following:
 - (a) Value for recreation and aesthetic pleasures.
 - (b) Importance in maintaining green and open buffers along scenic waterways and views.
 - (c) Need for preserving tidal wetlands in a natural state.
 - (d) Desirability of open spaces in dense, built-up neighborhoods with small private yards.
 - (e) Availability of dredge spoil disposal areas that are unsuitable for urban building development but are suitable for park and outdoor recreation opportunities.

§ 197-25. Suburban Zone.

- A. Symbol: R-1.
- B. Purposes:
 - (1) Provide for residential development in the outer portion of the City at a lower density. This zoning designation is intended for annexed lands that are already developed at similar densities and for annexation of undeveloped lands.

§ 197-26. Residential Low-Density Zone.

- A. Symbol: R-2.
- B. Purposes:
 - (1) Provide for residential development outside of the City's town center and beachfront area.
 - (2) Maintain lots that will permit the efficient use of public water and sewer services.
 - (3) Diversify the City's residential development pattern by providing an opportunity for lots larger than those found in or near the center of the City.

§ 197-27. Residential Low-Density (Historic) Zone.

- A. Symbol: R-2(H).
- B. Purposes:
 - (1) Provide for residential development outside of the City's town center and beachfront area.
 - (2) Maintain lots that will permit the efficient use of public water and sewer services.
 - (3) Diversify the City's residential development pattern by providing an opportunity for lots larger than those found in or near the center of the City.
- C. Historic District.
 - (1) All of the Residential Low-Density (Historic) Zone [R-2(H)] is located within the Lewes Historic District.
 - (2) All properties within the Residential Low-Density (Historic) Zone [R-2(H)] shall be subject to the requirements of Article **VI**.

§ 197-28. Residential Beach Zone.

- A. Symbol: R-3.

B. Purposes:

- (1) Provide for residential development in the City's beachfront area.
- (2) Preserve the distinctive residential character of the City's beachfront area.
- (3) Preserve physical and visual access to nearby beaches and marshes.

§ 197-29. Residential Beach (Historic) Zone.

A. Symbol: R-3(H).

B. Purposes:

- (1) Provide for residential development in the City's beachfront area.
- (2) Preserve the distinctive residential character of the City's beachfront area.
- (3) Preserve physical and visual access to nearby beaches and marshes.

C. Historic District.

- (1) All of the Residential Beach (Historic) Zone [R-3(H)] is located within the Lewes Historic District.
- (2) All properties within the Residential Beach (Historic) Zone [R-3(H)] shall be subject to the requirements of Article **VI**.

§ 197-30. Residential Medium-Density Zone.

A. Symbol: R-4.

B. Purposes:

- (1) Provide for residential development adjacent to the City's town center.
- (2) Preserve face-to-face intimacy in an urban setting.
- (3) Preserve architecturally diverse but harmonious streetscapes.
- (4) Encourage a residential development pattern that is:
 - (a) Appropriate for older, densely settled sections of the City and also provides for light, air, and private open space.
 - (b) Compact and urban so that nearby commercial and public services are available to residents by walking or bicycling.

§ 197-31. Residential Medium-Density (Historic) Zone.

A. Symbol: R-4(H).

B. Purposes:

- (1) Provide for residential development adjacent to the City's town center.
- (2) Preserve face-to-face intimacy in an urban setting.
- (3) Preserve architecturally diverse but harmonious streetscapes.
- (4) Encourage a residential development pattern that is:
 - (a) Appropriate for older, densely settled sections of the City and also provides for light, air, and private open space.
 - (b) Compact and urban so that nearby commercial and public services are available to residents by walking or bicycling.

C. Historic District.

- (1) All of the Residential Medium-Density (Historic) Zone [R-4(H)] is located within the Lewes Historic District
- (2) All properties within the Residential Medium-Density (Historic) Zone [R-4(H)] shall be subject to the requirements of Article **VI**.

§ 197-32. Mixed Residential Zone.

A. Symbol: R-5.

B. Purposes:

- (1) Provide for a mix of housing types to include multifamily and affordable housing alternatives.

§ 197-33. Limited Commercial Zone.

A. Symbol: LC.

B. Purposes:

- (1) Provide an area appropriate for a mix of residential uses and a limited number and types of commercial uses.
- (2) Establish density standards that respect not only residential uses in the zone but also adjacent residential neighborhoods.
- (3) Restrict the size and intensity of nonresidential uses to a scale that is compatible with adjacent and intervening residential uses.
- (4) Preserve residential character by requiring structures to maintain a residential appearance.

§ 197-34. Limited Commercial (Historic) Zone.

- A. Symbol: LC(H).
- B. Purposes:
 - (1) Provide an area appropriate for a mix of residential uses and a limited number and types of commercial uses.
 - (2) Establish density standards that respect not only residential uses in the zone but also adjacent residential neighborhoods.
 - (3) Restrict the size and intensity of nonresidential uses to a scale that is compatible with adjacent and intervening residential uses.
 - (4) Preserve residential character by requiring structures to maintain a residential appearance.
- C. Historic District.
 - (1) All of the Limited Commercial (Historic) Zone [LC(H)] is located within the Lewes Historic District.
 - (2) All properties within the Limited Commercial (Historic) Zone [LC(H)] shall be subject to the requirements of Article VI.

§ 197-35. Cultural/Historic Zone.

- A. Symbol: C/H.
- B. Purposes:
 - (1) Provide for historic and cultural resources unique to Lewes as the "first town in the first state."
 - (2) Recognize the characteristics and importance of historic and culturally significant properties.
- C. Special considerations.
 - (1) Properties within the Cultural/Historic Zone may be used for minor commercial activities under the following conditions:
 - (a) Such activities shall be undertaken only by those public service organizations directly involved with that property.
 - (b) Such activities shall be nonprofit in nature.
 - (c) Such activities shall be subject to all relevant City codes.

§ 197-36. Community Facilities Zone.

- A. Symbol: CF.
- B. Purposes:
 - (1) Provide for community facilities and services which, although they generate high levels of traffic during the day, are compatible with one another and contribute to the recreation, safety, and functioning of

the City.

§ 197-37. Community Facilities (Educational) Zone.

- A. Symbol: CF(E).
- B. Purposes:
 - (1) Provide for educational institutions at all levels in the City of Lewes.
 - (2) Recognize the important role of public and private educational institutions in the life of the community.
 - (3) Recognize that university and college activities in Lewes:
 - (a) Reinforce the City's relationship with the sea.
 - (b) Create year-round employment opportunities.
 - (c) Promote physical and cultural diversity within the community.

§ 197-38. Community Facilities (Health Care) Zone.

- A. Symbol: CF(HC).
- B. Purposes:
 - (1) Provide for hospital, medical center, major nursing care and other health care institutions in the City of Lewes.
 - (2) Recognize the important role of health care institutions in:
 - (a) Providing acute care, therapeutic services and long-term care for the residents.
 - (b) Creating employment opportunities.

§ 197-39. Town Center Zone.

- A. Symbol: TC.
- B. Purposes:
 - (1) Sustain a centralized, commercial, residential, and cultural core in the center of the City.
 - (2) Strengthen connections between the town center and the City's residential districts.
 - (3) Create a pedestrian corridor from the mainland to the bay.
 - (4) Provide for establishments offering retail products and services, commercial entertainment, professional and financial services, and other businesses which are vital to a year-round working

community.

- (5) Encourage a mix of retail, office, and residential uses, consistent with the existing scale and character of the area, in order to promote the economic stability of the area.
- (6) Provide for apartment dwellings in conjunction with retail, office, and service uses, but only on the stories above street level.

C. Notes.

- (1) In this zone, five-percent lot coverage must remain open with access from the road or sidewalk to that open area.

§ 197-40. Town Center (Historic) Zone.

A. Symbol: TC(H).

B. Purposes:

- (1) Sustain a centralized, commercial, residential, and cultural core in the center of the City.
- (2) Strengthen connections between the town center and the City's residential districts.
- (3) Create a pedestrian corridor from the mainland to the bay.
- (4) Provide for establishments offering retail products and services, commercial entertainment, professional and financial services, and other businesses which are vital to a year-round working community.
- (5) Encourage a mix of retail, office, and residential uses, consistent with the existing scale and character of the area, in order to promote the economic stability of the area.
- (6) Provide for apartment dwellings in conjunction with retail, office, and service uses, but only on the stories above street level.

C. Notes.

- (1) In this zone, five-percent lot coverage must remain open with access from the road or sidewalk to that open area.

D. Historic District.

- (1) All of the Town Center (Historic) Zone [TC(H)] is located within the Lewes Historic District.
- (2) All properties within the Town Center (Historic) Zone [TC(H)] shall be subject to the requirements of Article VI.

§ 197-41. Marine Commercial Zone.

A. Symbol: MC.

B. Purposes. Preserve the City's historic connection to the sea by:

- (1) Encouraging a mix of retail and residential uses that complement and support a marina.
- (2) Ensuring that the character and scale of development in the zone is compatible with a marina.
- (3) Prohibiting the establishment of and the continuation of industrial uses not compatible with the characteristics of a Marine Commercial Zone.

C. Notes:

- (i) In this zone, five-percent lot coverage must remain open with access from the road or sidewalk to that open area.

§ 197-42. General Commercial Zone.

A. Symbol: GC.

B. Purpose: Provide residents and visitors with a variety of commercial goods and services in locations convenient to the City's residential areas.

C. Notes.

- (i) In this zone, five-percent lot coverage must remain open with access from the road or sidewalk to that open area.

§ 197-43. Industrial Zone.

A. Symbol: I.

B. Purpose. Accommodate enterprises engaging in the manufacturing, processing, creating, repairing, renovating, cleaning or assembling of goods, merchandise or equipment.

Article IV. Use Regulations

§ 197-44. Permitted uses and structures.

[The **Table of Permitted Uses** and Structures is included at the end of this chapter.]

§ 197-45. Home-based businesses.

A. Definition. A "home-based business" is any business, occupation, or activity undertaken for gain and conducted entirely within a dwelling unit by the residents thereof which is clearly incidental and secondary to the use of the structure for dwelling purposes. The home-based business shall be conducted entirely within either the dwelling or an accessory building, but not both.

B. Permitted home-based businesses:

- (1) Offices for professionals, including but not limited to architects, brokers, counselors, clergy, draftspeople and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, contract managers, graphic designers, construction contractors, landscape designers, surveyors, cleaning services personnel, salespeople, manufacturers' representatives, travel agents, and caterers.
 - (2) Instructional services, including but not limited to music, dance, art and craft classes, and tutoring and not to exceed three students at a time.
 - (3) Studios for artists, sculptors, musicians, photographers, and authors.
 - (4) Workrooms for tailors, dressmakers, milliners, and craftspersons, including but not limited to weaving, lapidary, jewelry making, cabinetry, and woodworking.
 - (5) Repair services, including watches and clocks, small appliances, computers, electronic devices.
- C. Prohibited home-based businesses:
- (1) Day-care center, adult.
 - (2) Day-care center, child.
 - (3) Kennels, stables, veterinary clinics and hospitals.
 - (4) Medical clinics, medical offices, dental clinics, dental offices, hospitals.
 - (5) Restaurants, bars, and nightclubs.
 - (6) Funeral homes and undertaking establishments.
 - (7) Adult uses.
- D. Operational standards.
- (1) Operating hours:
 - (a) Customer and client visits to the home-based business shall be limited to the hours from 7:00 a.m. to 9:00 p.m.
 - (2) Exterior environment.
 - (a) Home-based businesses shall not generate volumes of vehicular or pedestrian traffic or parking demand that is inconsistent with the character of the neighborhood.
 - (b) No alteration shall be made in either the external structural form or the external appearance of the residential building for purposes of any home occupation.
 - (c) No evidence of any home occupation shall be visible from off the lot where it is conducted.
 - (d) There shall be no displays of goods on the premises that are visible from a public street or adjacent properties.
 - (e) Any commercial vehicle used in conjunction with the occupation shall be subject to the provisions of this chapter governing commercial vehicles in residential zones.
 - (f) Equipment or materials used in a home-based business may be stored outside the principal

residence in an enclosed accessory structure.

- (3) Employees. Employees of a home occupation shall be limited to permanent residents of the dwelling unit.
- (4) Equipment. The operation of the home-based business, including equipment used therein, shall not:
 - (a) Create any vibrations, heat, glare, dust, odors, or smoke discernible at the property lines.
 - (b) Generate noise that violates any City ordinance or regulation pertaining to noise.
 - (c) Use and/or store hazardous materials in excess of quantities otherwise permitted in residential structures.
- (5) Signs. See Article **VIII**.

§ 197-46. Accessory uses.

- A. Definition. A use is an accessory use if it meets all of the following criteria:
 - (1) It is incidental and subordinate to the principal use.
 - (2) It is customary to the principal use.
 - (3) It is operated and maintained under the same ownership and on the same lot as the principal use.
 - (4) It does not include structures or structural features inconsistent with the principal use.
- B. Where permitted. Except as otherwise provided, accessory uses are permitted in all zones.
- C. Prohibited activities and facilities in accessory buildings and structures.
 - (1) Accessory buildings and structures shall not be used for human habitation.
 - (2) Cooking facilities, including stoves, ovens, ranges, wood, coal, microwave or any other type of appliance which is or could be used for the preparation of food.
 - (3) Bathing facilities, including a bidet, shower, tub unit or any other similar facility, except that any accessory building may have one sink with running water and one toilet or commode.
 - (4) Sleeping facilities, including, but not limited to, beds, sleep sofas, hammocks or any other sleeping apparatus which is or could be used for sleeping purposes, stored in such a manner so as not to be available for sleeping purposes.

§ 197-47. Temporary uses.

- A. Intent and purpose.
 - (1) Intent. Allow for the short-term placement of activities in temporary facilities or outside of buildings.
 - (2) Purpose. Avoid incompatibility between temporary uses and surrounding areas.

- B. Permitted temporary uses:
- (1) Real estate sales offices within approved development projects.
 - (2) Christmas tree sale lots for a period not to exceed 30 consecutive calendar days; however, a permit shall not be required when a sale is in conjunction with an established commercial business.
 - (3) Other seasonal activities, such as pumpkin sales, auto shows, garden tours, racing events.
 - (4) Circuses and carnivals.
 - (5) Temporary outdoor display/sales of merchandise in any zone under the following conditions:
 - (a) No more than eight such displays/sales are conducted in any calendar year.
 - (b) The sales/displays are not conducted for a period of more than three consecutive days.
 - (c) The premises are not utilized for a permanently established business.
 - (6) Fairs, festivals and concerts, when not held within premises designed to accommodate such events, such as auditoriums, stadiums or other public assembly facilities.
 - (7) Farmers' markets and swap meets.
 - (8) On- and off-site contractors' construction yards.
 - (9) Large-scale promotional balloons (e.g., roof-mounted hot air balloons) in any zone under the following conditions:
 - (a) No more than four such promotions are conducted in any calendar year.
 - (b) The promotions are not conducted for a period of more than seven consecutive days.
 - (c) The promotions are related to merchandise or services which are customarily available on the premises.
 - (d) The premises are utilized for a permanently established business.
 - (10) Similar temporary uses which, in the opinion of the Mayor and City Council, are compatible with the zoning district and surrounding land uses.
- C. Permit required. See Article **XIV**, § **197-102**.

§ 197-48. Prohibited uses in all zoning districts.

The following uses are prohibited in all zoning districts:

- A. Animal rendering.
- B. Asphalt refining.
- C. Automobile/motor vehicle wrecking.
- D. Blast furnace garbage or offal reduction or rendering or dumping.

- E. Crude oil refining.
- F. Houseboats.
- G. Manufacture of asphalt, bleaching compounds, coal, coke, cork products, corrosive acid, fertilizer, gelatins, glue, industrial alcohol, linoleum, matches, oils, paint, rubber, soap, tar products, paper.
- H. Ore smelting.
- I. Rubber treatment.
- J. Slaughterhouses.
- K. Storage of toxic bulk chemicals, bulk gasoline above the ground, explosives, junk, oil.
- L. Tanning or curing of hides.
- M. Raising livestock, poultry or exotic animals.

Article V. Dimensional Regulations

§ 197-49. OS, R-1, R-2, R-2(H), R-3, R-4 and R-4(H) Zones.

[The Table of Dimensional Regulations for the OS, R-1, R-2, R-2(H), R-3, R-4 and R-4(H) Zones is included at the end of this chapter.]

§ 197-50. R-5, LC and LC(H) Zones.

[The Table of Dimensional Regulations for the R-5, LC and LC(H) Zones is included at the end of this chapter.]

§ 197-51. Nonresidential zones.

[The Table of Dimensional Regulations for Nonresidential Zones is included at the end of this chapter.]

§ 197-52. Accessory buildings and structures.

- A. "Accessory buildings and structures" shall be defined as a building or structure customarily incidental or subordinate to and accessory to the principal building or structure and located on the same lot as the principal building or structure; provided, however, that any accessory building or structure shall not exceed 900 square feet for the first floor, shall adhere to the dimensional regulations found in § **197-52B**, and shall not have any of the following facilities:
 - (1) Cooking facilities, including stoves, ovens, ranges, wood, coal, microwave or any other type of appliance which is or could be used for the preparation of food, are prohibited.

- (2) Toilet rooms, including a toilet or commode, bidet, shower, tub unit or any other similar facility, are prohibited, except that any accessory building may have one sink with running water.
 - (3) Sleeping facilities, including, but not limited to, beds, sleep sofas, hammocks or any other sleeping apparatus which is or could be used for sleeping purposes, are prohibited unless stored in such a manner so as not to be available for sleeping purposes.
- B. Accessory buildings and structures shall adhere to the following dimensional regulations. [The Table of Dimensional Regulations for Accessory Buildings and Structures is included at the end of this chapter.]

§ 197-53. Yards.

[Amended 5-20-2013]

- A. In the case of a corner lot, a front yard, as provided for in each district, shall be required on each street on which a corner lot abuts, provided that, when one front lot line of said corner lot measures less than sixty-five (65) feet and said corner lot is located in one of the following districts: the Residential Low-Density, Residential Low-Density (Historic) [R-2 and R-2(H)], Residential Beach, Residential Beach (Historic) [R-3 and R-3(H)], Residential Medium-Density, Residential Medium-Density (Historic) [R-4 and R-4(H)], Limited Commercial, and Limited Commercial (Historic) [LC and LC(H)], the front yard on the side of the corner lot with a front lot line measuring longer than 65 feet may be decreased to not less than the minimum side yard requirements.
- B. In the case of a through lot, front yard requirements shall be observed on both streets.
- C. Permitted projections into required yards shall be as shown on the **Table of Permitted Projections** Into Required Yards included at the end of this chapter.

§ 197-54. Fences, walls, hedges, and shrubbery.

- A. Setback. The building line and yard requirements of this chapter shall not apply to fences, walls, hedges, or shrubbery.
- B. Residential areas.
- (1) Applicability: properties used for residential purposes.
 - (2) All fences shall be "finished side out."
 - (3) Maximum height: eight feet, except that the maximum height shall be three feet in the required front yard.
[Amended 7-9-2012]
 - (4) Six feet or less: The entire fence may be solid.
 - (5) Between six feet and eight feet. That portion of the fence or wall which exceeds six feet in height shall contain openings equal to at least 50% of the area that the fence or wall exceeds six feet.
- C. Nonresidential areas.

- (1) Applicability: properties used for other than residential purposes.
- (2) All fences shall be "finished side out."
- (3) Maximum height: eight feet, except that the maximum height shall be four feet in the required front yard.
[Amended 7-9-2012]
- (4) Six feet or less: The entire fence may be solid.
- (5) Between six feet and 10 feet: That portion of the fence or wall which exceeds six feet in height shall contain openings equal to at least 50% of the area that the fence or wall exceeds six feet.

D. Areas along the Lewes-Rehoboth Canal.
[Added 5-20-2013]

- (1) No continuous fences, hedgerows or landscaping shall exceed three feet in height.
- (2) All other naturally occurring or introduced trees, shrubs, bushes, plantings or vegetation of any kind or manner shall not obstruct more than 50% of the view of the canal as measured at a height of three feet from any point along the closest street paralleling the canal.

§ 197-55. Building height.

A. In general.

- (1) Measurement. The vertical distance of a building measured from a point where the center line of a building to be erected intersects with the center line of the street on which the building will face to the highest point of the highest roof.
- (2) Exception. Chimneys, spires, towers, elevators, tanks and other similar projections shall not be included in calculating the "height."

B. Prior to September 14, 1987.

- (1) Applicability:
 - (a) All buildings for which a building permit was issued prior to September 14, 1987.
 - (b) Subdivisions of more than two lots for which final approval was granted by the Planning Commission of the City prior to September 14, 1987.
- (2) Measurement. The "height" of a building shall be defined as the vertical distance measured from grade, the average of the finished ground level adjoining the building at the side facing the nearest street to the highest point of the coping of a flat roof building or the highest point of the coping of the highest flat roof if the building has more than one flat roof level or to the highest point of a mansard, gable, hip or gambrel roof building.
- (3) Exception. Chimneys, spires, towers, elevators, pent, tanks and other similar projections shall not be included in calculating the "height."

C. Flood-prone areas:

- (1) Applicability:
 - (a) R-2 and R-2(H) Zones (formerly LB-Lewes Beach District) located within the coastal high hazard area.
 - (b) Coastal Flood Plain Area and situate on the northeast side of the Lewes and Rehoboth Canal.
- (2) Measurement. The vertical distance of a building measured from a point where the center line of the building to be erected intersects with the center line of the street on which the building will face to the highest point of the highest roof shall not exceed 34 feet for all lots created prior to and after September 14, 1987; provided, however, that any roof in the R-2 and R-2(H) Zone (formerly LB-Lewes Beach District) northeast of the Lewes and Rehoboth Canal shall have a minimum pitch of five inches of vertical rise for each 12 inches of horizontal run to the ridge of the greatest height of the roof.

Article VI. Historic District Requirements

§ 197-56. Applicability; purpose; definitions.

- A. These regulations are applicable to structures used for residential purposes within the Residential Low-Density (Historic), Residential Beach (Historic), Residential Medium-Density (Historic), Limited Commercial (Historic) and Town Center (Historic) Zoning Districts, hereafter referred to as the "Historic District." Because structures in the Historic District are individual in their location, size, style, and history, the Lewes HPC will consider each property as a unique entity and make decisions according to Chapter **197** of the City Ordinance with consideration of the Standards of the U.S. Department of the Interior.
[Amended 12-9-2013]
- B. The purpose of this article shall be to accomplish the following:
 - (1) To assist in preserving the historic character and the historic fabric of the City of Lewes.
 - (2) To safeguard the heritage of the City by preserving the elements which reflect the cultural, social, economic, political or architectural history of the City.
 - (3) To promote the use and preservation of the values as established by the Lewes Comprehensive Plan.
 - (4) To recommend alteration or new construction in keeping with the Historic District.
 - (5) To recommend restoration rather than demolition of contributing structures or historic properties.
 - (6) To encourage the proper maintenance, preservation and, when necessary, alteration of structures in the Historic District.
- C. Definitions. In this article, the following definitions shall be applicable unless the context clearly indicates to the contrary:

ALTERATION(S)

Any activity requiring a building permit, the approval of the Lewes Building Official, and/or any change in the exterior appearance (other than maintenance) or structural change, including but not limited to construction, reconstruction, renovation, modification, alteration, moving or demolition of a noncommercial structure within the Historic District of the City of Lewes.

BUILDING HEIGHT, ESTABLISHED

Subject to approval by the Historic Preservation Commission pursuant to this article, the height of any single-family dwelling located in the Historic District and in public view may be increased to the same height as any other existing single-family dwelling within 100 feet of the front property line, on the same side of the street and within the same block. An exception to the height limit of 30.5 feet may be granted by the Historic Preservation Commission, if recommended by the Building Official, to accommodate architectural features of a roof or roofline. A flat roofline beyond the 30.5-foot limit shall not be grounds for granting an exception. Upon confirmation by the Building Official that all applicable requirements are met, an addition to an existing single-family structure that is located within the Historic District, but will not be in public view, may be built to the height of the existing structure to maintain existing rooflines and architectural features. No structure shall exceed the height of 36 feet.

[Amended 7-9-2012]

COMMERCIAL STRUCTURE/SITE

Any structure or site which is currently used primarily for commercial activities and not primarily for residential uses.

CONTRIBUTING STRUCTURES

Structures that are judged to add to the Historic District's sense of time, place and historic development under criteria established by the HPC,^[1] including historical significance, integrity and context. Such structures are so designated because they meet an architectural test (i.e., compatible with surrounding buildings or represent an architectural style identified with Lewes' history) and a longevity test (built on or before December 31, 1940).

DEMOLITION

Destruction, razing, commencement of the work or steps of total or partial destruction with the purpose of completing the same; includes any willful neglect in the maintenance and repair of a structure that threatens to result in substantial deterioration of the exterior features or the structural integrity of the building.

HISTORIC DISTRICT

An area of the City of Lewes identified and designated as having historic importance. The Historic District is shown on the City of Lewes Zoning Map^[2] as a series of zoning districts characterized as "historic."

HISTORIC PROPERTIES

Noncommercial structures and sites, public rights-of-way or areas designated by City Council as having importance in the history of the City of Lewes as listed in Appendix B. [NOTE: Appendix B (List of Historic Structures) is on file in the City Offices.] These properties may be within or not within the designated "historic" zoning districts.

IN PUBLIC VIEW

That portion of a structure that is visible, or could be visible in the absence of a fence or landscaping, from the section of a public right-of-way or public street upon which the dwelling fronts. If the dwelling is located on more than one street, then that portion of a structure that is visible, or could be visible in the absence of a fence or landscaping, from any section of a public right-of-way or public street abutting a property line of the property on which the structure exists.

MAINTENANCE/REPAIR

Ordinary repairs and maintenance, including design, materials, features or finishes of a structure which

do not alter the exterior appearance of the structure and have no material effect on the historical, archaeological or architectural significance of the structure. Paint color is included in this definition regardless of the effect on exterior appearance.

MAYOR AND CITY COUNCIL

Hereinafter known as "City Council."

NONCONTRIBUTING STRUCTURE

Structures that do not add to the Historic District's sense of time, place and historic development. Such structures are so designated because they are not listed or pending to become listed on the National Register of Historic Places or do not meet either an architectural test (i.e., compatible with surrounding buildings or represent an architectural style identified with Lewes' history) or longevity test (built on or before December 31, 1940).

OUTBUILDING

A term used to refer to all nonresidential structures on a site, including any accessory structure.

RESIDENTIAL STRUCTURE

Any structure or site currently used primarily for residential living.

RHYTHM

The rhythm of a structure and its components is the spacing or repetition of architectural elements or details. The regularity, frequency and placement of doors, windows, porches and ramps and their placement within a facade is a type of rhythm. Rhythm between adjoining structures can exist when building types are repeated along a streetscape.

SCALE

Scale is the relationship of the architectural mass of the structure in the context of the streetscape.

STREETSCAPE

The visual appearance of a street formed by the location and size of buildings, walkways, and other facilities.

STRUCTURE

A combination of materials to form a construction for use, occupancy, or ornamentation, including but not limited to buildings, sheds, outbuildings listed in Appendix B, fences, storage tanks, signs, bulkheads, jetties, groins, whether installed on, above, or below the surface of land or water. [NOTE: Appendix B (List of Historic Structures) is on file in the City Offices.]

[Amended 7-9-2012]

[1]: *Editor's Note: The Historic Preservation Commission.*

[2]: *Editor's Note: The Zoning Map is on file in the City offices.*

§ 197-57. Historic Preservation Commission composition; qualifications; appointment.

- A. There is hereby established a commission to be called the "Historic Preservation Commission" (hereafter "HPC").
- B. The HPC shall consist of seven members to be appointed by the Mayor of the City of Lewes, subject to

confirmation by a majority of the elected members of the City Council for a term of three years.

Appointments shall be made with consideration of the diverse talents and communities represented in Lewes; consideration for appointments shall be given to residents who possess knowledge or experience in architectural design and historic preservation. At least four members shall be residents of and have legal or equitable title to property in the Historic District, and all members shall be residents of and have legal or equitable title to property in or be leaseholders of public lands within the City of Lewes.

- C. A member of City Council may and a City Building Official shall be ex officio members of the HPC. An ex officio member may exercise all the powers of the regular members of the HPC except that he/she shall not have a vote. No ex officio member shall hold an office on the HPC.
- D. The HPC shall elect annually a Chairperson, Vice Chairperson, and a Secretary from among its own members and may utilize experts, clerks and such other assistance that its fiscal appropriations may permit. The HPC may also appoint, by and with the prior approval of the City Council, a custodian of its plans and records who may be the City Manager or his/her designee or a Building Official.
- E. The HPC shall establish its own rules and procedures and determine the times of its meetings. All meetings and actions of the HPC shall be open to the public except appropriate executive sessions. All records of the HPC shall be public except those otherwise required to be confidential.
- F. The HPC shall schedule monthly meetings. If no agenda items are available or requested 10 working days prior to the time of the scheduled meeting, such meeting may be canceled. An agenda item may be withdrawn at any time up to and including the opening of a scheduled meeting; however, if such matter has been withdrawn prior to the meeting and it is the only matter for that agenda, the meeting may be canceled.
[Amended 12-9-2013]
- G. The HPC will hear all applications that meet the above criteria at its regularly scheduled meetings. The Chair will establish the meeting agenda for reviewing applications, has the right to modify the sequence when necessary, and, in unusual circumstances, has the right to call special meetings of the commission with seven days' prior notice.
[Amended 12-9-2013]
- H. Chair/staff review. In certain circumstances, the HPC Chairman or a HPC commissioner appointed by the Chairman, Building Official, and the Assistant Building Official may decide to approve an HPC application without a formal hearing. A Chair/staff review shall be used for routine and minor Historic District construction applications whose costs are estimated at less than \$25,000. The requests may include such items as the addition or replacement of fences, window replacements, and other projects where the HPC has a history of approving similar projects using the same materials.
[Amended 12-9-2013]

§ 197-58. Procedures.

- A. Before the construction, alteration, reconstruction, moving or demolition of any dwelling, residence or related structures on property within the Historic District or on historic properties not within the Historic District that would affect the exterior appearance of a structure visible or intended to be visible from an adjacent public way, the owner, agent or representative proposing to construct or change shall file with the Building Official of the City of Lewes an application for permission from the HPC to construct, build, alter, reconstruct, move, demolish or make the addition.

- B. Actions not requiring review by the HPC. Ordinary repairs, maintenance, and replacement that do not constitute a change to the appearance of the structure include:
- (1) Repair and/or replacement of existing windows and doors, using the same material, including the installation of storm windows that will not alter the exterior appearance of the structure.
 - (2) Maintenance, repair, and/or replacement of existing roof material, involving no change in the design, scale, material, or appearance of the structure.
 - (3) Repair and/or replacement of existing roof structures, such as cupolas, dormers and chimneys, using the same materials that will not alter the exterior appearance of the structure.
 - (4) Repair and/or replacement of existing shingles, clapboards, or other siding, using the same materials, and maintaining the exterior appearance of the structure.
 - (5) Replacement or repairs to existing shutters, fences, or retaining walls, using the same materials for those items being repaired or replaced.
 - (6) Change of paint color.
- C. Application and approval procedures.
- (1) The applicant shall apply for a building permit; if the proposed site is in the Historic District, the Building Official shall notify the applicant that his/her project must be approved by the HPC (unless the project falls under Subsection **B** above) and shall give him/her an HPC application and a "user friendly" brochure describing the application process.
 - (2) For the initial application, the applicant shall fill out the application form, and attach eight copies that include 1) a site plan identifying all existing and new structures, 2) plan and elevation drawings of the proposed change, construction, alteration, or modification, 3) a description of the type and texture of the materials to be used for the exterior, 4) current photographs of the property to include front, side, and/or rear street views if applicable, 5) current photographs of adjacent and neighborhood properties, including the streetscape of both sides of the street on which the subject property is located. A three-dimensional drawing is recommended, but not required, for new house construction and/or a significant alteration of an existing structure. An application is deemed complete when these items have been submitted. After the review process is completed, the Building Official will return six sets of plans to the applicant and retain two for City records. When the application is for demolition of all or part of a structure, a report from a licensed professional engineer is strongly recommended.
[Amended 12-9-2013]
 - (3) The HPC will meet at regular intervals to ensure timely consideration of all applications pending before the HPC. Completed applications submitted to the Building Official two weeks (10 working days) prior to a regular scheduled meeting will be heard at that next scheduled meeting. Applicants or their designee must attend the HPC meeting at the time their application(s) is heard.
 - (4) The HPC shall endeavor to arrive at a decision at the first meeting at which the application is presented; however, if the HPC decides that it needs more information or time in which to make a decision, it shall either place the application on the agenda for the next meeting or schedule a special meeting. The HPC shall grant or deny the application as expeditiously as possible, but in no event later than the second meeting at which the application is on the agenda and the applicant appears, except when the application is for demolition (see § **197-58D**); failure to act within said time frame shall be deemed to be approval of the application as submitted; however, an extension may be granted if agreed to by both the applicant and the Commission.

- (a) If an applicant or a member of the public has information, evidence or testimony that contradicts the current designation of contributing or noncontributing, or has information about the history or other information that could materially affect the decisionmaking process of Commission members, the HPC shall consider that information, evidence or testimony before addressing the application. Such information shall be presented to the HPC as a notarized statement, or a copy of official document(s), and shall be made available to the Building Official, HPC, and applicant at least five working days before the scheduled meeting.
 - (b) If the members of the Commission, by vote of the Commission, determine that additional time is needed to digest the new information, the decision will be postponed for one meeting and the requirement for a decision at the end of the second meeting at which the application is considered shall be suspended.
- (5) If, after review of the application by the Building Official, he/she determines that the proposed activity will require a variance, the Building Official shall notify the applicant and provide information on the process for application to the Board of Adjustment. If no application to the Board of Adjustment is made by the applicant within 30 days after notice has been given by the Building Official, the application shall be deemed to have been withdrawn. However, if the applicant desires to have the HPC review an application prior to applying to the Board of Adjustment, the applicant shall request the Building Official to forward the application to the HPC.
 - (6) The HPC may either grant approval, grant approval with conditions, or deny the application. A denial shall include the reasons that the proposal does not meet the criteria in Article VI, § 197-59, Criteria; standards. The applicant shall have the opportunity to resubmit his/her application with modifications; such resubmissions shall meet the same requirements as the original. If the second submission of the application is denied, the applicant may either modify the application for another submission or appeal the denial to the Board of Adjustment. In no event may the HPC make recommendations for changes that will require violation of other requirements of this chapter.
 - (7) Written notice of the decision of the HPC will be forwarded promptly by the HPC to the applicant and to the Building Official. The notice will inform the applicant to meet with the Building Official to complete the application for a building permit. Approval shall be valid for one year for the approved project; if the project is commenced but not completed before the end of that period, the owner shall apply to the Building Official for an extension that may not exceed an additional period of one year.
 - (8) Substantive changes to the HPC-approved project prior or during construction shall require review and approval by the HPC. For such changes, the applicant shall submit one copy of the original application and a description of the proposed changes as well as any supporting documentation to illustrate the effect or noneffect of such proposed changes. Consideration of such changes shall be placed at the top of the HPC's agenda at the next regularly scheduled meeting or may be considered for approval by a Chair/staff review.
[Amended 12-9-2013]
- D. Demolition or removal. If the structure or any part thereof is deemed to be "contributing" and therefore has historic and/or architectural significance, no demolition or removal of the structure from the premises may take place until after an initial meeting with the HPC and a subsequent public hearing. Presentation of a conceptual plan for reuse of the property shall be required prior to the approval to move and/or demolish the structure. Efforts may be taken to either mitigate or to eliminate the demolition or removal through informal discussions among the applicant, the Chair of the HPC, and the City Building Official. In addition, the HPC may delay its final decision for up to an additional 60 days over and above the usual two-meeting requirement for a decision in order to obtain an independent opinion from a licensed professional engineer regarding the structural integrity of the property. A final decision on demolition or removal must be

rendered no later than 120 days after the initial application unless delayed by federal, state or local holidays, severe weather or other natural disasters, emergencies, or unless an extension is agreed to by the applicant and the HPC. If the structure is noncontributing, the HPC may address the application for demolition or removal without a hearing.

- E. Interior features. The HPC shall consider only exterior features and shall not consider interior arrangements except to the extent that an interior alteration affecting the exterior is required by law or disability of owner or tenant.
- F. Designation of historic properties. Owners of property outside the boundaries of the Historic District may request his/her/their property be designated an historic property. Before any such designation may be assigned, specific procedures, information required and recordation procedures and requirements shall have been determined. Such procedures shall include reference to the guidelines of the United States Department of the Interior (see HPC bylaws and procedures).
- G. Appeals. Any person aggrieved by a decision rendered by the HPC shall have the right to appeal to the Board of Adjustment of the City of Lewes.

§ 197-59. Criteria; standards.

- A. Criteria. In reviewing the plans for any construction, change, or demolition, the HPC shall give consideration to:
 - (1) Historic or architectural value and significance of the structure and its relationship to the historic value of the surrounding area.
 - (2) Relationship of the exterior architectural features of the structure to the remainder of the structure and to the surrounding neighborhood. Distinctive stylistic features or examples of skilled craftsmanship shall be preserved, if possible.
 - (3) General compatibility of exterior design, arrangement, texture and materials proposed to be used with other structures contributing to the established character of the Historic District of Lewes.
 - (4) When application is made to demolish a structure or any part thereof, the impact of its removal from the area in which it is located, and its structural condition and the economic feasibility of alternatives to the proposed demolition.
 - (5) When application is made to move an historic structure, the potential loss of history to its original site and to the Historic District as a whole, and the reasons for not keeping the structure at its present location.
 - (6) The effect of the structure on the health, safety and general welfare of the City.
 - (7) Other factors that the HPC deems to be pertinent, consistent with the City Code, include the following:
 - (a) Facade treatment. The exterior features of all buildings should be visually and physically compatible with those facades surrounding them.
 - (b) Height. New and renovated structures should be in harmony with the streetscape.
 - (c) Proportion. The relationship between the width and height of the front elevation of a structure

should be compatible to adjacent structures. Proportion is also the relationship of the different elements of the building itself, including but not limited to additions, porches, windows, and doors.

[Amended 12-9-2013]

- (d) Rhythm. The rhythm of the streetscape and building with its components should be considered as one of the criteria.

[Amended 12-9-2013]

- (e) Scale. Since the scale of the City of Lewes is intimate in nature, any building contrary to that of the streetscape will be deemed to be out of place.

- (8) When owners of structures in the Historic District that have been or are designated as "noncontributing" make application to the HPC for approval for alteration or demolition, the HPC evaluation shall be based on the potential impact on the streetscape setting of the property, rather than the potential impact on the property itself. When owners of structures in the Historic District designated as "contributing structures" make application to the HPC for alteration or demolition, preserving the property will be the HPC's primary criterion in evaluating the application. The HPC may require the applicant to submit both financial and construction details in support of any proposed demolition.
- (9) A proposed new structure or any alteration to an existing structure or historic property shall conform to the City Code. However, it is the intent of the HPC, consistent with its purpose [**§ 197-56B(1)**] to assist in preserving the historic character and the historic fabric of the City of Lewes, to work in conjunction with applicants to arrive at the most desirable and appropriate outcome of their application to maintain harmony within the streetscape. To this end, the HPC may focus on height, rhythm, scale and proportion as issues that the applicant will be asked to consider and, when appropriate, to alter their plan and/or design.
- (10) The current or future color of a structure or any part of the exterior of a structure in the Historic District shall not be reviewed or considered by the HPC.
- (11) The HPC shall not deny the addition of items such as solar panels or other inventions that are designed to generate or conserve energy except to designate reasonable alternative design and/or placement.
- (12) The HPC shall not deny any reasonable accommodation for a disability, compatible with this chapter; however, the HPC may suggest reasonable alternative design and/or placement.
- B. Standards. The following standards shall be used by the HPC in preserving the district's architectural integrity and insuring the compatibility of new construction and alterations with the existing body of distinctive Lewes historic building styles. All materials used shall be consistent with and appropriate in design, texture and other visual qualities to the style and period of the structure. (The Secretary of the Interior's regulations, "Standards For Rehabilitation," including reference drawings, as designated in Appendix C, include broad guidelines covering rehabilitation projects of historic buildings and should be referred to in a reasonable manner, taking into consideration economic and technical feasibility.) (NOTE: See Appendix C on file and available for inspection in the City Manager's office.)
- (1) Roofs, pitch, dormers and types. The roof and pitch of the roof shall be in keeping with traditional roof types and styles in use in Lewes in new structures and alterations.
- (a) The roof types traditionally found in Lewes include:

- [1] Gable, including such variations as the "clipped gable" and the "saltbox";
 - [2] Gambrel or "barn roof";
 - [3] A traditionally framed mansard with dormers incorporated into the roof design; and
 - [4] Hip, including variations on hip roofs such as "gable on hip."
- (b) Any of these traditional roof types is acceptable without the need to duplicate the predominant roof type of a specific neighborhood since part of the charm of the Lewes streetscape lies in the variation of roof styles and pitches within these basic roof types. Modern variations of these roof types that clearly bear no resemblance to the traditional styles and pitches will not be approved. (Reference Drawings Nos. 1, 2 and 3. [NOTE: See Appendix C on file and available for inspection in the City Manager's office.])
- (2) Roofing materials. Acceptable materials include wood, slate, metal, asphalts, and fiberglass shingles. Repair materials shall be compatible with the existing roofing material. When a flat roof is otherwise consistent with the design criteria established in this article, i.e., porches, decks, widow's walks or cupolas, then rubber membrane or similar material may be used.
 - (3) Siding material. All materials used shall be consistent with and appropriate in design, texture and other visual qualities to the style and period of the structure. Man-made siding (Brick, stucco, cedar shake and cement fiber board can all be considered man-made or manufactured.) is acceptable, although, if used, it should have a traditional profile. The smooth finish of high-quality cement fiberboard is the approved standard for this material. Vinyl and aluminum or other metal siding is prohibited as substitute siding material. Existing vinyl or aluminum or other metal material on a contributing or noncontributing structure may continue to be used. No vinyl or aluminum or other metal siding material may be used on any new noncontributing structure.
[Amended 12-9-2013]
 - (4) Foundation material. The traditional type of foundation in use in the Lewes Historic District is brick or ballast stone. The use of brick, or a brick veneer over a block foundation, is strongly recommended. Other acceptable materials are natural stone and pargeting (stucco) sufficient to disguise the block joints.
 - (5) Chimney styles and materials. Chimneys in public view should be of brick or pargeting (stucco). Metal chimneys are acceptable for use in nonpublic view.
 - (6) Porches. All materials shall be consistent with and appropriate in design, texture and other visual qualities to the style and period of the structure. Vinyl or aluminum or other metal railings and trim are prohibited; provided, however, that if such vinyl or aluminum or other metal railings and trim exist on a contributing or noncontributing structure, it may continue but cannot be used on a new noncontributing structure in the Historic District. If a porch is to be included in new construction or alteration, it shall adhere to the height line and average depth of other porches in the surrounding neighborhood. When existing structures with traditional porches, either one- or two-story, are renovated, owners are encouraged to preserve both the porch and its architectural detailing. An open porch in public view that encroaches into the setback shall not be converted into living space. Areas under porches or decks shall not be open to view.
[Amended 12-9-2013]
 - (7) Windows.
[Amended 7-9-2012]

- (a) Restoration. If the windows are original to the historic contributing structure, every reasonable effort shall be made to rehabilitate rather than replace them. Repair materials shall duplicate the old in composition, design, and texture, and shall match as closely as possible the existing historic window elements.
 - (b) Replacement. In the event the original historic windows cannot be restored, every reasonable effort shall be made to replace them in kind using the same sash and pane configuration. The replacement sash shall fit the window opening and not noticeably change the character-defining components of the original window, including the depth of the sill and reveal, mullion profile and configuration, appearance of the frame, reflective qualities of the glass panes, exterior trim, and other design details.
 - (c) New construction. New structures in the historic district and alterations to existing historic structures shall have windows compatible with existing and surrounding structures.
- (8) Architectural details. The term "architectural details" applies to such building features as window and door trim styles, cornices, ornamental brackets, porch and entrance balustrades, porch pillars, corner pilasters, gable peak ornamentation, lattice work, traditional paneled and louvered wooden shutters and similar details. If consistent with the period, shutters added to a structure shall present the appearance of working shutters, i.e., set out from the siding surface, covering the window casing, and of proper size and proportion in relation to the window. Decorative shutters should not be installed on a building unless there is clear evidence that such decorative shutters were used at some point in the structure's period of significance. The applicant is encouraged to extend the design motif of the existing structure to any addition, and in the case of alteration of an existing structure, the architectural details on the exterior shall be preserved. (Reference Drawings Nos. 5 and 6. [NOTE: See Appendix C on file and available for inspection in the City Manager's office.])
- (9) Walls, fences and gates. Materials shall be of a type compatible with the architecture of the Historic District and historic properties. Chain link, vinyl, and concrete block are prohibited. (Reference Drawing No. 7. [NOTE: See Appendix C on file and available for inspection in the City Manager's office.])

Article VII. Off-Street Parking and Loading

§ 197-60. Purposes and scope.

A. Purposes:

- (1) Relieve congestion and facilitate the movement of vehicular traffic.
- (2) Facilitate the movement of police, fire, and other emergency vehicles.
- (3) Promote the safety and convenience of pedestrians and shoppers by locating parking areas so as to lessen vehicle movements in the vicinity of intensive pedestrian traffic.
- (4) Protect adjoining residential neighborhoods from the negative effects of on-street parking.
- (5) Promote the general convenience, welfare, and prosperity of commercial and other uses that depend on off-street parking and loading facilities.

B. Scope.

- (1) When required. Off-street parking and loading facilities shall be provided under the following conditions:
 - (a) When any use is established or changed.
 - (b) When any building or structure is erected, altered, renovated, or expanded.
- (2) The parking and loading requirements in this part of the chapter are in addition to requirements in other parts of this chapter.
- (3) The parking and loading requirements in this part of the chapter do not limit requirements or conditions that may be imposed in conjunction with other approvals, reviews, or applications.
- (4) Parking and loading facilities may not be used for the sale, repair, servicing, or dismantling of any type of vehicle, equipment, material, or supplies.

§ 197-61. Off-street parking.

A. Definition. An off-street parking space is a permanently reserved, temporary storage area for one motor vehicle that is not located on, but is directly accessible to, a dedicated street right-of-way by a driveway. With the exception of townhouses and lots that are less than 5,000 square feet, an off-street parking space shall afford ingress and egress for a motor vehicle without requiring another motor vehicle to be moved.

B. General requirements.

- (1) The parking requirements in the chart are in addition to space for storage of trucks or other vehicles used in connection with any use.^[1]

[1]: *Editor's Note: See also Subsection E, Minimum required spaces.*
- (2) The parking requirements in this article do not limit other parking requirements contained in the district regulations.
- (3) The parking requirements in this article do not limit special requirements which may be imposed pursuant to Article **XIII**, Conditional uses.
- (4) Floor area shall be as defined in Article **XVI**.
- (5) Where fractional spaces result, the parking spaces required shall be constructed to be the highest whole number.
- (6) Except as otherwise provided, the number of employees shall be compiled on the basis of the maximum number of persons employed on the premises at one time on an average day or average night, whichever is greater. Seasonal variations in employment may be recognized in determining an average day, as determined by the City of Lewes Planning Commission.
- (7) The parking space requirements for a use not specifically listed in the chart shall be the same for a listed use of similar characteristics of parking demand generation.^[2]

[2]: *Editor's Note: See Subsection E, Minimum required spaces.*
- (8) In the case of mixed uses, uses with different parking requirements occupying the same building or

premises or in the case of joint use of a building or premises by more than one use having the same parking requirements, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.

- (9) Whenever a building or use is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise to create a need under the requirements of this article for an increase in parking spaces of 10% or more than those required before the change or enlargement, such additional space shall be provided on the basis of the change or enlargement. No additional spaces shall be required for the first change or enlargement which would result in an increase of spaces of less than 10% of those required before the change or enlargement, but this exception shall not apply to a series of changes or enlargements which together result in a need or an increase in parking space of 10% or more.
- (10) Parking requirements, if any, for home businesses or home offices shall be determined by the Building Inspector to provide adequate off-street parking outlined in § 197-61. In any event, the front yard shall not be used for the required parking spaces, and parking spaces shall not be less than five feet from any property line.
- (11) All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change, enlargement of use or where such spaces are provided collectively or used jointly by two or more buildings or establishments, the required spaces may be located and maintained at a distance not to exceed 400 feet from an institutional building or other nonresidential building served.
- (12) Up to 50% of the parking spaces required for theaters, public auditoriums, bowling alleys, dance halls and nightclubs and up to 100% of the parking spaces required for a church auditorium may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments and similar uses not normally open, used or operated during the same hours as those uses listed, and up to 100% of parking spaces required for schools may be provided and used jointly by a church auditorium; provided, however, that a written agreement thereto is properly executed and recorded as specified below.
- (13) In any case where the required parking spaces are not located on the same lot with the building or use served or where such spaces are collectively or jointly provided and used, such parking space shall be used in conjunction with the principal use and shall be reserved as such through an encumbrance on the title of the property to be designed as required parking space, such encumbrance to be valid for the total period that the use or uses for which the parking is needed are in existence. A certificate of recording shall be furnished to the Building Inspector.

C. Design standards.

- (1) Minimum area. For the purpose of these regulations, an off-street parking space is an all-weather surfaced area not in a street or alley, permanently reserved for the temporary storage of one vehicle and connected with a street or alley by a paved driveway which affords ingress and egress for an motor vehicle without requiring another motor vehicle to be moved. An off-street parking space shall have the following dimensions, exclusive of driveways:
 - (a) For single-family, duplex, and townhouse residential uses, a minimum of 162 square feet, measured with a minimum width of nine feet and a minimum length of 18 feet.
 - (b) For all other uses, a minimum of 200 square feet, measured with a minimum width of 10 feet and a minimum length of 20 feet.

- (2) Vehicular access. Off-street parking areas that make it necessary for vehicles to back out directly into a public road are prohibited, except for dwelling units each having an individual driveway.
 - (3) Drainage and maintenance. Off-street parking facilities shall be drained to eliminate standing water and eliminate damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable specifications. Off-street parking areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and not used for the sale, repair or dismantling or servicing of any vehicles, equipment, materials or supplies.
 - (4) Separation from walkways and streets. Off-street parking spaces shall be separated from walkways, sidewalks, streets or alleys by a wall, fence or curbing or other approved protective device or by a distance so that vehicles cannot protrude over publicly used areas.
 - (5) All curb cuts for entering and/or exiting any off-street parking areas, including single-family dwellings, shall have a maximum width of 20 feet, except in the Town Center District, the R-4 District, the R-4(H) District, and single-family dwellings located in the Limited Commercial District which the maximum curb cut shall be 12 feet in width.
 - (6) Entrances and exits. Location and design of entrances and exits shall be in accord with the requirements of applicable state regulations and standards. Landscaping, curbing or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians.
 - (7) Interior drives. Interior drives shall be of adequate width to serve a particular design arrangement of parking spaces as determined by the Planning Commission.
 - (8) Marking. Parking spaces in lots of more than four spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot.
 - (9) Lighting. Adequate lighting shall be provided if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to minimize glare on property in a residential area and all traffic areas.
 - (10) Screening. When off-street parking areas for 10 or more motor vehicles are located closer than 50 feet to a lot in a residential district, or to any lot upon which there is a dwelling as a permitted use under these regulations, and where such parking areas are not entirely screened visually from such lot by an intervening building or structure, there shall be provided along the lot a continuous visual screen with a minimum height of six feet. Such screen may consist of a compact evergreen hedge or foliage screening or a louvered wall or fence.
- D. Exceptions. No off-street parking shall be required for any uses fronting on properties in the following areas:
- (1) On the north side of Second Street from the westerly right-of-way line of Savannah Road to the westerly side of the parking lot located on Sussex County Tax Parcel 3-35-8.08-35.00.
 - (2) On the south side of Second Street from the westerly right-of-way line of Savannah Road to the easterly right-of-way line of Market Street.
 - (3) On the west side of Market Street from Sussex County Tax Parcel 3-35-8.08-35.00 to the northerly side of the intersection of Parcel 35 aforesaid and the westerly side of Market Street and continuing along the westerly side of Market Street to the southerly side of Front Street.
 - (4) On the south side of Front Street from the westerly right-of-way of Market Street to the westerly

right-of-way line of Savannah Road.

- (5) On both sides of Bank Street.
- (6) On both sides of Neils Alley.
- (7) On both sides of West Third Street from the westerly right-of-way of Savannah Road to the easterly right-of-way of Market Street.

E. Minimum required spaces.

Use	Required Number of Off-Street Parking Spaces
Single and multifamily dwellings, apartments and garden apartments	2 per dwelling unit
Rooming houses, boardinghouses or tourist houses	1 per rental room, plus 1 for the resident owner or manager
Hotels, motels and lodging inns	1 per rental room or suite, plus 1 per 3 employees. If a restaurant, open to the public, is operated in connection with such use, additional off-street parking space meeting the minimum requirements for a restaurant must be provided.
Eating places, taverns or bars and nightclubs	1 per 200 square feet assigned for patron use, plus 1 for each 2 employees on the largest shift
Food service drive-in facilities	15 minimum, plus 1 per 150 square feet of floor area
Indoor and outdoor commercial recreation	1 per 150 square feet of floor, building or ground area, or 1 per 4 seats for patron use, whichever is applicable to the particular area
Offices, office buildings, banks or other financial offices	1 per 200 square feet of floor area, exclusive of basements, if not used for office or customer service purposes
Retail stores and supermarkets	1 per 200 square feet of floor area used for sales or display of merchandise purposes, plus 1 for each 2 employees on the largest shift
Beauty shops and barbershops and other personal services	2 per 200 square feet of floor area
Shopping centers	5 per 1,000 square feet of gross leasable area
Furniture and appliance stores	1 per 400 square feet of floor area devoted to sales and display purposes
Funeral homes	1 per 10 square feet of floor area used for seating accommodations, including chairs, plus 1 per employee
Commercial nurseries, sales of outdoor equipment or furniture and sales of new and used cars, trucks, boats, mobile homes, trailers and campers	3 per salesman during peak period of employment
Gasoline service stations	2 spaces for each employee plus 1 for each service bay
Automobile service and repair garages	1 per 500 square feet of floor area, plus 1 per employee during peak period of employment
Wholesaling and manufacturing establishments	1 for every 2 employees on the major shift
Day nurseries, day-care centers or private preschools or kindergartens	1 for every 1,000 square feet of floor area, plus 1 per adult teacher or attendant
Elementary and junior high or middle	3 per room used for administrative purposes, plus 1 per

schools	classroom, plus 1 for each 5 seats in the auditorium or gymnasium or other facility open to the public
Senior high, trade and vocational schools, colleges and universities	3 per room used for administrative offices, plus 1 for every 10 pupils enrolled, plus 1 for each 5 seats in the auditorium, gymnasium or other facility open to the public
Stadiums, assembly halls, theaters and community centers	1 per 4 fixed seats in the assembly area or for each 40 square feet of floor area for rooms having movable seats or 1 space per 150 square feet of floor area, whichever is applicable to the facility
Public libraries	1 per 400 square feet of floor area for public use, plus 1 per 2 employees
Nursing homes, convalescent homes and homes for the aged	1 for each 4 patient beds, plus 1 per each employee on the largest shift
Hospitals	1 for each 3 patient beds, except bassinets, plus 1 per medical staff member, plus 1 per 2 employees on the largest shift
Medical and dental clinics and offices	1 for each 2 employees, plus 4 per doctor or dentist
Churches or other places of worship	1 for each 5 seats

§ 197-62. Off street loading.

A. Definition. An “off-street loading space” is a space or berth that is not on a dedicated street that is used for the loading or unloading of cargo, products, or materials from vehicles.

B. Minimum required spaces.

Use or Category	Square Feet of Floor Area	Loading Spaces Required
Retail store, department store, eating and drinking establishment, wholesale establishment, warehouse, general service, manufacturing, or industrial establishment	2,000 to 10,000 10,000 to 20,000 20,000 to 40,000 40,000 to 60,000 Each additional 50,000	1 2 3 4 1
Apartment building, hotel, motel, offices, office building, hospital or similar institution, places of public assembly	5,000 to 25,000 25,000 to 100,000 100,000 to 200,000 Each additional 50,000	1 2 3 1
Funeral home or mortuary	N/A	1 for each chapel

C. Additional computational standards.

(1) Joint use. Where more than one land use occupies a single structure, off-street loading space shall be computed by assuming that the entire building is occupied by the use for which the most spaces are required.

(2) Modification permitted. The Planning Commission may, or recommend that the Mayor and City Council, waive the requirement for or reduce the number of required loading spaces for buildings containing less than 10,000 square feet under the following circumstances:

(a) When the character of a particular use makes loading and unloading facilities unnecessary.

(b) Where community loading facilities are available.

(c) Where providing loading space is impractical.

D. Location. Off-street-loading spaces shall be:

- (1) Located on the same lot as the building or use served; and
- (2) Situated on the lot served so as to minimize their visibility from public roads and adjacent residential areas.

E. Design standards.

- (1) Loading space dimensions.

Item	General Standard (feet)	Funeral Homes (feet)
Width	12	10
Depth	40	25
Vertical clearance	14	8

- (2) Entrances and exits. The location and design of entrances and exits shall be in accord with applicable state or municipal traffic regulations and standards.
- (3) Surface material. Off-street loading areas shall be surfaced with erosion-resistant material in accordance with applicable City specifications.
- (4) Drainage. Off-street loading areas shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys.
- (5) Maintenance. Off-street-loading areas shall be maintained in a clean and orderly condition at the expense of the owner or lessee and not used for the sale, repair, dismantling, or servicing of any vehicles, equipment, materials, or supplies.

Article VIII. Signs and Billboards

§ 197-63. Purpose.

This article is intended to protect and further the health, safety, and welfare of the residents of the City of Lewes; to further the intent of the City of Lewes Zoning Ordinance and its zoning districts; to prevent traffic hazards; to provide safer conditions for pedestrians; to improve community appearance; and to promote economic development by regulating the construction, alteration, repair, maintenance, size, location and number of signs. Signs should be consistent with the architectural features of the building upon which it is placed and the streetscape in which it is located and should not obstruct or destroy any unique architectural features of such building or surrounding buildings. This article is intended to promote and encourage the continuation of the small-town ambience and eclectic nature of existing signage within the City while limiting excessive signage both in number and location.

§ 197-64. Definitions.

The following words and phrases shall be construed in accordance with the definitions noted in the article:

ADVERTISE

To advise, announce, apprise, command, give notice of, inform, make known, publish or call to the public attention by any means whatsoever.

ADVERTISEMENT

Notice given in a manner designed to attract public attention. Information communicated to the public or to the individual concerned, as by handbills, newspaper, television, billboards, radio.

ANIMATED SIGN

A mechanical or electronically illuminated or nonilluminated sign which displays letters, words, characters or symbols which are not stationary.

AWNING OR CANOPY

A retractable or fixed shelter constructed of materials on a supporting framework that project from the exterior wall of a building.

AWNING OR CANOPY SIGN

A sign affixed to or integral with the surface of an awning or canopy.

BALLOON SIGN

A sign composed of an inflatable, nonporous bag.

BANNER SIGN

A fabric, plastic, or other sign made of nonrigid material without an enclosing structural framework.

BILLBOARD

A sign located on or off premises which advertises an establishment, product, service, space or activity not located on the lot on which the sign is located.

BUSINESS

Nonresidential activity, employment, occupation, profession, or enterprise, whether for profit or not for profit, in which an individual is willing to invest time and capital on future outcome.

CANOPY

See "awning or canopy."

COMMUNITY SIGN

Any permanent sign that identifies any community, subdivision or facility.

CONSTRUCTION SIGN

A sign which identifies the owners, financiers, contractors, architects, engineers or tenants of a project under construction.

DIRECTIONAL SIGN

A sign displaying only the name, nature and location of establishments located in the City offering accommodations, merchandise, and/or services or real estate developments, industries, churches, schools, parks or other features or institutions of note located in the City.

FLAG

A fabric or similar material that is mounted onto a pole on one edge.

FLAG, COMMERCIAL

A flag with an advertisement or used to advertise the operation of a business, products for sale or services available, including but not limited to "open/closed" flags.

FLAG, DECORATIVE

A flag consisting of patterns and colors without messages.

FLAG, GOVERNMENTAL

A flag consisting of a symbol of a recognized government or related entity.

FLASHING SIGN

An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color. Any sign which revolves or moves, whether illuminated or not, shall be considered a "flashing sign."

FREESTANDING SIGN

A permanent sign which is not attached to a building, including pylons, posts or monument signs.

GOVERNMENT SIGN

A temporary or permanent sign erected by the City of Lewes, Sussex County, or the state or federal government, including temporary signs as necessary in conjunction with the improvement of public infrastructure.

GRADE

Shall be determined by height from center of road and shall be adjusted to consider exceptional topography.

GROUND SIGN

A detached sign which shall include any sign supported by uprights or braces placed upon or in or supported by the ground and not attached to any building.

IDENTIFICATION SIGN

A sign which lists the name and/or address of the occupant or business entity.

ILLUMINATED AWNING SIGN

Any sign which is a part of an illuminated awning.

INCIDENTAL OR DIRECTORY SIGN

An informational sign which gives directions or instructions for use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," etc.

INDIRECTLY ILLUMINATED SIGN

A sign whose illumination is derived from an external artificial source, which source is so arranged that no direct rays of light are projected into residential districts or public streets.

INSTRUCTIONAL SIGN

A sign conveying instructions with respect to the premises on which it is maintained, such as "Entrance," "Exit," "No Trespassing," "Danger," and similar signs.

LICENSEE

A person holding a valid license.

MARQUEE SIGN

A sign attached to or hung from a marquee. For the purpose of this chapter, a "marquee" is a covered structure projecting from and supported by the building with independent roof and drainage provisions and which is erected over a doorway or doorways as protection against the weather.

MONUMENT SIGN

A freestanding sign that is affixed to a base that is equal to or wider than the sign itself.

MULTIFACED SIGN

A sign with two or more facings.

MURAL

A design or representation painted or drawn on a wall which does not contain promotional or commercial advertising; any wall decoration without lettering.

NONCOMMERCIAL SPEECH SIGN

Any sign containing a philosophical, religious or other public-interest message not used for commercial purposes and not made in furtherance or promotion of a commercial product, service or enterprise.

OFF-PREMISES SIGN

A sign directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is maintained.

ON-PREMISES SIGN

A sign directing attention to a business, commodity, service or entertainment conducted, sold or offered upon the same premises as those upon which the sign is maintained.

PERMANENT SIGN

A sign which has a permanent location on the ground or which is attached to a structure having a permanent location and which meets the structural requirements for signs as established in the Building Code.

PLACARD

A sign which provides notices of a public nature, such as "No Trespassing" or "No Hunting" signs.

POLITICAL SIGN

A sign used in connection with an official City of Lewes, school district, county, state or federal election or referendum.

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, including but not limited to "sandwich board signs"; and signs attached to or painted on vehicles parked and visible from the public right-of-way.

PROJECTING SIGN

Includes any sign which is attached to a building and extends beyond the wall of the building to which it is attached or within the setback required for a building.

PROMOTE

To contribute to growth, enhancement or prosperity of; to forward; to further; to encourage; to advance.

PROPERTY

Includes a lot, parcel or tract of land, a building, and/or a single business or activity, such as a tenancy, within a building.

READER BOARD

A sign of permanent character, but with movable or printed letters, words or numerals, indicating the names of persons associated with or events conducted upon or products or services offered upon the premises upon which such a sign is maintained.

REAL ESTATE SIGN

A sign advertising the real estate upon which the sign is located as being for sale, rent, or lease.

ROOFLINE

The eave line of a roof or building parapet, whichever is higher, but excluding any cupolas, chimneys, or other minor projections.

ROOF SIGN

A sign erected on a roof which extends above the roofline of the building.

ROOF SIGN, INTEGRAL

A sign which is constructed as an essentially integral part of a normal roof structure of any design, such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

SETBACK

An open space on the same premises with a sign or signs, which open space lies between the nearest edge of the sign or signs and the nearest street line or property line.

SIGN

A structure, display or device that is arranged, intended, designed or used as an advertisement, announcement, identification, description or direction.

SIGN AREA

The total "area" of a sign shall include all side or area of display of a single or multifaced sign, together with all moldings, battens, cappings, nailing strips and latticing which are attached and are part of the sign proper and/or incidental to its decoration. Structural elements, such as aprons or skirting, which serve to shade, deflect or block light generated by a sign and which do not display advertising on their surfaces shall not be included in the total "area" of a sign. For the purpose of this chapter, signs which are composed of letters, words or representations only and which follow no square or rectangular pattern shall be considered to include in "sign area" a square or rectangle as drawn at the outer limits of the letters, words or representations.

SPECIAL EVENT SIGN

A sign used for activities or events that are temporary and of limited duration, may be recurring, or be unusual for the purpose of drawing attention or conveying public information for the activity and shall include, by way of example and not in limitation, yard sales, sidewalk sales, special promotions and public events.

STREET LINE

A dividing line between a lot, premises or tract of land and/or a street, road, highway, court, place, square, lane or way set aside and/or used as a right-of-way for common street or ingress or egress purposes. For the purposes of this chapter, street frontage shall be measured along the "street line."

TEMPORARY SIGN

A sign which is erected for a time limit not to exceed two weeks.

WALL SIGN

A single-faced sign painted or attached directly to and parallel to the exterior wall or window of a building and shall not project more than 12 inches from the wall.

WINDBLOWN DISPLAYS

Any banner, flag, pennant, spinner, streamer, moored blimp or gas balloon, or the like, whether or not conveying a message through the use of words, letters and/or symbols.

WINDOW SIGN

A sign placed inside or outside of a window and intended to be viewed from the outside and which is displayed within 12 inches of the window and is legible from outside the window.

§ 197-65. Signs exempted in all districts.

The following signs do not require a sign permit but shall comply in all other respects with the regulations set forth herein:

- A. Noncommercial speech signs. Noncommercial speech signs may be erected or displayed in any district, subject to the following limitations:
 - (1) Not more than one sign per dwelling unit or, in the case of lots upon which no dwelling units are constructed, not more than one sign per lot or business.
 - (2) Noncommercial speech signs shall not be illuminated.
 - (3) The total area of all noncommercial speech signs shall not exceed three feet by five feet.
 - (4) Noncommercial speech signs shall not be displayed on any one parcel during more than 180 days, consecutively or nonconsecutively, of any calendar year.
 - (5) Noncommercial speech signs shall be subject to all other controlling First Amendment considerations, including, without limitation, obscenity, fight words and libel.
- B. Political signs are subject to the following provisions:
 - (1) Political signs shall not be displayed more than 90 days prior to and must be removed one day after the official election to which such sign pertains.
 - (2) Political signs shall be no larger than four square feet.
 - (3) Political signs shall be placed only on private property with permission of the property occupant.
 - (4) Political signs shall be no higher in overall height than four feet from the grade. A political sign shall conform to all local sign ordinances.
 - (5) Political signs shall not obstruct visibility at road intersections.
- C. Real estate signs are subject to the following provisions:
 - (1) Real estate signs shall be no larger than six square feet.

- (2) Real estate signs shall be placed only on private property with the permission of the property owner.
 - (3) Real estate signs shall be no higher in overall height than four feet from the grade.
 - (4) Real estate signs shall be removed within 30 days after closing the sale, lease or rental of the property.
 - (5) One real estate sign per street frontage permitted, except during the period an open house is conducted, wherein signs directing traffic to the open house are permitted.
 - (6) Real estate signs announcing the sale of properties within a subdivision are permitted, provided that such signs comply with the following provisions:
 - (a) They do not exceed 20 square feet in area.
 - (b) They are removed at such time as all lots are sold.
 - (c) They do not obstruct visibility at road intersections.
 - (d) No more than one sign per each subdivision entrance is erected.
- D. Construction signs are permitted subject to the following provisions:
- (1) Construction signs shall not be erected until a building permit has been issued for the project which is the subject of the proposed sign and construction activity has begun.
 - (2) There shall be no more than one construction sign per contractor and/or subcontractor, architect, surveyor, engineer, lender to be displayed at any one time on a single property.
 - (3) Construction signs shall be removed immediately upon the issuance of any certificate of occupancy or certificate of completion of the structure(s) or facility which is the subject of the sign.
 - (4) Construction signs shall not exceed six square feet; i.e., two feet by three feet per sign.
- E. Incidental signs are permitted subject to the following provisions:
- (1) Incidental signs shall not exceed six square feet in area and four feet in overall height from the grade.
 - (2) Incidental signs shall be limited to the identification of functions such as traffic control, loading areas, entrance/exit and security system signs.
- F. Commercial flags are permitted subject to the following provisions:
- (1) The maximum number of commercial flags shall be two per business.
 - (2) The total square footage of commercial flags per flag shall be 15 square feet (three feet by five feet) maximum.
 - (3) The bottom of a flag shall be no lower than seven feet above grade or sidewalk.
- G. Signage with the international symbol of accessibility or van-accessible recognized logo.
- H. Window signs are permitted as long as the total number does not exceed 1/2 of the total area of the window in which they are posted; provided, however, that this shall not apply to grocery stores.
- I. Government signs. Highway and street signs erected by state, county or municipal road agency identifying streets or highways, giving direction to streets or places of interest or establishing restrictions or conditions of use for streets or highways. This exemption shall further include all such signs authorized by a road

agency in conjunction with street or utility construction projects denoting detours or identifying access to business or industrial areas or sites when normal access is disrupted by such construction.

- J. Historic markers placed under the authority of the local, state or federal government.
- K. Placards not exceeding two square feet.
- L. Flags of any nation, state, city, educational institution, nonprofit organization, or decorative flags.
- M. Special decorative displays used for holidays, public demonstrations or promotion for nonpartisan civic purposes.
- N. Signs on a truck, bus or other vehicle while in use in the normal course of business.

§ 197-66. Signs prohibited in all districts.

- A. Strings of light bulbs, pennants, streamers, balloons, or banners, except as temporary advertising signs provided in this article.
- B. Signs, including reader boards, that employ any flashing, moving, oscillating, blinking, variable-intensity lights, or produce noise, vapor, smoke, particles, or odor.
- C. Building walls used for advertising or directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere other than upon the premises on which the building sits.
- D. Off-premises signs.
- E. A sign erected in any place where it may, by reason of its position, shape, color, or other characteristic, interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device or constitute a nuisance per se.
- F. Wall sign extending beyond the edge of the wall to which it is affixed nor extending above the roofline of a building.
- G. Roof signs.
- H. Billboards.
- I. Internally illuminated signs.
- J. Signs attached to or included on or in any vehicle parked primarily for display purposes.
- K. Any sign which is not specifically permitted by or does not conform to the provisions of this article.

§ 197-67. General provisions for all zoning districts.

- A. Any sign and/or supporting structure which for a period of 60 days advertises or identifies a closed business that had been conducted, or product no longer sold on the premises, shall be removed by the owner, agent, or person having the beneficial use of the building, structure, or property upon which such sign is located within 30 days of receipt of written notice by the Building Official.

- B. No light pole, utility pole or other supporting member of a building or property shall be used for the placement of any sign unless the owner of the pole or supporting member has given prior written approval for such use and the sign otherwise conforms with this article.
- C. All signs for home occupations, bed-and-breakfast establishments, or professional offices located in a residential dwelling, if lit, shall only be externally illuminated. The source of the light shall be enclosed and directed to prevent the source of light from shining directly onto traffic or residential property or otherwise restricting visibility.
- D. A sign accessory to a nonconforming use or structure shall conform to the provisions of the zoning district in which the nonconforming use or structure is located.
- E. All signs, including all supports, braces, guys and anchors, shall be maintained in good repair, free of peeling paint or paper, fading of colors, staining, rust, damage, outages in lighting, or other conditions which impair the legibility of such sign and in conformance with this article and in such a manner so as not to cause a hazard to the public.
- F. At every street intersection there shall be a clear view between the heights of three feet and 10 feet in a triangle formed by the corner and points on the curb 30 feet from the intersection and entranceway.
- G. All signs shall comply with the Building and Electrical Codes of the City of Lewes. Underground wiring shall be required for all illuminated signs or signs requiring electrical connections which are not attached to a building.
- H. Temporary permits for special event signs. Notwithstanding any other provision of this chapter, any property owner, tenant or other entity in legal possession of any real property in the City may apply to the Building Official for a temporary permit to display a sign in connection with a special event, subject to the following:
 - (1) A "special event" shall, for purposes hereof, mean an event of temporary and limited duration and shall include, by way of example and not in limitation, sidewalk sales, special promotions and public events.
 - (2) Permits granted hereunder shall generally be limited to the duration of the event and not exceed seven days consecutive or nonconsecutive. Depending upon the nature of the event and the purpose and location of the temporary sign, a longer period, not exceeding 21 days consecutive or nonconsecutive, may be approved in the exercise of the Building Official's reasonable discretion.
 - (3) No temporary permit shall be issued for any sign hereunder which exceeds three feet by five feet or is illuminated by animated, revolving, flashing or moving lights, which is, itself, animated, revolving or moving or which utilizes reflectors or sound devices, nor shall any such permit be granted for an illuminated sign in the OS, OS(H), R-1, R-2, R-2(H), R-3, R-3(H), R-4, R-4(H), R-5, TC, or TC(H) Zoning Districts.

§ 197-68. Signs permitted in all zoning districts.

- A. General provisions.
 - (1) Signs not otherwise prohibited in this article are permitted in all districts unless otherwise provided in this article.
 - (2) Any sign shall not be placed between a sidewalk and street.

- (3) A business may have a maximum of three signs.
- B. Area measurement. The area of a sign shall be measured as the area within a single, continuous perimeter composed of the smallest geometric shape which encloses the extreme limits of writing, representation, emblem, logo, or any other figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding only the structure necessary to support the sign. Reader boards shall be included in the sign measurement.
 - C. Multifaced signs. The area shall be measured by including the area of all sign faces, except if two such faces are placed back-to-back and are of equal size, the area of the two back-to-back faces shall be counted as one face. If the two back-to-back faces are of unequal size, the larger of the two sign faces shall be counted as the one face. While square footage is referenced throughout, unusually shaped signs may be calculated by square inches.
 - D. Wall signs.
 - (1) Size. The maximum area for all wall signs per storefront or business frontage may not exceed one square foot of sign area for every one linear foot of building length of the wall upon which the sign is to be displayed.
 - (2) Number: one per storefront or business frontage.
 - E. Awning and canopy signs.
 - (1) Size. The total sign area shall not exceed one square foot for every two linear feet of street frontage of the wall upon which the awning, canopy or marquee is located. Signs shall be affixed flat to the vertical surface.
 - (2) Illuminated awning sign.
 - (a) Only the copy area of an illuminated awning sign shall be considered in any square foot limitations.
 - (b) When an illuminated awning sign covers multiple storefronts, each store shall be permitted a copy area width not to exceed 80% of the individual storefront.
 - F. Projecting signs.
 - (1) Number.
 - (a) Generally: one per building wall which faces a street or parking lot.
 - (b) A building having multiple commercial tenants is permitted more than one projecting sign on a street or parking lot frontage, provided that the number of projecting signs does not exceed one for each 25 feet of frontage and one per tenant.
 - (2) Size. Signs shall not exceed six square feet in area per sign.
 - (3) Location.
 - (a) Signs shall not project more than three inches from the face of the building or wall or extend beyond the roofline of a one-story building.
 - (b) Signs shall maintain a clearance of eight feet from the public way (sidewalk).

- (c) No projecting sign shall project or extend more than 10 feet into or beyond a required building setback line.
- (d) No projecting sign shall be permitted which obstructs or interferes or in any way becomes a hazard to the orderly movement of pedestrian and/or vehicular traffic.

G. Freestanding signs.

(1) Number.

- (a) Street frontage less than 300 continuous linear feet: one per lot or parcel.
- (b) Street frontage 300 or more continuous linear feet: two signs per lot or parcel.

(2) Size. The sign area shall not exceed one square foot for each linear foot of street frontage and with a maximum of 32 square feet.

(3) Location. Signs shall be located at least five feet from any property line; provided, however, that portable signs, where permitted, shall meet the requirements of Subsection L of this section.

(4) Height. Signs shall be no higher than 12 feet from the grade in districts where the maximum posted speed limit is 25 miles per hour, 16 feet where the speed limit is over 25 miles per hour.

(5) All signage in multitenant locations shall have continuity in design, size, color and lettering.

H. Instructional signs. The total sign area shall not exceed eight square feet.

I. Marquee signs are subject to the following:

- (1) They shall not project more than 18 inches beyond the marquee faces or edges.
- (2) They shall in no instance be lower than eight feet above the walkway or thoroughfare or sidewalk.
- (3) They shall in no instance exceed 32 square feet in area.

J. Letters mounted on buildings. When individual letters are mounted directly on a building, square footage shall be determined by the space from the left-hand side of the first letter and ending on the right-hand side of the last letter multiplied by the height of the largest letter; such letters shall not exceed 12 inches in width or 36 inches in height.

K. Sign height. The height of the sign is measured from the finished grade to the top of the sign. Such signs shall be situated so as to have the longer dimension oriented horizontally and to have the shorter dimension oriented vertically.

L. Portable signs/sandwich board signs. Sandwich board signs shall not exceed 12 inches in width and 36 inches in height, and it shall be placed adjacent to the building and business to which it pertains.

M. One reader board per lot or business is permitted on a wall or as a freestanding sign.

N. Windblown display. In the case of a string of pennants, flags, etc., each string shall be treated as one "windblown display," and the total area of all such pennants or flags on the string shall not exceed three feet by five feet.

§ 197-69. Sign regulations by zoning district.

A. Residential districts.

- (1) Applicability: R-1, R-2, R-2(H), R-3, R-3(H), LC, and LC(H) Districts.
- (2) Customary signs and fixed symbols, in conjunction with residential usage, such as mailbox signs and names of residences. No such sign shall exceed 15 square feet in area, nor shall it be illuminated.
- (3) Except as may otherwise be provided in this article, no signs shall be displayed from the interior of any structure so as to be plainly visible from outside such structure.
- (4) Freestanding community signs for residential subdivisions, mobile home parks, multiple-family complexes having six or more units, schools, churches, or other institutional uses permitted in the district:
 - (a) Number: one per street frontage, to a maximum of two signs per subdivision, park, multiple-family complex, school, church or other institutional use.
 - (b) Size. Each sign shall be no greater than 24 square feet.
 - (c) Location. Signs shall be located at least five feet from any property line.
 - (d) Height. No higher than six feet from the grade.
- (5) Wall signs for multiple- family complexes having six or more units and nonresidential uses:
 - (a) Number: one per street frontage.
 - (b) Size: no greater than 12 square feet.
- (6) Signs for home-based businesses and bed-and-breakfast establishments.
 - (a) Number. A licensed home occupation, professional office, or bed-and-breakfast establishment shall be permitted only one identification sign that is freestanding, projecting, or affixed flat against the residence.
 - (b) Size: no greater than three square feet in area.
 - (c) Freestanding sign standards.
 - [1] Height: no higher than four feet from grade level.
 - [2] Location: not less than two feet from the public right-of-way.
 - (d) Any sign must be placed or sized so as not to impede visibility for vehicular or pedestrian traffic.
- (7) Windblown displays may be flown or displayed in the R-1, R-2, R-2(H), R-3 and R-3(H) Districts and may be flown in the LC and LC(H) Districts when the primary use for the property is residential, provided that:
 - (a) No windblown display shall be permitted on any lot carrying a commercial message in conjunction within a commercial use or activity occurring on any other specific lot within the City or within a one-mile radius of the City.
 - (b) Where flown or displayed upon any lot upon which a commercial use or activity is occurring, the following restrictions shall apply:

[1] No more than three windblown displays per lot may be flown or displayed at the same time.

[2] No windblown display shall exceed three feet by five feet in area.

(c) No windblown display shall be illuminated in any fashion, except for flags of sovereign nations, states, counties or municipalities.

(d) Flags of sovereign nations, states, counties or municipalities may be illuminated by any conventional methods, but:

[1] Revolving flashing, animated, or moving lights shall not be permitted.

[2] All such illuminated flags shall be flown or displayed from the same flagpole, staff or other similar device; any illumination shall be enclosed and directed to prevent the light from shining directly into traffic or residential property or otherwise restricting visibility.

B. Nonresidential districts.

(1) Applicability: TC, GC, MC, C/H, CF, CF(E), CF(HC), I Districts.

(2) Standards.

(a) Temporary signs and/or banners used for holidays, public demonstrations, or promotion of civic welfare or charitable purposes, when authorized by the Building Official.

(b) The Building Official will consider the size of the proposed sign in relation to the location and zoning of the area in which it is proposed for placement.

(c) Temporary signs, i.e., garage sales, shall be removed within two days following the event.

C. Sign specifications: mixed use.

(1) In case of a mixed-use building or lot, sign rules shall be those pertaining to the primary use.

(2) In case of a conflict, the most stringent regulation shall apply.

D. Structures with multiple uses. The following shall be allowed:

(1) One freestanding sign identifying the structure and/or the separate primary tenants or business uses.

(2) One wall sign for each tenant or business.

§ 197-70. Nonconforming signs, billboards or advertising signs; removal.

A. General provisions.

(1) Every permanent legally existing sign, billboard or advertising sign which does not conform to the height, size, area, or location requirements of this article as of the date of the adoption of this chapter is hereby deemed to be a continued legal nonconforming use.

(2) When compliance required. Nonconforming signs shall be removed from the premises or otherwise made to comply with these regulations in the following instances:

- (a) When there is a construction, renovation, replacement or repair to more than 75% of the exterior of the principal building measured in square feet of exterior wall surface area, or expansion of more than 20% of the floor area of the principal building measured in square feet of floor area on the premises on which such nonconforming signs are present, except that freestanding signs that are nonconforming with respect to front setback requirements shall not be made to be set back further than the front of the principal structure.
- (b) When, within any given two-year period, construction, renovation, replacement or repair projects involving less than 75% of the building exterior and/or individual building additions involving less than 20% of the floor area of the principal building on the premises would, in aggregate, exceed the seventy-five-percent renovation and/or twenty-percent expansion thresholds set forth herein, all such nonconforming signs shall be brought into conformity with these regulations or shall be removed from the premises.
- (c) When a sign is to be replaced.
- (d) When a business or activity for which the sign existed closes its business or activity.
- (e) Prior to the issuance of any permit for the placement of any additional signage on the property. No new signs of any type shall be added to the property until nonconforming signs are removed.

B. Removal of unsafe or nonconforming signs.

- (1) If the Building Official or the authorized representative determines that any sign regulated by this article is unsafe or constitutes a hazard to the public, including but not limited to obstructing vision of vehicle drivers or pedestrians, or has been constructed, erected or maintained in violation of the provisions of this article, the Building Official may remove the sign or require its immediate removal. Failure to comply with a notice of violation by the Building Official shall be deemed a violation.
- (2) Any sign placed or erected in a public street, alley or right-of-way, or other public place, which is not specifically permitted in such place, shall be deemed an unlawful sign, and the department of the City having jurisdiction over the maintenance of such public place shall remove such sign. Such removal may be without written or other notice to the owner, lessee or person of the property adjacent to the public street, alley, or right-of-way, or other public place upon which such sign is located; however, there shall be notice if the unlawful sign will cause no immediate danger.
- (3) Should any sign be removed by an authorized agency of the City, the owner of the property on which the sign was located shall be responsible for the cost of removal and any storage.

§ 197-71. Sign permits.

- A. Permit required. A permit shall be required to erect, alter, display, relocate or replace any sign structure or mural, except as exempted herein.
- B. Application contents and procedure.
 - (1) Application for permit to erect or install a sign is to be made by the owner, tenant, or lessee of the property on which the sign is located or by the authorized agent, Delaware licensed contractor, or registered architect or engineer.
 - (2) The application is to be made in writing to the Building Official, on forms furnished by the Building

Official, and shall be signed by the applicant.

- (3) The application shall state the address, site of installation, and estimated cost of work and fully describe the sign according to the definitions and specifications of the chapter.
- C. Permit fee. Upon approval of the application and before issuing the sign permit, a permit fee in an amount determined by Mayor and City Council shall be paid.
- D. Any person adversely affected by the provisions of this article as defined in a decision of the Building Official concerning the compliance to code and denial of application may appeal to the Board of Adjustment for a variance from the provisions herein.
- E. If the licensee shall at any time fail to comply with the provisions of this article or not be in accordance with the approved drawings, specifications and details of the approved application, or shall fail to comply with any written directions of the Building Official based upon the provisions of this article, the Building Official or authorized representative may suspend or revoke the permit and provide the reasoning therefor.

Article IX. Environmental Protection Regulations

§ 197-72. Purposes and applicability.

- A. Purposes.
 - (1) Identify environmentally sensitive areas in the City.
 - (2) Impose additional land development standards and practices in these environmentally sensitive areas.
- B. Applicability: in all zoning districts of the City.

§ 197-73. Floodplains.

[Amended 10-21-2013; 12-16-2014^[1]]

- A. General provisions.
 - (1) Findings.
 - (a) The Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the City of Lewes. Special flood hazard areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Development that is inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contributes to the flood loss.
 - (b) The City of Lewes, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on March 15, 1977. Subsequent to that date or the initial effective date of the City of Lewes Flood Insurance Rate

Map, all development, new construction, and substantial improvement, as defined herein, are to be compliant with the floodplain management regulations in effect at the time of construction, and all development, new construction, and substantial improvements subsequent to the effective date of these regulations shall be compliant with these regulations and the flood load and flood-resistant construction provisions of the Building Code, including specific amendments adopted by the City of Lewes.

- (2) Statement of purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to:
 - (a) Protect human life, health and welfare;
 - (b) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
 - (c) Minimize flooding of water supply and sanitary sewage disposal systems;
 - (d) Maintain natural drainage;
 - (e) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
 - (f) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (g) Minimize prolonged business interruptions;
 - (h) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges;
 - (i) Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
 - (j) Minimize the impact of development on adjacent properties within and near flood-prone areas;
 - (k) Provide that the flood storage and conveyance functions of the floodplain are maintained;
 - (l) Minimize the impact of development on the natural and beneficial functions of the floodplain;
 - (m) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
 - (n) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.
- (3) Areas to which these regulations apply. These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Lewes, as established herein.
- (4) Basis for establishing special flood hazard areas.
 - (a) For the purposes of these regulations, and for the purpose of establishing flood hazard areas in the Building Code [Section 1612.3 and Table R301.2(1)], the following are adopted by reference as a part of these regulations and serve as the basis for establishing special flood hazard areas:
 - [1] The FEMA Flood Insurance Study for Sussex County, Delaware and Incorporated Areas, dated March 16, 2015, and all subsequent amendments and/or the most recent revision

thereof.

- [2] The FEMA Flood Insurance Rate Map for Sussex County, Delaware and Incorporated Areas, dated March 16, 2015, and all subsequent amendments and/or the most recent revision thereof.
 - [3] Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate one-hundred-year floodplains, floodways or other areas of special flood hazard.
 - [4] The City of Lewes may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a "Local Flood Hazard Map," using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.
 - [5] Where field-surveyed topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a flood hazard map, the area shall be considered as a special flood hazard area.
- (b) Maps and studies that establish special flood hazard areas are on file at City Hall.
- (5) Abrogation and greater restrictions. These regulations are not intended to repeal or abrogate any existing ordinances, including subdivision regulations, zoning ordinances or Building Codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.
 - (6) Interpretation. In the interpretation and application of these regulations, all provisions shall be:
 - (a) Considered as minimum requirements;
 - (b) Liberally construed in favor of the governing body;
 - (c) Deemed neither to limit nor repeal any other powers granted under state statutes; and
 - (d) Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence, where more restrictive.
 - (7) Warning and disclaimer of liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Lewes, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.
 - (8) Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.
- B. Definitions. Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application. Where terms are not defined in these regulations and are defined in the

Building Code,^[2] such terms shall have the meanings ascribed to them in that code.

ACCESSORY STRUCTURE

For the purposes of these regulations, a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

AREA OF SHALLOW FLOODING

A designated Zone AO on a community's Flood Insurance Rate Map with a one-percent annual chance or greater of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the "one-hundred-year flood" (or the "one-percent-annual-chance flood").

BASE FLOOD DISCHARGE

The volume of water resulting from a base flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

BASE FLOOD ELEVATION

The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the community's Flood Insurance Rate Map.

BASEMENT

Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL

A wall that is designed and certified by a registered design professional that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

BUILDING CODE

The family of Building Codes specifically adopted by the City of Lewes in Chapter 70, Building Construction. The code that applies to one- and two-family dwellings is referred to as the "Residential Code."

COASTAL A ZONE

Flood hazard areas that have been delineated as subject to wave heights between 1 1/2 feet (457 mm) and three feet (914 mm). Such areas are seaward of the Limit of Moderate Wave Action shown on the Flood Insurance Rate Map.

COASTAL HIGH HAZARD AREA

Area within the flood hazard area that is subject to high-velocity wave action, and shown on a Flood Insurance Rate Map (FIRM) or other flood hazard map as Zone V, VO, VE or V1-30.

CRITICAL FACILITY

Hospitals, nursing homes, police stations, fire stations, and emergency operation centers that are needed for flood response activities before, during, or after a flood; public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a

flood; and structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. The term includes facilities that are assigned Risk Category III and Risk Category IV, assigned pursuant to the Building Code, or Flood Design Class 3 and Flood Design Class 4 assigned pursuant to ASCE 24, if applicable.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DRY FLOODPROOFING

A combination of measures which results in a structure, including attendant utilities and equipment, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

ELEVATION CERTIFICATE

The National Flood Insurance Program, Elevation Certificate (FEMA Form 086-0-33), used to document building elevations and other information about buildings. When required to be certified, the form shall be completed by a licensed professional land surveyor.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

The federal agency with the overall responsibility for administering the National Flood Insurance Program.

FEMA TECHNICAL BULLETIN

A series of guidance documents published by FEMA to provide guidance concerning building performance standards of the National Flood Insurance Program. See sections where specific TBs are identified.

FLOOD DAMAGE-RESISTANT MATERIALS

Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. See FEMA Technical Bulletin No. 2, Flood Damage-Resistant Materials Requirements, and FEMA Technical Bulletin No. 8, Corrosion Protection for Metal Connectors in Coastal Areas.

FLOOD INSURANCE RATE MAP (FIRM)

An official map on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

- (1) **ZONE A**
Special flood hazard areas inundated by the one-percent-annual-chance flood; base flood elevations are not determined.
- (2) **ZONE AE**
Special flood hazard areas subject to inundation by the one-percent-annual-chance flood; base flood elevations are determined; floodways may or may not be determined.
- (3) **ZONE AO**
Areas of shallow flooding, with or without a designated average flood depth.
- (4) **ZONE X (shaded)**
Areas subject to inundation by the five-hundred-year flood (0.2% annual chance); areas subject to

the one-percent-annual-chance flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected by levees from the base flood.

(5) **ZONE X (unshaded)**

Areas determined to be outside the one-percent-annual-chance flood and outside the five-hundred-year floodplain.

(6) **ZONE VE**

Special flood hazard areas subject to inundation by the one-percent-annual-chance flood and subject to high velocity wave action (also referred to as "coastal high hazard areas").

(7) **LIMIT OF MODERATE WAVE ACTION (LiMWA)**

The inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the Zone VE and the LiMWA will be similar to, but less severe than, those in the Zone VE.

FLOOD INSURANCE STUDY

The official report provided by the Federal Emergency Management Agency (FEMA) containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevations of the base flood and supporting technical data.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN

Any land area susceptible to being inundated by water from any source. (See "flood or flooding.")

FLOODPROOFING CERTIFICATE

The National Flood Insurance Program, Floodproofing Certificate for Non-Residential Structures (FEMA Form 86-o-34), used by registered professional engineers and architects to certify dry floodproofing designs.

FLOODWAY

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height.

FREEBOARD

A margin of safety added to the base flood elevation to account for waves, debris, miscalculations, or lack of data.

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE

Any structure that is:

- (1) Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on the City's local inventory of historic places; the City's historic preservation program is certified by the Secretary of the Interior.

HYDROLOGIC AND HYDRAULIC ENGINEERING ANALYSIS

An analysis performed by a professional engineer, licensed in the State of Delaware, in accordance with standard engineering practices as accepted by FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

LETTER OF MAP CHANGE

An official FEMA determination, by letter, to amend or revise an effective Flood Insurance Rate Map, Flood Boundary and Floodway Map, and Flood Insurance Study. Letters of Map Change include:

- (1) **LETTER OF MAP AMENDMENT (LOMA)**
An amendment based on technical data showing that a property was inadvertently included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.
- (2) **LETTER OF MAP REVISION (LOMR)**
A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood; in order to qualify for this determination, the fill must have been permitted and placed in accordance with these regulations.
- (3) **CONDITIONAL LETTER OF MAP REVISION (CLOMR)**
A formal review and comment as to whether a proposed flood protection project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies; upon submission to and approval of certified as-built documentation, a Letter of Map Revision may be issued.

LOWEST FLOOR

The lowest floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage, provided that such enclosure is not built so as to render the structure in violation of the nonelevation requirements specified in the Building Code for enclosures below the lowest floor.

MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

NEW CONSTRUCTION

Buildings and structures for which the "start of construction" commenced on or after March 15, 1977, including any subsequent improvements to such structures.

PERSON

An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

RECREATIONAL VEHICLE

A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

SPECIAL FLOOD HAZARD AREA

The land in the floodplain subject to flood hazards and shown on a Flood Insurance Rate Map as Zones A, AE, AO, and VE. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in § 197-73A(4).

START OF CONSTRUCTION

The date of issuance of permits for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of issuance. The "actual start" means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings, or construction of columns. Permanent construction does not include land preparation (such as clearing, grading and filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE (OR BUILDING)

That which is built or constructed.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

Any combination of repair, alteration, reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a ten-year period, the cumulative cost of which equals or exceeds 50%

of the market value of the structure before improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. For each building or structure, the ten-year period begins the date a permit is issued for the first improvement or repair of that building subsequent to October 16, 2006. The term does not, however, include any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the Building Official and that are the minimum necessary to assure safe living conditions.

VIOLATION

The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time that documentation is provided.

[2]: *Editor's Note: See Ch. 70, Building Code.*

C. Administration.

(1) Designation of the Floodplain Administrator.

- (a) The Building Official is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator shall obtain and maintain Certified Floodplain Manager (CFM) certification from the Association of State Floodplain Managers, Inc.
- (b) The Floodplain Administrator is authorized to fulfill the duties and responsibilities set forth in these regulations, delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, and enter into a written agreement or written contract with another jurisdiction or agency, or private sector entity, to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.

(2) Duties and responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (a) Coordinate with City officials to support administration, interpretation, and enforcement of the flood load and flood-resistant construction provisions of the Building Code.
- (b) Review applications for permits to determine whether proposed activities will be located in special flood hazard areas.
- (c) Interpret floodplain boundaries and provide flood elevation and flood hazard information.
- (d) Advise applicants for new construction or substantial improvement of structures that are located on any coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as identified undeveloped coastal barriers or otherwise protected areas.
- (e) Review applications to determine whether proposed activities will be reasonably safe from flooding.

- (f) Review applications to determine whether all necessary permits have been obtained from those federal, state or local agencies from which prior or concurrent approval is required.
 - (g) Verify that applicants proposing to alter or relocate a watercourse have notified adjacent communities and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship), and have submitted copies of such notifications to the Federal Emergency Management Agency.
 - (h) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or disapprove the same in the event of noncompliance.
 - (i) Inspect special flood hazard areas to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed.
 - (j) Review submitted elevation certificates for completeness.
 - (k) Submit to FEMA data and information necessary to maintain flood hazard maps, including hydrologic and hydraulic engineering analyses prepared by or for the City of Lewes, corrections to labeling or planimetric details, etc.
 - (l) Maintain and permanently keep all records for public inspection that are necessary for the administration of these regulations, including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing permits, elevation certificates, other required certifications, variances, and records of enforcement actions taken for violations of these regulations.
 - (m) Enforce the provisions of these regulations.
 - (n) Assist with and coordinate flood hazard map maintenance activities.
 - (o) Conduct determinations as to whether existing buildings and structures damaged by any cause and located in special flood hazard areas have been substantially damaged.
 - (p) Make reasonable efforts to notify owners of substantially damaged buildings and structures of the need to obtain a permit prior to repair, rehabilitation, or reconstruction, and to prohibit the noncompliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a structure to prevent additional damage.
 - (q) Undertake, as determined appropriate due to the circumstances, other actions which may include but are not limited to issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assisting owners with National Flood Insurance Program claims for increased cost of compliance payments.
 - (r) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Lewes have been modified.
- (3) Permits required. It shall be unlawful for any person or entity to begin construction or other development which is wholly or partially within any identified special flood hazard area, as established in § **197-73A(4)**, including but not limited to subdivision of land, filling, grading, or other site

improvements and utility installations; placement or replacement of a manufactured home; recreational vehicles; installation or replacement of storage tanks; or alteration of any watercourse, until a permit is obtained from the City of Lewes. These regulations are intended to be administered and enforced in conjunction with the Building Code. No permit shall be issued until the requirements of these regulations and, as applicable, the flood load and flood-resistant construction provisions of the Building Code have been met.

- (4) Application required. Application for a permit shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual start of construction. The application shall be on a form furnished for that purpose. For applications for buildings and structures, these required minimum contents of the application are in addition to the requirements of the Building Code.

(a) Application contents. At a minimum, applications shall include:

- [1] Site plans drawn to scale showing the nature, location, dimensions, existing and proposed topography of the area in question, the limits of any portion of the site that was previously filled, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
- [2] Elevation of the existing natural ground where structures are proposed, referenced to the datum on the Flood Insurance Rate Map, and an elevation certificate that shows the ground elevation and proposed building elevations (identified in Section C of the elevation certificate as "Construction Drawings").
- [3] Delineation of special flood hazard areas, floodway boundaries, flood zones, and base flood elevations. Where surveyed natural ground elevations are lower than the base flood elevations, base flood elevations shall be used to delineate the boundary of special flood hazard areas. If proposed, changes in the delineation of special flood hazard areas shall be submitted to and approved by FEMA in accordance with § **197-73C(4)(b)**. Where special flood hazard areas are not delineated or base flood elevations are not shown on the flood hazard maps, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from other sources, or to determine such information using accepted engineering practices.
- [4] For subdivision proposals and development proposals containing at least 50 lots or at least five acres, whichever is the lesser, and where base flood elevations are not shown on Flood Insurance Rate Maps, hydrologic and hydraulic engineering analyses and studies as required by § **197-73D(2)(d)**.
- [5] Elevation of the lowest floor, including basement, or elevation of the bottom of the lowest horizontal structural member, as applicable to the flood zone, of all proposed structures, referenced to the datum on the Flood Insurance Rate Maps.
- [6] Such other material and information, as may be requested by the Floodplain Administrator, necessary to determine conformance with these regulations.
- [7] For work on an existing structure, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement, including:
 - [a] Documentation of the market value of the structure before the improvement is started or before the damage occurred.

- [b] Documentation of the actual cash value of all proposed improvement work, or the actual cash value of all work necessary to repair and restore damage to the before damaged condition, regardless of the amount of work that will be performed; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definitions for "substantial damage" and "substantial improvement."
- [8] Certifications and/or technical analyses prepared or conducted by an appropriate design professional licensed in the State of Delaware, as appropriate to the type of development activity proposed and required by these regulations and the Building Code:
 - [a] Floodproofing certificate for dry floodproofed nonresidential structures, as required by the Building Code.
 - [b] Certification that flood openings that do not meet the minimum requirements for nonengineered openings but designed to automatically equalize hydrostatic flood forces, as required by the Building Code.
 - [c] Certification that the structural design, specifications and plans, and the methods of construction to be used for buildings and structures in coastal high hazard areas are in accordance with accepted standards of practice and meet the requirements of the Building Code.
 - [d] Technical analyses to document that the flood-carrying capacity of any watercourse alteration or relocation will not be diminished and documentation of maintenance assurances as required in § **197-73E(3)(c)**.
 - [e] Hydrologic and hydraulic engineering analyses demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but has not delineated a floodway, as required by § **197-73E(3)(b)**.
 - [f] Hydrologic and hydraulic engineering analyses of any development proposed to be located in an identified floodway, as required by § **197-73E(3)(a)**.
 - [g] Hydrologic and hydraulic engineering analyses to develop base flood elevations for subdivisions and large-lot developments, as required by § **197-73D(2)(d)** or otherwise required by the Floodplain Administrator.
- (b) Right to submit new technical data. The applicant has the right to seek a Letter of Map Change and to submit new technical data to FEMA regarding base maps, topography, special flood hazard area boundaries, floodway boundaries, and base flood elevations. Such submissions shall be prepared in a format acceptable by FEMA, and the Floodplain Administrator shall be notified of such submittal. Submittal requirements and processing fees shall be the responsibility of the applicant.
- (c) Requirement to submit new technical data. The Floodplain Administrator shall notify FEMA of physical changes affecting flood hazard areas and flooding conditions by submitting technical or scientific data as soon as practicable, but not later than six months after the date such information becomes available. The Floodplain Administrator has the authority to require applicants to submit technical data to FEMA for Letters of Map Change.

- (5) Review, approval, or disapproval.
 - (a) Review. The Floodplain Administrator shall:
 - [1] Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information required to support the application.
 - [2] Review applications for compliance with these regulations after all information required in § 197-73C(4) or identified and required by the Floodplain Administrator has been received.
 - [3] Review all permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including but not limited to:
 - [a] Permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Delaware Environmental Protection Agency under Section 401 of the Clean Water Act.
 - [b] Permits required by the State of Delaware.
 - (b) Approval or disapproval. The Floodplain Manager shall approve applications that comply with the applicable requirements of these regulations. The Floodplain Manager shall disapprove applications for proposed development that does not comply with the applicable provisions of these regulations and shall notify the applicant of such disapproval, in writing, stating the reasons for disapproval.
 - (c) Expiration of permit. A permit is valid, provided the actual start of construction occurs within 180 days of the date of permit issuance. If the actual start of construction is not within 180 days of the date of permit issuance, requests for extensions shall be submitted in writing. Upon reviewing the request and the permit for continued compliance with these regulations, the Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more than 180 days each.
- (6) Inspections. The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction, in order to monitor compliance. In addition to the inspections required by the Building Code, such inspections may include:
 - (a) Stake-out inspection, to determine location on the site relative to the special flood hazard area and floodway.
 - (b) Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.
 - (c) Enclosure inspection, including crawlspaces, to determine compliance with applicable provisions.
 - (d) Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.
 - (e) Storage of materials.
- (7) Submissions required prior to foundation inspection and prior to issuance of a certificate of occupancy. The following certifications are required to be submitted by the permittee for

development that is permitted in special flood hazard areas prior to the foundation inspection and prior to issuance of a certificate of occupancy:

- (a) For new or substantially improved residential structures or nonresidential structures that have been elevated, the applicant shall:
 - [1] As part of the foundation inspection and placement of the lowest floor, and prior to further vertical construction, submit an elevation certificate that shows the ground elevation and floor elevation (identified in Section C of the elevation certificate as "Building Under Construction").
 - [2] Prior to issuance of the certificate of occupancy, submit an elevation certificate (identified in Section C of the elevation certificate as "Finished Construction").
 - (b) For nonresidential structures that have been dry floodproofed, a floodproofing certificate based on "Finished Construction" (identified in Section II).
 - (c) For all development activities subject to the requirements of § **197-73C(4)(b)**, a Letter of Map Revision shall be provided.
- (8) Flood Insurance Rate Map use and interpretation. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of special flood hazard maps and data:
- (a) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used. When a Preliminary Flood Insurance Rate Map has been provided by FEMA to identify base flood elevation where such elevations were not previously shown, the base flood elevations on the Preliminary Flood Insurance Rate Map shall be used.
 - (b) Special flood hazard area delineations, base flood elevations, and floodway boundaries on FEMA maps and in FEMA studies shall take precedence over delineations, base flood elevations, and floodway boundaries by any other source that reflect a reduced special flood hazard area, reduced floodway width and/or lower base flood elevations.
 - (c) Other sources of data shall be reasonably used if they show increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies.
 - (d) Where field surveyed topography indicates that ground elevations are below the base flood elevation, even in areas not delineated as a special flood hazard on a flood hazard map, the area shall be considered as special flood hazard area.

D. Requirements in all special flood hazard areas.

- (1) Application of requirements. The general requirements of this section apply to all development proposed within special flood hazard areas identified in § **197-73A(4)**.
- (2) Subdivisions and developments.
 - (a) All subdivision and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.

- (b) All subdivision and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
 - (c) All subdivision and developments proposals shall have adequate drainage provided to reduce exposure to flood damage.
 - (d) All subdivision proposals and development proposals containing at least 50 lots or at least five acres, whichever is the lesser, in FEMA-delineated special flood hazard areas where base flood elevation data are not available shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway delineations. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.
- (3) Protection of water supply and sanitary sewage systems.
- (a) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
 - (c) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.
- (4) Buildings and structures. All new construction of buildings and structures, including placement of manufactured homes and substantial improvements to existing buildings and structures, that are to be located, in whole or in part, in special flood hazard areas shall comply with flood load and flood-resistant construction requirements of the Building Code, including specific amendments adopted by the City of Lewes.
- (5) Fill.
- (a) Disposal of fill, including but not limited to rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.
 - (b) Fill shall not be permitted to be placed for the purpose of supporting a building or structure.
 - (c) Fill placed for a purpose other than to support a building or structure shall be compacted for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling and shall be designed with adequate drainage and no adverse effect on adjacent properties.
- (6) Historic structures. Repair, alteration, or rehabilitation of historic structures where the proposed work is a substantial improvement or repair of substantial damage shall be subject to the requirements of this section unless a determination is made that compliance will preclude a structure's continued designation as a historic structure and a variance is granted in accordance with § **197-73G** and such variance is the minimum necessary to preserve the historic character and design of the structure.
- (7) Recreational vehicles.
- (a) Recreational vehicles in special flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.

- (b) Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § **197-73D(9)** for manufactured homes.
- (8) Gas or liquid storage tanks.
 - (a) Underground tanks in special flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
 - (b) Above-ground tanks in special flood hazard areas shall be elevated and anchored to or above the base flood elevation plus 18 inches or shall be anchored at grade and designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
 - (c) In special flood hazard areas, tank inlets, fill openings, outlets and vents shall be:
 - [1] At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood.
 - [2] Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- (9) Manufactured homes.
 - (a) Elevation. All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the lowest horizontal structural supporting member of lowest floor of the manufactured home is elevated to or above the base flood elevation plus 18 inches.
 - (b) Foundations. All new and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on permanent, reinforced foundations that are designed in accordance with Section R322 of the Residential Code based on the applicable flood zone identified on the FIRM. Designs for foundations shall be certified as meeting the requirements of these regulations and the Residential Code.
 - (c) Anchoring. All new and replacement manufactured homes to be placed or substantially improved in a special flood hazard area shall be installed using methods and practices which minimize flood damage. Manufactured homes shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. The anchor and tie-down specifications of the manufacturer are permitted, provided such specifications are specific to installation in special flood hazard areas. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - (d) Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the requirements of Section R322 of the Residential Code based on the applicable flood zone identified on the FIRM.
 - (e) Protection of mechanical equipment and outside appliances. Mechanical equipment and outside appliances shall comply with the requirements of Section R322 for protection of mechanical and electrical systems.
- (10) Critical facilities. New critical facilities shall, to the extent feasible, be located outside of the special flood hazard area and outside of the 0.2% annual chance flood hazard area (five-hundred-year

floodplain). If documentation is provided that feasible sites outside of the special flood hazard area are not available that satisfy the objectives of a proposed critical facility, then the critical facility shall:

- (a) Have the lowest floor elevated to or above the 0.2% annual chance flood hazard area (five-hundred-year floodplain) elevation plus one foot (305 mm) or to the design flood elevation, whichever is higher; and
- (b) Meet the applicable flood-resistant requirements of the Building Code and ASCE 24, and where elevation requirements are specified, the minimum elevation shall be the 0.2% annual chance flood hazard area (five-hundred-year floodplain) elevation plus one foot (305 mm) or to the design flood elevation, whichever is higher.

E. Requirements in special flood hazard areas other than coastal high hazard areas and Coastal A Zones.

- (1) General requirements. In addition to the general requirements of § 197-73D, the requirements of this section apply to all development proposed in special flood hazard areas other than coastal high hazard areas and other than Coastal A Zones. These areas include Zones A, AE, and AO, except in areas seaward of the Limit of Moderate Wave Action. See § 197-73D(4) for the requirement that buildings and structures comply with the flood load and flood-resistant construction requirements of the Building Code, including specific amendments adopted by the City of Lewes.
- (2) Accessory structures. Accessory structures shall meet the requirements of these regulations. Accessory structures that have a footprint of no more than 200 square feet may be allowed without requiring elevation or floodproofing, provided such structures meet all of the following requirements:
 - (a) Useable only for parking or limited storage.
 - (b) Constructed with flood damage-resistant materials below the base flood elevation.
 - (c) Constructed and placed to offer the minimum resistance to the flow of floodwaters.
 - (d) Firmly anchored to prevent flotation, collapse, and lateral movement.
 - (e) Electrical service and mechanical equipment elevated to or above the level of the base flood elevation plus 18 inches.
 - (f) Equipped with flood openings that meet the requirements of Section R322.2.2 of the Residential Code.
 - (g) For guidance, see FEMA Technical Bulletin No. 7, Wet Floodproofing Requirements.
- (3) Protection of flood-carrying capacity.
 - (a) Development in floodways. Within any floodway area designated on the Flood Insurance Rate Map, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic engineering analysis that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Such technical data shall be submitted to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed development activity may be permitted if the analyses demonstrate that the activity:

- [1] Will not result in any increase in the base flood elevation; or
- [2] Will result in an increase in the base flood elevation, provided a Conditional Letter of Map Revision has been issued by FEMA and the applicant completes all of the following:
 - [a] Submits technical data required in § 197-73C(4)(a)[8][e];
 - [b] Evaluates alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
 - [c] Certifies that no structures are located in areas which would be impacted by the increased base flood elevation;
 - [d] Documents that individual legal notices have been delivered to all impacted property owners to explain the impact of the proposed action on their properties;
 - [e] Requests and receives concurrence of the City Manager of the City of Lewes and the Chief Executive Officer of any other community impacted by the proposed actions; and
 - [f] Notifies the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship).
- (b) Development in areas with base flood elevations but no floodways. For development activities in a special flood hazard area with base flood elevations but no designated floodways, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such analyses and data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed development activity may be permitted if the analyses demonstrate that the cumulative effect of the proposed development activity, when combined with all other existing and potential special flood hazard area encroachments, will not increase the base flood elevation more than one foot at any point.
- (c) Deliberate alterations of a watercourse. For the purpose of these regulations, a watercourse is deliberately altered when a person causes a change to occur within its banks. Deliberate changes to a watercourse include, but are not limited to, widening, deepening or relocating of the channel; installation of culverts; construction of bridges, and excavation or filling of the channel or watercourse banks. For any proposed deliberate alteration of a watercourse, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed alteration of a watercourse may be permitted upon submission, by the applicant, of the following:
 - [1] Documentation of compliance with § **197-73E(3)(a)** if the alteration is in a floodway or § **197-73E(3)(b)** if the alteration is in a watercourse with base flood elevations but no floodway.
 - [2] A description of the extent to which the watercourse will be altered or relocated as a result of the proposed development.
 - [3] A certification by a licensed professional engineer that the bankful flood-carrying capacity of

the watercourse will not be diminished.

- [4] Evidence that adjacent communities, the U.S. Army Corps of Engineers, and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship) have been notified of the proposal and evidence that such notifications have been submitted to the Federal Emergency Management Agency.
- [5] Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood-carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the City of Lewes specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

F. Requirements in coastal high hazard areas (Zone VE) and Coastal A Zones.

- (1) General requirements. Section **197-73D(4)** requires buildings and structures, including buildings and structures in coastal high hazard areas (Zone V) and Coastal A Zones, to comply with the flood load and flood-resistant construction requirements of the Building Code, including specific amendments adopted by the City of Lewes.

G. Variances. The City of Lewes's Board of Adjustment shall have the power to authorize, in specific cases, such variances from the requirements of these regulations and the flood load and flood-resistant construction of the Building Code, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in exceptional practical difficulties to the owner of the structure.

- (1) Application for a variance. Any owner, or agent thereof, of property for which a variance is sought shall submit an application for a variance to the Board of Adjustment per § **197-90**. Notwithstanding the requirements of § **197-90**, at a minimum, such application shall contain the following information: name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request. Each variance application shall specifically address each of the considerations in § **197-73G(2)** and the limitations and conditions of § **197-73G(3)**.
- (2) Considerations for variances. In considering variance applications under this section, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:
 - (a) The danger that materials may be swept onto other lands to the injury of others.
 - (b) The danger to life and property due to flooding or erosion damage.
 - (c) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
 - (d) The importance of the services provided by the proposed development to the community.
 - (e) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
 - (f) The necessity to the facility of a waterfront location, where applicable, or if the facility is a

functionally dependent use.

- (g) The compatibility of the proposed use with existing and anticipated development.
 - (h) The relationship of the proposed use to the comprehensive plan for that area.
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
 - (l) Variances may be issued for the repair and rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Limitations for variances.
- (a) An affirmative decision on a variance request shall only be issued upon:
 - [1] A showing of good and sufficient cause. A "good and sufficient" cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.
 - [2] A determination that failure to grant the variance would result in exceptional practical difficulty due to the physical characteristics of the property.
 - [3] Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional practical difficulty to the applicant.
 - [4] A determination that the granting of a variance for development within any designated floodway, or special flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
 - [5] A determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
 - [6] A determination that the structure or other development is protected by methods to minimize flood damages.
 - [7] A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of these regulations.
 - (c) The Board of Adjustment shall notify, in writing, any applicant to whom a variance is granted for a

building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements only, and that the cost of federal flood insurance will be commensurate with the increased risk.

H. Enforcement.

(1) Compliance required.

- (a) No structure or land development shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations.
- (b) Failure to obtain a permit shall be a violation of these regulations and shall be punishable in accordance with § **197-73H(3)**.
- (c) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that is contrary to that authorized shall be deemed a violation of these regulations.

(2) Notice of violation. The Building Official is authorized to serve a notice of violation or order on any person or entity in violation of the provisions of this section. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation. If the notice of violation is not complied with promptly, the Building Official is authorized to request that the City Solicitor institute the appropriate proceeding at law or in equity to enforce this section.

(3) Violations and penalties.

- (a) Who shall be liable. Any person or entity who knowingly commits, takes part or assists in any violation or who maintains any buildings or premises in which a violation exists, including, but not limited to, the following:
 - [1] The owner, general agent or contractor of a building or premises where such violation has been committed or shall exist; and
 - [2] The lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist; and
 - [3] The owner, general agent, contractor, lessee or tenant of any part of a building or premises in which such violation has been committed or shall exist; and
 - [4] The general agent, architect, builder, contractor or any other person.
- (b) Penalties if convicted. If convicted, a person or entity, as enumerated in this section, shall be subject to the following:
 - [1] A fine, not less than \$50 nor more than \$1,000 and/or imprisonment for not more than 30 days for each and every offense.
 - [2] Payment of costs of prosecution, including the City's reasonable attorney's fees.
- (c) Each day a separate offense. Whenever the Building Official shall have notified a person by service of a warrant in a prosecution or in any other way that he/she is committing such violation of this section, each day that such violation continues shall be deemed a separate offense

punishable by like fine or penalty.

- (d) Unlawful construction declared nuisance. Any building or portion thereof or part of foundation wall hereafter erected or placed upon any lot or premises within the City in violation of the provisions of this section is hereby declared to be a common and public nuisance and may be abated as authorized in the Charter of the City of Lewes for the abatement of any other nuisance in addition to the provisions of this section.
- (e) Violation abatement. In addition to any other remedy provided by law, an appropriate action or proceeding, whether by legal process or otherwise, may be instituted to:
 - [1] Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
 - [2] Restrain, correct, abate such violation;
 - [3] Prevent the occupancy of such building, structure or land; or
 - [4] Prevent any illegal act, conduct, business or use in and about such premises.

[1]: *Editor's Note: This ordinance provided an effective date of 3-16-2015.*

§ 197-74. Wetlands.

- A. Purpose: provide standards for protecting wetlands in development projects.
- B. Definition:
 - (1) 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
 - (2) Areas that are defined and delineated in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, as amended from time to time; or
 - (3) Areas that are 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 (DNREC).
- C. Official boundaries. The official map for wetlands is prepared by the Delaware Department of Natural Resources, Division of Water Resources, Wetlands and Subaqueous Lands Section.
- D. Identification on development plans.
 - (1) Development plans shall include a report delineating the locations of both state and federal wetlands by legal description with bearings and distances and with each flag point numbered, signed, and dated.
 - (2) Wetland delineation report.
 - (a) The report shall utilize the on-site method or process for identifying wetlands as described in the U.S. Army Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1, 1987 as amended from time to time.
 - (b) 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.

- (3) Building lots containing wetlands shall be identified with a notation stating, "Construction activities within these sites may require a permit from the United States Army Corps of Engineers or the State of Delaware."
- (4) If a tract proposed for development contains no wetlands, the plan shall include a statement affirming this from an experienced, qualified professional.

E. Permitted activities.

- (1) Generally, development is not permitted in wetlands.
- (2) Exception. Utility and access crossings within wetlands may be allowed where no other recourse is available.
 - (a) Proposed crossings must be authorized by the City and meet the requirements of the City Code, U.S. Army Corps of Engineers regulations, and DNREC.
 - (b) Any work in wetland buffer areas shall meet the requirements of the City Code, U.S. Army Corps of Engineers regulations, and DNREC.

F. Wetland mitigation activities.

- (1) Definition: activities carried out in order to compensate for freshwater wetlands or state open-waters loss or disturbance caused by regulated activities.
- (2) Before commencing wetland mitigation measures, an applicant shall obtain a permit from the U.S. Army Corps of Engineers.
- (3) Permits from the state may also be required.

§ 197-75. Water resources protection areas; Source Water Protection Overlay.

A. Intent.

- (1) The intent of this section is to provide clarification on the environmental constraints and requirements for development in environmentally sensitive areas and to protect public drinking water resources from contamination and pollution. Protection areas include source water resource protection areas.
- (2) The purpose of this article is to protect the quality and quantity of groundwater supplies. The City herein adopts the overlay maps delineating, as source water protection areas, wellhead protection and excellent groundwater recharge potential areas. To ensure the protection of these drinking water supplies, this article establishes a zoning overlay to be known as the Source Water Protection Overlay.
- (3) The purpose of the Source Water Protection Overlay is to protect public health and safety by minimizing contamination of aquifers, preserving, and protecting existing and potential sources of drinking water supplies. It is the intent to accomplish this purpose through both public education and public cooperation, as well as by creating appropriate land use regulations that may be imposed in addition to those currently imposed by existing zoning districts or other state and county regulations.

- (4) The Source Water Protection Overlay is superimposed on current zoning districts. It shall apply to all new construction, redevelopment, or expansion of existing buildings and new or expanded uses. Applicable activities/uses allowed in a portion of one of the underlying zoning districts that fall within the Source Water Protection Overlay must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Source Water Protection Overlay District.

B. Definitions. This subsection defines words, terms, and phrases found in this article.

ABOVEGROUND STORAGE TANK (AST)

A single containment vessel greater than 250 gallons as defined in the Delaware Regulations Governing Aboveground Storage Tanks, dated February 11, 2005. ASTs with a storage capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene, are subject to the design, construction, operation, and maintenance requirements of the Delaware AST regulations.

APPLICANT

See Article XVI.

AQUIFER

A geological formation, group of formations or part of a formation composed of rock, sand, or gravel capable of storing and yielding groundwater to wells.

CERCLA AND/OR HAZARDOUS SUBSTANCES

Those substances specifically designated as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),^[1] otherwise known as the Superfund Law, or those substances identified under other laws. In all, the Superfund Law includes references to four other laws to designate more than 800 substances as hazardous and identify many more as potentially hazardous due to their characteristics and the circumstances of their release.

CONTAMINATION

Any physical, chemical, biological, or radiological substance that enters the hydrological cycle through human action and may cause a deleterious effect on groundwater resources; it shall include, but is not limited to, hazardous waste, limiting nutrients, and sanitary sewage.

DRAINAGE

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

DRAINAGE AREAS

The delineated areas that currently contribute or are proposed to contribute runoff to a specific location or point.

ENGINEER

See Article XVI.

EXCELLENT GROUNDWATER RECHARGE POTENTIAL AREA

Those areas with high percentages of sand and gravel that have "excellent" potential for recharge as determined through a stack unit mapping analysis delineated by the Delaware Geological Survey and presented in the Report of Investigations No. 66, Groundwater Recharge Potential Mapping in Kent and Sussex Counties, Delaware, Geological Survey, 2004.

GEOLOGIST

See Article XVI.

GROUNDWATER

A portion of the subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

HAZARDOUS SUBSTANCE UST SYSTEM

An underground storage tank system that contains a hazardous substance defined by § 101(4) of CERCLA^[2] (but not including any substance regulated as a hazardous waste under RCRA^[3] Subtitle C), or any mixture of such substances and petroleum, and which is not a petroleum UST system.

HAZARDOUS WASTE

A solid waste, or combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in the Delaware Regulations Governing Hazardous Wastes, §§ 261.31 to 261.33.

IMPERVIOUS COVER

Surfaces providing negligible infiltration such as pavement, buildings, recreation facilities (by example, but not by limitation, tennis courts, swimming pools) and covered driveways.

PUBLIC WATER SUPPLY WELL

A well from which the water is used to serve a community water system by § 22.146 (Public Water Systems) in the Delaware Regulations Governing Public Drinking Water Systems.

REDEVELOPMENT

Any proposed expansion, addition, major facade change or rebuilding to an existing building, structure or parking facility.

RUNOFF

That portion of precipitation or snowmelt that has not evaporated or infiltrated into the soil but flows on land surface.

SOURCE WATER

Refers to any aquifer from which water is drawn either periodically or continuously by the City's water system or any community water system which provides piped water for human consumption.

SOURCE WATER PROTECTION AREA

Wellhead protection areas and excellent groundwater recharge potential areas.

STORMWATER

The runoff of water from the surface of the land resulting from precipitation or snow or ice melts.

STORMWATER MANAGEMENT

- (1) 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

- (2) 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.

UNDERGROUND STORAGE TANK (UST)

One or a combination of tanks including underground pipes, the volume of which is 10% or more below ground, as defined in the Delaware Regulations Governing Underground Storage Tank Systems, dated March 12, 1995. The following USTs are not subject to the design, construction, operation, and maintenance requirements of the Delaware UST regulations: residential heating fuel, agricultural, and residential motor fuel USTs less than 1,100 gallons and any UST less than 110 gallons.

WELLHEAD

The upper terminal of a well, including adapters, ports, seals, valves, and other attachments.

WELLHEAD PROTECTION AREA (WHPA)

Surface and subsurface areas surrounding public water supply wells or well fields where the quantity or quality of groundwater moving toward the wells or well fields may be adversely affected by land use activity.

WELLHEAD PROTECTION (WHP) ZONE 1

The surface area extending to a minimum one-hundred-fifty-foot radius around the wellhead.

WELLHEAD PROTECTION (WHP) ZONE 2

The remaining surface area of the delineated WHPA outside Zone 1.

[1]: *Editor's Note: See 42 U.S.C. § 9601 et seq.*

[2]: *Editor's Note: See 42 U.S.C. § 9601(14).*

[3]: *Editor's Note: The Resource Conservation and Recovery Act.*

- C. Source water protection areas. Source water protection areas are wellhead protection areas and excellent water recharge potential areas. All such areas are as depicted on source water protection area maps located in City Hall as adopted as part of the update and implementation of the 2005 Comprehensive Land Use Plan. These maps are also available in GIS overlays from Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program. These areas shall be managed as required by this article to protect public drinking water resources from activities and substances that may harm water quality and subtract from overall water quantity.
- D. Wellhead protection areas.
- (1) WHP Zone 1 requirements.
- (a) Parcels of land within a WHP Zone 1 wellhead protection area shall be preserved in a natural condition with the exception of impervious surface limited to building and access associated with the well and distribution and treatment facilities and their maintenance.
- (b) Aboveground storage tanks for materials used in the treatment facility operation are permitted.
- (c) Underground storage tanks are prohibited.
- (d) Stormwater runoff shall be diverted away from the wellhead.
- (e) Stormwater infiltration practices designed to handle runoff are prohibited,

- (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) On-site wastewater and disposal systems shall not be permitted.
- (2) WHP Zone 2 requirements.
- (a) Impervious cover. Impervious cover shall not exceed 20% per parcel. New development in this Zone 2 may exceed the twenty-percent impervious cover threshold within WPAs but shall be no more than fifty-percent impervious cover, provided that the applicant submits an environmental assessment impact report (see Article **IX**, § **197-75H**).
 - (b) Stormwater.
 - [1] Stormwater shall be treated by an approved stormwater quality management practice in accordance with current requirements of the Delaware Sediment and Stormwater Regulations, dated October 11, 2006, or as later revised.
 - [2] For all new construction, all structures shall be required to discharge roof drains onto permeable surfaces.
 - (c) Underground storage tanks (USTs).
 - [1] USTs with a capacity greater than 110 gallons containing petroleum, and residential and agricultural USTs with a capacity greater than 1,100 gallons containing heating fuel or motor fuel, shall not be permitted in a delineated WHP Zone 2 wellhead protection area.
 - [2] USTs with a capacity greater than 110 gallons containing a hazardous substance as defined in CERCLA § 101(14)^[4] shall not be permitted in a designated wellhead area.
 - [4]: *Editor's Note: See 42 U.S.C. § 9601(14).*
- (3) Hazardous waste treatment, storage, and disposal facilities, as defined in 7 DE Admin. Code § 1302, Delaware Regulations Governing Hazardous Waste, shall not be permitted in wellhead protection areas.
- (4) Sanitary and industrial landfills, as defined in 7 DE Admin. Code § 1301, Delaware Regulations Governing Solid Waste, shall not be permitted in wellhead protection areas.
- (5) Hazardous waste generators, vehicle repair, salvage operations, waste sludge storage or application, tire piles and dredge spoil sites shall not be permitted in wellhead protection areas.
- (6) Aboveground storage tanks. Aboveground storage tanks with a capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene, shall be permitted in a delineated wellhead area if the ASTs are designed, constructed, operated and maintained with the applicable requirements in the Delaware Regulations Governing Aboveground Storage Tanks, dated February 11, 2005, or as later revised.
- (7) Wastewater treatment and disposal systems. On-site wastewater treatment and disposal systems shall not be permitted.

E. Excellent groundwater recharge potential areas.

- (1) Impervious cover. The excellent groundwater recharge potential area shall not exceed twenty-percent impervious cover per parcel. New development in this area may exceed the twenty-percent impervious cover threshold within the excellent groundwater recharge potential area but shall be no more than fifty-percent impervious cover, provided that the applicant submits an environmental assessment impact report (see Article IX, § 197-75H).
- (2) Stormwater.
 - (a) Stormwater shall be treated by an approved stormwater quality management practice in accordance with current requirements of the Delaware Sediment and Stormwater Regulations, dated October 11, 2006, or as later revised.
 - (b) For all new construction, all structures shall be required to discharge roof drains onto permeable surfaces.
- (3) Underground storage tanks.
 - (a) Underground storage tanks with a capacity greater than 110 gallons containing petroleum, and residential and agricultural ASTs with a capacity greater than 1,100 gallons containing heating fuel or motor fuel, shall be permitted in an excellent groundwater recharge potential area if the USTs are designed, constructed, maintained and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems, dated March 12, 1995, or as later revised. (NOTE: Regulated USTs must be constructed with secondary containment of the tanks and piping and must have continuous monitoring for releases.)
 - (b) Underground storage tanks with a capacity greater than 110 gallons containing a hazardous substance as defined in CERCLA § 101(14)^[5] shall be permitted a delineated excellent groundwater recharge potential area if the USTs are designed, constructed, maintained and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems, dated March 12, 1995, or as later revised. (NOTE: Regulated USTs must be constructed with secondary containment of the tanks and piping and must have continuous monitoring for releases.)
[5]: Editor's Note: See 42 U.S.C. § 9601(14).
- (4) Aboveground storage tanks. Aboveground storage tanks with a capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene, shall be permitted in a delineated excellent groundwater recharge potential area if the ASTs are designed, constructed, operated and maintained with the applicable requirements in the Delaware Regulations Governing Aboveground Storage Tanks, dated February 11, 2005, or as later revised.
- (5) Wastewater treatment and disposal systems. Such systems shall not be permitted in an excellent groundwater recharge potential area.

F. Boundary interpretation and adjustment.

- (1) All subdivision and land development plans depicting development or land disturbance submitted for City review shall be evaluated for the existence of source water protection areas. All such areas are as depicted on source water protection area maps located in City Hall, including but not limited to Stormwater Map, Recharge Area Map and Wellhead Protection Map, and as adopted as part of the update and implementation of the 2005 Comprehensive Land Use Plan. These maps are also available in GIS overlays. Maps/overlays are available from Delaware Department of Natural Resources and Environmental Control (DNREC), Source Water Assessment and Protection Program (SWAPP). If an

SWPA exists within a proposed development site, the boundaries of these areas shall be delineated on the plan by the applicant's engineer or geologist.

- (2) DNREC SWAPP may, when based on sound science and information, revise and update the overlay maps of wellhead protection areas.
- (3) The Delaware Geological Survey (DGS) may, when based on sound science and information, revise and update the overlay maps of excellent groundwater recharge potential areas.
- (4) When there appears to be a conflict between the mapped boundary and actual site conditions, the applicant may engage the services of a geologist to prepare a report intended to determine more accurately the precise boundary of the source water protection area. The report shall include:
 - (a) A detailed topographic layout of the subdivision and/or area to be developed and prepared by a state-registered professional land surveyor or geologist.
 - (b) Evidence derived from a site-specific investigation that may include aquifer testing, test borings, test pits, observation wells, groundwater elevations, and topography surveys as appropriate for the type of source water protection area that clearly demonstrate that the area in question does not meet the definition of a source water protection area as defined.
 - (c) Any challenges to the delineations of the excellent groundwater recharge potential areas must follow the methods used in the Delaware Geological Survey publication Report of Investigations No. 66, Groundwater Recharge Potential Mapping in Kent and Sussex Counties, Delaware. The challenge must be approved by DGS and DNREC SWAPP.
 - (d) Notwithstanding any other section of this article, if an owner initiates a precise boundary delineation pursuant to this section, any and all time review limitations shall be stayed pending the submission of the complete report contemplated by this section. Following submission of the report and all supporting documents, the DGS and DNREC SWAPP shall have 90 days to approve finally or disapprove the exploratory sketch plan submission or such further time as deemed necessary by the DGS and DNREC SWAPP, but not to exceed an additional 90 days.

G. Identification on development plans.

- (1) Development plans shall delineate the locations of water resources protection areas. A statement by an experienced, qualified engineer or geologist shall be provided, verifying the accuracy of the delineation.
- (2) If a tract proposed for development contains no wellhead protection areas, the plan shall include a statement affirming this from an experienced, qualified professional engineer or geologist.
- (3) When a property proposed for development contains water resources protection areas, an environmental impact assessment report shall be submitted with the preliminary plan.
- (4) 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:
 - (a) Stormwater management facilities shall be designed and constructed in accordance with DNREC Delaware Sediment and Stormwater Regulations, dated October 11, 2006, or as later revised.
 - (b) (Reserved)

H. Environmental impact assessment report.

- (1) If a proposed use requires an environmental impact assessment report, the applicant shall submit an environmental assessment report. Such report shall include a climatic water budget and systems to augment recharge that assure water quality as well as water quantity. The environment impact assessment must document that post-development recharge will be no less than pre-development recharge when computed on an annual basis. It is acknowledged that, commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey pretreated rooftop runoff for infiltration to groundwater. Refer to Supplement 1, Groundwater Recharge Design Methodology, dated May 2005, or as later revised, for the details of how to design recharge facilities in Delaware source water protection areas.
 - (2) An engineer or geologist prepares an environmental assessment report, including but not limited to the following elements of planning, design, construction, and maintenance of groundwater recharge facilities:
 - (a) Site description of proposed development within the water resource protection area;
 - (b) Climatic water balance comparing pre-development and post-development recharge potential;
 - (c) Subsurface exploration, including borings, test pits, and infiltration tests;
 - (d) Design of groundwater recharge facilities that assure water quality as well as quantity;
 - (e) Construction and maintenance considerations; and
 - (f) Recommended groundwater monitoring plan.
 - (3) Enter into a water management agreement between the applicant, the City, the Board of Public Works of the City of Lewes and Sussex County Conservation District providing for review, monitoring, and maintenance of the recharge system.
 - (4) The applicant shall abide by the groundwater management agreement as written in DNREC Supplement 1 to the Source Water Protection Guidance Manual for the Local Governments of Delaware: Groundwater Recharge Design Methodology, dated May 2005, or as later revised.
- I. Redevelopment in wellhead protection areas and groundwater recharge protection areas.
- (1) Impervious cover.
 - (a) Site modifications that require site plan approval must create a fifteen-percent reduction in the amount of impervious cover on the site when compared to pre-redevelopment conditions.
 - (b) If the fifteen-percent reduction would require a site to go below the twenty-percent maximum impervious cover provisions of source water protection areas, then the maximum impervious surface cover for the site is 20%.
 - (2) Stormwater.
 - (a) Sites that do not meet the twenty-percent impervious cover threshold must employ rooftop infiltration practices. Stormwater shall be treated by an approved stormwater quality management practice in accordance with current requirements of the Delaware Sediment and Stormwater Regulations, dated October 11, 2006, or as later revised.
 - (b) If the fifteen-percent reduction does not meet the twenty-percent impervious cover threshold, the site must employ rooftop infiltration practices. Stormwater shall be treated by an approved stormwater quality management practice in accordance with current requirements of the

Delaware Sediment and Stormwater Regulations, dated October 11, 2006, or as later revised.

- (3) Abandoned or vacant property. Article **IX**, § **197-75I** does not apply to vacant or abandoned property. These properties shall comply with the source water protection area regulations.

J. Uniform standards and criteria.

- (1) Hazardous waste treatment, storage, and disposal facilities, as defined in regulations established pursuant to 7 Del. C., § 6302, Delaware Regulations Governing Hazardous Waste, shall not be permitted in source water protection areas.
- (2) Sanitary and industrial landfills, as defined in regulations established pursuant to 7 DE Admin. Code § 1301, Delaware Regulations Governing Solid Waste, shall not be permitted in source water protection areas.

K. Nonconforming uses.

- (1) Nonconforming uses may continue in wellhead protection areas and excellent groundwater recharge potential in the form in which they existed at the time of the posting of this proposed ordinance, unless they pose a direct hazard to the City's water supply, as determined by the Board of Public Works, upon advice from the Delaware Division of Public Health, or are causing some foreign substances (by example, but not by limitation, oil, salts, chemicals, or other substances) to be introduced into the City's water supply as determined by the Board of Public Works upon advice from DNREC's Division of Air and Waste Management and/or Division of Water Resources. In the latter case, the Building Official or Board of Public Works shall issue a mandatory cease and desist order to stop the offending activity within the area.
- (2) Nonconforming existing underground or aboveground storage of oil, petroleum, and petroleum products shall require secondary containment pursuant to the regulations of the State of Delaware governing underground storage tanks.
- (3) Nonconforming existing aboveground storage of petroleum products shall require containment facilities capable of capturing the material stored on the site, for existing facilities that are proposed either to be upgrade or replaced.

L. Replacement and new wells.

- (1) The replacement of any existing public water supply well that was not required to meet this wellhead protection requirement at the date of its original installation and that has failed shall be exempt from meeting this wellhead protection requirement.
- (2) All public water supply wells within a housing development, subdivision or strip development recorded on or after the implementation of the Delaware Regulations Governing the Construction and Use of Wells, dated April 6, 1997, or as later revised, shall be located at least 150 feet within the subdivision's or development's outermost property lines.

§ 197-76. Drainage.

A. Natural drainage system utilized to maximum extent feasible.

- (1) To the extent practicable, all development shall conform to the natural contours of the land. Natural and preexisting man-made drainageways shall remain undisturbed.

- (2) To the extent practicable, lot boundaries shall be made to coincide with the natural and preexisting man-made drainageways within subdivisions to avoid the creation of lots that can only be built upon by altering such drainageways.

B. Proper drainage required.

- (1) All developments, lots, and properties shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the site.
- (2) Surface water may not be channeled or directed into a sanitary sewer.
- (3) Whenever practicable the drainage system of new developments shall be designed to retain runoff on site, and streets shall provide natural stormwater management in a manner consistent with provision of standardized shade trees.

§ 197-77. Permanent stormwater management.

A. Requirement.

- (1) Developments shall be constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such development.
- (2) No development or property may be constructed or maintained in a way that such development or property unreasonably hampers the natural flow of water from higher adjacent properties across the development or property thereby causing substantial damage to the higher adjacent property.
- (3) No development or property may be constructed or maintained so that surface waters from such development or property are unreasonably collected and channeled onto lower adjacent properties at such locations and at such volumes so as to cause substantial damage to the lower adjacent property.

B. Design, construction, and review. See § **170-24**, Subdivision and Land Development.

§ 197-78. Erosion and sediment control.

A. Requirement. Development plans shall include adequate provision for controlling temporary flooding, soil erosion, and sediment deposits during and after construction.

B. Design and construction.

- (1) All development or land-disturbing activity is subject to the requirements of the Delaware Erosion and Sediment Control Handbook.
- (2) Topsoil.
 - (a) No topsoil shall be removed from a site or used as spoil.
 - (b) Topsoil moved during the course of construction shall be redistributed so as to provide at least six inches of cover to all areas of the subdivision and stabilized by seeding and planting.

Article X. Streets and Other Infrastructure

§ 197-79. Streets and roads.

See § 170-21 in Chapter 170, Subdivision and Land Development.

§ 197-80. Water supply and distribution.

See § 170-22 in Chapter 170, Subdivision and Land Development.

§ 197-81. Sewage collection and disposal.

See § 170-23 in Chapter 170, Subdivision and Land Development.

§ 197-82. Electricity.

See § 170-25 in Chapter 170, Subdivision and Land Development.

§ 197-83. Other utilities.

See § 170-26 in Chapter 170, Subdivision and Land Development.

Article XI. Nonconforming Situations

§ 197-84. Definition; intent.

- A. Definition. "Nonconforming situations" are existing structures, lots, signs, and uses of land that were lawful before this chapter was adopted or amended but would be prohibited, regulated, or restricted under the provisions of this chapter.
- B. Intent. It is the intent of this chapter to permit these legal nonconforming lots, buildings, structures and uses of land, buildings and structures to continue until they are removed.

§ 197-85. Nonconforming lots.

- A. Definition: a recorded lot, whose area and/or width was lawful before this chapter was adopted, revised or

amended, that does not meet the lot area and/or lot width standards of this chapter.

- B. Applicability: all zoning districts.
- C. Regulation.
 - (1) A nonconforming lot may be improved (without a variance) as long as the structure complies with the dimensional and density standards of this chapter, other than lot area and/or lot width.
 - (2) A variance shall be required to deviate from any standards, other than lot area and/or lot width.

§ 197-86. Nonconforming buildings and structures.

- A. Definition: a building or structure, whose dimensional and density characteristics were lawful before this chapter was adopted, revised, or amended, that does not meet the dimensional and density standards of this chapter.
- B. Continued existence. A nonconforming building or structure may be continued under the following conditions:
 - (1) Normal repair and maintenance is permitted.
 - (2) A nonconforming building or structure may not be enlarged or altered in any way that increases its nonconformity. It may be altered in a way that decreases its nonconformity.
 - (3) Nonconforming buildings or structures may not be used as grounds for addition of other structures or uses that do not conform to the standards of the zoning district.
 - (4) If a nonconforming building or structure is moved, it shall be located in a manner that conforms to the requirements of the zone in its new location.
- C. Status when damaged or destroyed (other than by neglect). If any nonconforming building is damaged or destroyed, such building may be repaired, rebuilt or reconstructed, provided that it is not increased in size or square footage nor repaired, rebuilt or reconstructed in such a manner that the nonconformity which existed prior to such damage or destruction is increased in any way.

§ 197-87. Nonconforming uses.

- A. Definition. A use or activity, that was lawful before this chapter was adopted, revised or amended, that is not permitted under the use regulations of this chapter.^[1]
 - [1]: *Editor's Note: See also the **Table of Permitted Uses and Structures**, which is included at the end of the chapter*
- B. Continued existence. Although nonconforming uses are incompatible with permitted uses in their respective districts, a nonconforming use may continue under the following conditions:
 - (1) The use may not be enlarged, increased, or extended to occupy a greater area of land or space within a building or structure than was occupied on the date when this chapter is adopted or amended.
 - (2) The use may not be relocated or partially relocated from its location on the date when this chapter is

adopted or amended, unless it is placed in a zoning district that allows such use.

- C. Termination of legal nonconforming status.
 - (1) When a nonconforming use of land ceases for any reason for a period of six consecutive months or for 18 months during any three consecutive calendar years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.
 - (2) Any subsequent use of such land shall conform to provisions of this chapter.

§ 197-88. Nonconforming uses of land and buildings.

- A. Definition: a use of a building and land in combination, existing on the effective date of adoption or amendment of this chapter, that would not be allowed in the district under the terms of this chapter.
- B. Continued existence. The use may be continued as long as it remains otherwise lawful, subject to the following provisions:
 - (1) If the existing building should be enlarged, extended, reconstructed, moved or structurally altered, such change shall conform to the provisions of this chapter or any amendment thereto governing setbacks, yard widths, height and lot coverage applicable to the district in which the property is located.
 - (2) Whenever any building, or any building and land in combination, which is a nonconforming use is thereafter changed or altered or the use is changed to a more restricted use or to a conforming use, such building, or such building and land in combination, shall not thereafter be changed to a less restricted or to a nonconforming use.
- C. Termination of legal nonconforming status.
 - (1) Whenever a nonconforming use of a building, or a building and land in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three consecutive calendar years, the building, or building and land in combination, shall not thereafter be used except for a use in compliance with the provisions of this chapter applicable to the district in which the property is located.
 - (2) Land on which a building devoted to a nonconforming use is destroyed so that it cannot be repaired, as determined by the Building Inspector, or which is removed from land on which it is located shall not thereafter be used except for a use in compliance with the provisions of this chapter applicable to the district in which the property is located.

§ 197-89. Nonconforming signs and billboards.

See Article VIII, § 197-70.

Article XII. Administrative Reviews, Variances, and Special Exceptions

§ 197-90. Application and public hearing.

- A. Applicability. The provisions of this section apply to applications for administrative reviews, appeals of administrative decisions and determinations, variances, and special exceptions.
- B. Application submission.
- (1) Applications shall be filed in the office of the Board of Adjustment. The Building Official may provide forms to facilitate application processing.
 - (2) Applications shall be made in writing and shall provide the following information:
 - (a) Name(s) and address(es) of applicant(s) and property owner(s).
 - (b) Statement of the type of relief, permission, or review requested.
 - (c) Information to support the application.
 - [1] Information about the property for which the application or review is requested; or
 - [2] Identification of the provisions of this chapter with which the application must comply, and statements as to how the application complies with those provisions.
 - (d) Plans or drawings that support or clarify the relief or permission requested.
 - (e) Other information requested by the Board of Adjustment.
- C. Burden of proof on applicant. Every applicant shall have the burden of presenting the information needed by the Board of Adjustment to make a determination.
- D. Board of Adjustment hearing.
- (1) Scheduling. The Board of Adjustment shall schedule a public hearing.
 - (2) Public notice.
 - (a) Contents. The public notice shall specify the time, place, and nature of the hearing.
 - (b) How given. At least 15 days prior to the public hearing, the following notices shall be in place:
 - [1] Publication. A legal notice shall be published in a newspaper of general circulation.
 - [2] Property posting. For an application concerning a specific property, a sufficiently large sign shall be posted on the subject property in a visible location.
 - [3] City Hall. Notice shall be posted at City Hall.
 - (3) Public hearing.
 - (a) The hearing shall take place no less than 15 days following publication of the legal notice.
 - (b) The Board of Adjustment's hearing shall be conducted, and applications shall be acted on as specified in § **197-19** of this chapter.
 - (c) The Board of Adjustment may attach conditions to approvals of applications.

- E. Relationship to ordinances, standards, approvals, and review procedures.
 - (1) Approval of an application by the Board of Adjustment does not supersede or obviate the need for complying with any applicable ordinances, standards, approvals, or review procedures.
 - (2) The Board of Adjustment may condition approvals on satisfactory compliance with applicable ordinances, standards, approvals, or review procedures.
 - (3) The Board of Adjustment may also impose additional conditions.
- F. Duration; revocation; extension.
 - (1) Duration. The duration of an approved application is one year following its approval date.
 - (2) Revocation. If an applicant fails to make substantial progress in developing or construction on the property within one year of the approval date, the approval is automatically revoked.
 - (3) Extensions. The Board of Adjustment may grant one twelve-month extension for good cause, especially when an applicant can demonstrate that delays were beyond his/her control.
- G. Reapplications; appeals.
 - (1) Limitation on reapplications. The Board of Adjustment shall not hear or accept an application requesting the same relief or permission for the same property for a period of 12 months from the date that the Board of Adjustment took action on the application.
 - (2) Appeals to Superior Court. Appeals from the Board of Adjustment's decisions shall be made to the Superior Court as provided for in 22 Del. C. §§ 328 to 332.

§ 197-91. Administrative review; appeal of administrative decisions and determinations.

- A. Purpose: provide a mechanism for appeal where an error is alleged in any interpretation, order, requirement, decision, or determination made by the Building Official, or designee, in the administration of this chapter.
- B. Who may appeal. Pursuant to 22 Del. C. § 324, an appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the Building Official.
- C. Procedure. In order for the Board of Adjustment to conduct an administrative review:
 - (1) The Building Official shall issue a written interpretation, requirement, decision, or determination. The Building Official's written product shall include information about the applicant's/property owner's situation, request, inquiry, etc., and references to pertinent sections of this chapter to support the interpretation, requirement, decision, or determination.
 - (2) The Building Official shall make every effort to present the written product to the applicant, including, but not limited to, return-receipt mailing.
 - (3) The applicant shall file a written request for administrative review within 30 days after receiving written notice of the Building Official's action in the office of the Board of Adjustment.

- D. Stay of proceedings. Pursuant to 22 Del. C. § 325, an appeal stays all proceedings in furtherance of the action appealed from unless the Building Official certifies to the Board of Adjustment that a stay would cause imminent peril to life or property. In such a case, proceedings shall be stayed only by a restraining order granted by the Board of Adjustment or a court having jurisdiction.

§ 197-92. Variances.

- A. Definition: relief from the strict application of the provisions of this chapter when, owing to special conditions or exceptional situations, a literal interpretation of this chapter will result in exceptional practical difficulties to the property owner.
- B. Required findings. Pursuant to 22 Del. C. § 327(a)(3), the Board of Adjustment shall determine whether each variance application meets the following criteria:
- (1) The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity.
 - (2) The variance can be granted without substantial detriment to the public good.
 - (3) The benefits from granting the variance would substantially outweigh any detriment.
 - (4) Approval of the variance would not substantially impair the intent and purposes of the Comprehensive Plan or this chapter.
- C. Additional considerations. The Board of Adjustment shall also consider the following factors in reaching its decision on each variance application:
- (1) Nature of the zone where the property lies.
 - (2) Character of the immediate vicinity.
 - (3) Whether the restrictions, if lifted, would affect neighboring properties and uses.
 - (4) Whether the restriction would tend to create a hardship on the owner in relation to normal improvements.
- D. Additional standards.
- (1) Use variances not authorized. These provisions governing variances shall not be construed to permit the Board of Adjustment, under the guise of a variance, to authorize a use of land not otherwise permitted in this chapter.
 - (2) Nonconforming situations not grounds for variance. Nonconforming lots, structures, uses, or signs shall not be considered grounds for granting variances.

§ 197-93. Special exceptions.

- A. Definition: uses that are generally desirable for the general convenience and welfare but, because of their nature, require additional review to assess their impact on neighboring properties and the entire City.
- B. Required findings. The Board of Adjustment shall determine whether each special exception application

meets the following conditions:

- (1) Is in harmony with the purposes and intent of the Comprehensive Plan.
- (2) Will be in harmony with the general character of its neighborhood considering density, design, bulk, and scale of proposed new structures.
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties.
- (4) Will not cause objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity.
- (5) Will have no detrimental effect on vehicular or pedestrian traffic.
- (6) Will not adversely affect the health, safety, security, or general welfare of residents, visitors, or workers in the area.
- (7) Complies with all other applicable standards, laws, and regulations in addition to the provisions of this chapter.
- (8) Meets all other additional requirements for certain special exceptions.

C. Additional requirements for certain special exceptions. The following requirements are in addition to the required findings in § **197-93B** for the special exceptions listed below:

- (1) Bed-and-breakfast inn.
 - (a) The bed-and-breakfast inn shall be an incidental use to the principal use of the building as a single-family dwelling.
 - (b) The maximum accommodations shall be eight-guests in four guest rooms, including children, with not more than two adults occupying any guest room.
 - (c) The dwelling shall have a minimum of habitable space, excluding porches, garages, closets, basements and cellars, of 2,250 square feet, but in no event shall more than 40% of the total living area in a single-family dwelling be used for bed-and-breakfast sleeping rooms.
 - (d) Off-street parking shall be provided as required by Article **VII**. The Board of Adjustment may add to, but not reduce, the number of required parking spaces.
 - (e) Adequate and appropriate screening or planter area or a combination thereof as determined by the Board of Adjustment to be necessary to protect and preserve the property values of abutting and adjoining properties.
 - (f) The design and dimensions of any sign shall be subject to the provisions of Article **VIII**, Signs and Billboards.
 - (g) The property shall be the principal residence of the owner-operator of the bed-and-breakfast inn.
 - (h) There shall be no cooking facilities of any nature in any guest room used.
 - (i) The appropriate business license has been paid.
 - (j) No guests shall remain for more than eight consecutive nights in any sixty-day period.
 - (k) At the time the application for a special exception is submitted, it shall be accompanied by a site

plan, drawn to scale by a resident surveyor or a professional engineer, showing:

- [1] The location of all structures located on the premises;
 - [2] The design, dimension and location of any proposed sign;
 - [3] The location of all entrances and exits to the proposed property;
 - [4] The location of all off-street parking spaces;
 - [5] The location of all lot lines and the names of adjoining property owners;
 - [6] The location and type of any proposed fencing, screening or planting area and the location of any security lighting.
- (l) No exterior alterations shall be permitted in order to qualify a single-family dwelling as a bed-and-breakfast or to enlarge an existing dwelling to accommodate a bed-and-breakfast inn.
- (m) A permanent record shall be maintained by the proprietor of guests, which said permanent record shall indicate the name and address of each guest, the date of arrival and the date of departure of each guest, the number of guests in any party and the number of rooms occupied. Such record shall be maintained for a period of three years and shall be available for inspection by the City Manager or a designated representative of the City Manager.
- (n) The Board of Adjustment may impose additional conditions to preserve the residential character of the neighborhood.
- (2) Gasoline stations; gasoline stations and convenience centers.
- (a) A site plan of the gasoline station or gasoline station and convenience center shall be submitted to the Planning Commission.
 - (b) Minimum design standards for driveways, curb cuts and other design features relative to access to public roads shall be those of the Delaware Department of Transportation.
 - (c) Minimum lot size shall be 12,000 square feet.
 - (d) Minimum lot depth shall be 100 feet.
 - (e) Minimum lot width shall be 120 feet.
 - (f) Maximum lot coverage shall be 40%.
 - (g) Minimum setback line from all street lines shall be 50 feet.
 - (h) Minimum distance between any buildings and any lot zoned for residential use shall be 50 feet.
 - (i) Minimum distance between any access driveway or curb cut and any lot zoned for residential uses shall be 50 feet.
 - (j) Minimum distance between gasoline pumps or pump islands, compressed air equipment, tire racks and similar equipment and facilities and any street lines shall be 25 feet.
 - (k) Hydraulic hoists, service pits and all lubrication, greasing, repair and washing equipment must be entirely enclosed within buildings.

- (l) A compact evergreen screen or a fence either solid or with narrow openings not more than one inch for each 10 inches of length and not less than six feet in height shall be placed along all property lines separating the gasoline station from any lot in an adjoining residential district.
 - (m) Except for permitted curb cuts, a solid raised curb at least six inches high must be provided along all street lines and all lot lines.
 - (n) Exterior lighting must be located, designed and shielded so that it will not cause glare hazardous to passing motorists and annoying to adjacent properties.
 - (o) Junked or stripped vehicles in an inoperative condition are prohibited on the premises.
 - (p) All waste petroleum products must be stored in underground tanks meeting the approval of the National Fire Protection Association.
 - (q) Off-street parking and loading: see Article **VII**.
 - (r) No vehicles shall be parked or equipment placed, goods displayed or sign or lights erected within the street right-of-way.
 - (s) The entire service area and all access driveways and parking places must be paved with a weatherproof material and graded to direct all water away from adjoining lots.
 - (t) The minimum distance between any gasoline station and any school, day nursery, hospital, nursing home, library or similar use must be 200 feet, measured along the same street line in the same block from the nearest property line of the gasoline station.
 - (u) Where the storage and sale of liquefied petroleum gases is carried on as an accessory use to a gasoline station, the required service station site plan must clearly show the number, locations and capacities of liquefied petroleum gas storage tanks. No tank shall be installed and no truck carrying tanks shall be parked closer than 25 feet from the street line or any property line.
 - (v) Where the rental of utility trailers and/or small trucks is carried on as an accessory use to a gasoline station, the required site plan must clearly show the location and dimensions of the parking area for these vehicles. No more than 15% of the total area may be devoted to parking for rental utility trailers and trucks, and no trailer or truck may be parked closer to any street line than the setback distance required for gasoline pump islands. Parking areas for rental utility trailers and trucks must be clearly marked on the ground and must be located to avoid interference with normal customer traffic flow onto, within and from the service station lot and with traffic visibility at road intersections.
- (3) Certain residential uses and structures in the Marine Commercial Zone.
[Added 5-20-2013]
- (a) Dimensional regulations for all residential uses and structures permitted by special exception in the Marine Commercial Zone, except for bed-and-breakfast, shall be the same as the dimensional regulations established for the Limited Commercial and Limited Commercial (Historic) Zones.

Article XIII. Conditional Uses

§ 197-94. Definition.

“Conditional uses” are uses that are generally desirable for the general convenience and welfare but, because of their nature, require additional review to assess their impact on neighboring properties and the entire City.

§ 197-95. Application and review process.

- A. New application submission.
- (1) Applications for conditional uses shall be submitted to the Building Official. The Building Official may provide forms to facilitate application processing.
 - (2) Applications shall be made in writing and shall provide the following information:
 - (a) Name(s) and address(es) of applicant(s) and property owner(s).
 - (b) Statement of the type of use requested.
 - (c) Information about the property for which the application is being made.
 - (d) Information to support the application:
 - [1] Information about the property for which the application is being made.
 - [2] Statements as to how the application complies with all of the provisions of § **197-96**.
 - [3] Plans or drawings that support or clarify the use requested.
 - [4] Other information requested by the Mayor and City Council.
- B. Notification of neighboring property owners. An applicant for a conditional use shall provide copies of application materials to the owners of all properties within 200 feet of the property for which the application or review is being made.
- C. Burden of proof on applicant. An applicant for a conditional use shall have the burden of presenting the information needed by the Mayor and City Council to make a determination.
- D. Planning Commission review. The Planning Commission shall review each conditional use application at a regular or special meeting and forward a recommendation to the Mayor and City Council.
- E. Mayor and City Council review.
- (1) The Mayor and City Council shall review and take action on each conditional use application at a regular or special meeting.
 - (2) The Mayor and City Council may attach conditions to approvals of applications.

§ 197-96. Required findings.

The Mayor and City Council shall determine whether each conditional use application:

- A. Is in harmony with the purposes and intent of the Comprehensive Plan.
- B. Will be in harmony with the general character of its neighborhood considering density, design, bulk, and

scale of proposed new structures.

- C. Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties.
- D. Will not cause objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity.
- E. Will have no detrimental effect on vehicular or pedestrian traffic.
- F. Will not adversely affect the health, safety, security, or general welfare of residents, visitors, or workers in the area.
- G. Will not unduly affect designated scenic byways.
- H. Complies with all other applicable standards, laws, and regulations in addition to the provisions of this chapter.
- I. May require additional off-street parking (based on the conditional use in question).
- J. Meets all other additional requirements for certain conditional uses set forth this article.

§ 197-97. Relationship to development plan approval.

- A. Approval of an application by the Mayor and City Council does not supersede or obviate the need for complying with any development plan review standards or requirements.
- B. The Mayor and City Council may condition approvals on satisfactory compliance with applicable development review standards and/or may request that the Planning Commission conduct development plan review in conjunction with its review and recommendation on an application.

§ 197-98. Duration; expiration.

- A. Duration.
 - (1) For conditional use applications for public service organizations, the Mayor and City Council may grant long-term conditional use approval of up to five years, after which an applicant may reapply.
 - (2) For all other applications, the Mayor and City Council may grant conditional use approval of one year, after which an applicant may reapply.
- B. Expiration. A conditional use approval expires when such use is abandoned.

Article XIV. Development Plans, Certificates, and Permits

§ 197-99. Purpose.

The purpose of this article is to ensure that buildings and proposed uses of buildings and structures comply with

the provisions of this chapter prior to the issuance of any building permit or other development-related certificates, approvals, or permits.

§ 197-100. Development plan approval.

See Chapter **170**, Subdivision and Land Development.

§ 197-101. Zoning compliance report.

- A. When required:
- (1) Whenever a building or structure is erected, moved, added to, structurally altered.
 - (2) Whenever there is a change in use of any building or structure.
 - (3) In conjunction with the approval of development plans and prior to the recording of plats pursuant to Chapter **170**, Subdivision and Land Development, of the Code of the City of Lewes.
 - (4) In conjunction with excavation permits.
 - (5) In conjunction with issuance of building permits.
 - (6) In conjunction with issuance of a certificate of occupancy (see §§ **70-40** and **70-41** of the Code of the City of Lewes, Delaware).
- B. Temporary zoning compliance. The Building Official may issue a temporary zoning compliance report in conjunction with the issuance of a temporary certificate of occupancy (see § **70-42** of the Code of the City of Lewes, Delaware) or a temporary use permit as defined in this article.
- C. Format and procedure.
- (1) The Building Official shall determine the format for the report.
 - (2) To the extent practical, the report shall be coordinated with and/or made simultaneous with the applications and procedures of other development-related approvals.

§ 197-102. Temporary use permit.

- A. When required. A temporary use permit is required for every temporary use permitted in this chapter prior to commencement of the use.
- B. Procedure for obtaining a temporary-use permit.
- (1) An application for a temporary use permit shall be filed with the Building Official.
 - (2) The Building Official may provide forms to expedite the processing of applications.
 - (3) The Building Official shall refer each temporary use permit application to the Mayor and City Council as soon as practicable after receiving all information needed for the Mayor and City Council to

evaluate the application.

- C. Criteria for issuing a temporary use permit. The Mayor and City Council shall determine whether each temporary use permit application meets the following criteria:
- (1) The operation of the requested use at the location proposed and within the time period specified will not jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.
 - (2) The proposed site is adequate in size and shape to accommodate the temporary use.
 - (3) The proposed site is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that such temporary use will or could reasonably generate.
 - (4) Adequate temporary parking to accommodate vehicular traffic to be generated by such use will be available either on site or at alternate locations acceptable to the Building Official.
 - (5) The use would not jeopardize the public peace, safety or general welfare or be injurious or detrimental to properties adjacent to, or in the vicinity of, the proposed location of the activity.
- D. Conditions for approval. The Mayor and City Council may impose the following conditions on the issuance of a temporary use permit as appropriate:
- (1) Provision of temporary parking facilities, including vehicular access and egress.
 - (2) Regulations to deal with nuisance factors such as, but not limited to, the prevention of glare or direct illumination of adjacent properties, noise, vibrations, smoke, dust, dirt, odors, gases, and heat.
 - (3) Regulation of temporary buildings, structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards.
 - (4) Provision for sanitary and medical facilities.
 - (5) Provision for solid waste collection and disposal.
 - (6) Provisions for security and safety measures.
 - (7) Regulation of signs.
 - (8) Regulation of operating hours and days, including limitation of the duration of the temporary use to a shorter time period than that requested.
 - (9) Submission of a performance bond or other surety devices to ensure that any temporary facilities or structures used for such proposed temporary use will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition.
 - (10) Evidence of sufficient insurance coverage for the proposed use.
 - (11) Submission of a site plan indicating any information required by this chapter.
 - (12) Requirement that the approval of the temporary use permit is contingent upon compliance with applicable provisions of other ordinances.
 - (13) Such other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accord with the intent and purpose of this chapter.

§ 197-103. Sign permits.

See Article VIII, § 197-71.

Article XV. Amendment and Enforcement

§ 197-104. Text and map amendments.

A. Types of amendments:

- (1) Text amendment: addition, supplement, change, or modification to the text of this chapter.
- (2) Zoning Map amendment: addition, supplement, change, or modification to the Zoning Map.
 - (a) Comprehensive rezoning: rezoning of the entire municipality following the adoption of a Comprehensive Plan pursuant to 22 Del. C. § 702(c) or amendments thereto.
 - (b) Local rezoning: change(s) in zoning district(s) for one or more parcels outside of the comprehensive rezoning process.

B. Initiation.

- (1) By Mayor and Council. The Mayor and City Council may amend, supplement, change, or modify the number, shape, area, boundaries of the zoning districts (rezoning or Zoning Map amendment) or may amend, supplement, change, or modify the text of the regulations (text amendment) contained in this chapter.
- (2) By property owner. A petition for change or amendment by a property owner shall be submitted to the Mayor and City Council and contain the following information:
 - (a) For an amendment to the Zoning Map:
 - [1] A metes and bounds description of the property.
 - [2] A recent survey plot of the property.
 - [3] A statement of the change requested and grounds to support it.
 - [4] A petition fee payable to the City of Lewes.
 - [a] For petitions for change of zoning to a residential or mixed residential and commercial district: \$1,500, plus \$250 per dwelling unit over three.
 - [b] For petitions for change of zoning to a nonresidential district: \$1,500, plus \$250 per 5,000 square feet of land in the parcel.
 - [5] Certification that the property owner has notified the owners of all properties within 200 feet of the property which is the subject matter of the petition with the details of the petition.

[6] Property owner's name, signature, address, telephone number, and other contact information.

(b) For an amendment to the text of the Zoning Ordinance: a description of the proposed changes.

C. Planning Commission recommendation.

(1) The Mayor and City Council may refer a text or map amendment application to the Planning Commission for review and recommendation before taking action on such application.

(2) The Planning Commission shall review each text or map amendment, referred by Mayor and Council, at a regular or special meeting and forward a recommendation to the Mayor and City Council in a timely fashion.

D. Public hearing.

(1) Mayor and City Council to hold hearing.

(a) The Mayor and City Council shall hold a public hearing on each ordinance proposing an amendment to the text of this chapter or the Zoning Map.

(b) The Mayor and City Council shall set a public hearing date following receipt of the Planning Commission's review and recommendation.

(2) Public notice.

(a) At least 15 days' notice of the public hearing shall be published in an official newspaper of the City or a newspaper of general circulation in the City.

(b) The notice shall provide information about the nature of the proposed amendment and announce the date, time, and place of the public hearing.

(c) A copy of the newspaper notice shall also be given to the property owners, certified by the petitioner to be the property owners within 200 feet of the boundaries of the subject property.

[1] Such notice shall be given by certified mail with return receipt requested.

[2] Such notice shall be sent to the property owners within 200 feet of the boundaries of the subject property at least 15 days prior to the public hearing.

(3) Conduct of public hearing.

(a) The Planning Commission's recommendation shall be presented at the public hearing and made a part of the hearing record.

(b) All interested parties and citizens shall be given an opportunity to be heard.

(4) Review criteria.

(a) Text amendment:

[1] The relationship of the proposed change to the general purpose and intent of this chapter and the Comprehensive Plan.

[2] Information as to why the existing zoning text should be changed.

- (b) Comprehensive rezoning. Land shall be placed only in a zoning classification that is in accordance with the uses of land provided for in the Comprehensive Development Plan.
- (c) Local map amendment:
 - [1] Facts existing in the vicinity of the proposed change and the relationship of the proposed change to the general purpose and intent of the Comprehensive Plan.
 - [2] Whether the proposed zoning classification is in accordance with the land uses provided for in the Comprehensive Plan.
- (5) Adoption procedure. An amendment to the text or map of this chapter shall be made by ordinance.
- E. Limitation on reapplication. Whenever a petition requesting an amendment, supplement or change has been denied by the Mayor and Council, such petition, or one substantially similar, shall not be reconsidered sooner than one year after the previous denial.
- F. Revocation. Whenever a petition requesting an amendment, supplement or change has been granted by the Mayor and Council, the amendment shall become void unless the applicant shall have commenced within one year after the adoption of the amendment with development of the property, and the zoning shall revert to the same zoning as it was prior to the adoption of the amendment.

§ 197-105. Violations and penalties.

- A. Violations enumerated. The following actions shall be violations of this chapter:
 - (1) Failure to secure a building permit, certificate of zoning compliance, temporary use permit, sign permit, or certificate from the Board of Adjustment, when required, previous to the erection, construction, extension, or demolition of, or addition to, a building.
 - (2) Failure to secure a certificate of occupancy or certificate of compliance.
- B. Who shall be liable. Any person or entity who knowingly commits, takes part or assists in, any violation or who maintains any buildings or premises in which a violation exists, including, but not limited to, the following:
 - (1) The owner, general agent or contractor of a building or premises where such violation has been committed or shall exist; and
 - (2) The lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist; and
 - (3) The owner, general agent, contractor, lessee or tenant of any part of a building or premises in which such violation has been committed or shall exist; and
 - (4) The general agent, architect, builder, contractor or any other person.
- C. Penalties if convicted. If convicted, a person or entity, as enumerated in this section, shall be subject to the following:
 - (1) Fine and/or imprisonment.
 - (a) A fine, not less than \$50 nor more than \$1,000; and/or

- (b) Imprisonment for not more than 30 days for each and every offense.
- (2) Payment of costs of prosecution, including the City's reasonable attorney's fees.
- D. Each day a separate offense. Whenever the Building Official shall have notified a person by service of a warrant in a prosecution or in any other way that he/she is committing such violation of this chapter, each day that such violation continues shall be deemed a separate offense punishable by like fine or penalty.
- E. Unlawful construction declared nuisance. Any building or portion thereof or part of foundation wall hereafter erected or placed upon any lot or premises within the City in violation of the provisions of this chapter is hereby declared to be a common and public nuisance and may be abated in the same manner provided by the Charter of the City of Lewes for the abatement of any other nuisance in addition to the provisions of this chapter.
- F. Violation abatement. In addition to any other remedy provided by law, an appropriate action or proceeding, whether by legal process or otherwise, may be instituted to:
 - (1) Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
 - (2) Restrain, correct, abate such violation;
 - (3) Prevent the occupancy of such building, structure or land; or
 - (4) Prevent any illegal act, conduct, business or use in and about such premises.

Article XVI. Definitions

§ 197-106. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADJACENT

Physically touching or bordering upon; sharing a common boundary, but not overlapping

ADULT ENTERTAINMENT ESTABLISHMENT

Any commercial establishment, business or service, or portion thereof, which offers sexually oriented material, devices, paraphernalia or specific sexual activities, services, performances or any combination thereof, or in any other form, whether printed, filmed, recorded or live, pursuant to 24 Del. C. § 1602. The term "adult entertainment establishment" shall include but not be limited to such activities as:

- A. "Adult bookstore," which shall mean any corporation, partnership or business of any kind which has as part of its stock books, magazines or other periodicals and which offers, sells, provides or rents for a fee:
 - (1) Any sexually oriented material, and which business restricts or purports to restrict admission to adults, within the meaning of this chapter, or to any class of adults;
 - (2) Any sexually oriented material which is available for viewing by patrons on the premises by means of the operation of movie machines or slide projectors;

- (3) Any sexually oriented material which has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality; or
 - (4) Any sexually oriented material which has as its principal theme the depiction of sexual activity by, or lascivious exhibition of, the uncovered genitals, pubic region or buttocks of children who are or appear to be under the age of 18.
- B. "Adult motion-picture theater," which shall mean an enclosed building used for presenting film presentations which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities for observation by patrons therein.
 - C. "Adult shows" or "adult peep shows" which shall include all adult shows, exhibitions, performances or presentations which contain acts or depictions of specific sexual activities.
 - D. "Conversation parlor," "relaxation studio," "health salon" or "call service," which shall mean any commercial business, enterprise or service which offers or which holds itself out as offering conversations or relaxation or any other services whereby any employee, attendant or patron is involved in specific sexual activities or representations thereof.
 - E. "Massage establishment," which shall mean any business or enterprise which offers, sells or provides, or which holds itself out as offering, selling or providing, massages which include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating or other tactile stimulation of the human body, by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. This term shall not include the business or occupation of a chiropractor, chiropodist, podiatrist, barber, nurse, optometrist, cosmetologist, dentist, physician, massage/bodywork practitioner, physical therapist or operator of a funeral establishment, who is certified, registered or licensed pursuant to this title, or a hospital which is licensed pursuant to Title 16 or athletic coach or trainer.

AGRICULTURE

Production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including but not limited to the following:

- A. Forages and sod crops;
- B. Grains and seed crops;
- C. Bees and apiary products;
- D. Trees and forest products;
- E. Fruits of all kinds, including grapes, nuts, and berries;
- F. Vegetables;
- G. Nursery, floral, ornamental, and greenhouse products; and
- H. Lands devoted to a soil conservation or forestry management program.

ALLEY

A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

ALTERATION

Any change in or rearrangement of the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

ALTERATION, STRUCTURAL

Any change in either the supporting member of a building, such as bearing walls, columns, beams, and girders, or in the dimensions or configurations of the roof or exterior walls.

ANIMAL HOSPITAL

See "veterinary hospital."

ANIMAL KENNEL

Any structure or premises in which animals are boarded, groomed, bred, or trained for commercial gain.

ANIMAL SHELTER

A facility used to house or contain stray, homeless, abandoned or unwanted animals and that is owned, operated, or maintained by a public body, established humane society, animal welfare society, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

APARTMENT

A room or suite of rooms in a multiple-family dwelling intended for use as a residence by a single family where individual units usually share a common access, structure and similar common facilities.

APPLICANT

A person, firm or government agency that executes the necessary forms to obtain approval or a permit for any zoning, subdivision, land development, building, land disturbance, or other activity regulated.

ARCHITECT

An individual licensed to practice the profession of architecture by the State of Delaware.

ASSISTED LIVING FACILITY

A facility providing a special combination of housing, supportive services, supervision, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living (such as ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting) and/or instrumental activities of daily living (home management skills, such as shopping for food and personal items, preparing meals, or handling money), including those facilities licensed pursuant to 16 DE Admin. Code Ch. 3225.

AUTOMOBILE

A self-propelled, free-moving vehicle, with not more than two axles, usually used to transport passengers and licensed by the appropriate state agency as a passenger vehicle.

AUTOMOBILE REPAIR SERVICES

Definitions include the following.

A. MAJOR REPAIR SERVICES

General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, including bodywork, welding, and major painting service.

B. MINOR REPAIR SERVICES

Replacement or repair of any motor vehicle part that does not require removal of the engine head or

pan, engine transmission, or differential, but may include incidental body and fender work, minor painting, and upholstering service.

AUTOMOBILE SALES

Use of land and buildings for the display, sale, rental, or lease of new or used automobiles, light trucks, vans, trailers, recreation vehicles or sport utility vehicles (SUVs).

AUTOMOBILE SERVICE STATION

Building, land, or premises used for the retail dispensing or sales of vehicular fuels, servicing and repair of motor vehicles and, as accessory uses, the sale and installation of lubricants, tires, batteries, and similar vehicle accessories.

BASE FLOOD

The flood that has a one-percent chance of being equaled or exceeded in any given year, also referred to as the "one-hundred-year flood."

BASEMENT

A story in a building having a floor partly below the finished graded but having more than 1/2 of its height (measured from the finished ceiling) above the average level of the finished grade where such grade abuts the exterior walls of the building. A basement shall be considered as one story in determining the permissible number of stories.

BED-AND-BREAKFAST

A small inn, maintained as an incidental use to the principal use of the building as a single-family dwelling. See Article XII, § 197-93C(1).

BEST MANAGEMENT PRACTICES (BMPs)

State-of-the-art technology as applied to a specific problem which includes a schedule of activities, prohibited practices, managerial techniques, and maintenance; most often applied to environmental problems, such as, but not limited to, nonpoint-source pollution problems.

BLOCK

A unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity of development.

BOARD OF ADJUSTMENT

A Board appointed by Mayor and Council to hear appeals of orders, requirements, decisions and similar actions taken in the enforcement of this chapter; to hear arguments for special exceptions; and to authorize variances from strict application of provisions of this chapter. See § 197-19.

BOARD OF PUBLIC WORKS

Lewes Board of Public Works, authorized by an act of the General Assembly on March 15, 1901, to establish, control and regulate an electric light plant, water works, and a sewer system for the City of Lewes.

BUILDABLE AREA

The area of a lot remaining after the minimum yard and open space requirements of this chapter have been met.

BUILDING

Any structure having a roof supported by columns or walls intended for the shelter, housing, or enclosure of any individual, animal, process equipment, goods, or materials of any kind.

BUILDING, ACCESSORY

A subordinate structure on the same lot as a main building in which is conducted a use that is clearly incidental and subordinate to the lot's principal use. Accessory buildings and structures are further defined in § 197-52.

BUILDING CODE

Chapter 70 of the Code of the City of Lewes.

BUILDING HEIGHT, ESTABLISHED

Subject to approval by the Historic Preservation Commission pursuant to Article VI of this chapter, the height of any single-family dwelling located in the Historic District and in public view may be increased to the same height as any other existing single-family dwelling within 100 feet of the front property line, on the same side of the street and within the same block. An exception to the height limit of 30.5 feet may be granted by the Historic Preservation Commission, if recommended by the Building Official, to accommodate architectural features of a roof or roofline. A flat roofline beyond the 30.5-foot limit shall not be grounds for granting an exception. Upon confirmation by the Building Official that all applicable requirements are met, an addition to an existing single-family structure that is located within the Historic District, but will not be in public view, may be built to the height of the existing structure to maintain existing rooflines and architectural features. No structure shall exceed the height of 36 feet.

[Amended 7-9-2012]

BUILDING LINE

A line parallel to the street line touching that part of a building closest to the street.

BUILDING LINE, ESTABLISHED (EBL)

Where there are established buildings, the structure (excluding open porches or decks, screened or unscreened) which is closest to the street on the same side of said street within the same block. In the case of lots fronting on two streets, the street with an established building line of the fronts of established buildings shall be used. Corner lots shall not determine the established building line.

BUILDING, MAIN OR PRINCIPAL

A structure in which is located the primary use of the lot on which it is located.

BULK STORAGE

A warehousing and wholesaling operation involving the storage of chemicals, petroleum products, grains, and other materials in structures for subsequent resale to distributors, retail dealers, or outlets.

CELLAR

A space in a building below the first-floor joists with at least half of the clear ceiling height being below the main level of the adjacent ground and which shall not be used for human habitation.

CEMETERY

Property used for the interment of the dead.

CITY

"The City of Lewes" as exists pursuant to Section 1 of the Lewes City Charter as existing or amended subsequently.

CITY COUNCIL

The governing body of the City of Lewes consisting of the Mayor and four Councilpersons as described in Section 4 of the Lewes City Charter as existing or amended subsequently.

CLUBS AND FRATERNAL AND SOCIAL ORGANIZATIONS

Groups of people, organized for a social, educational, or recreational purpose, operating primarily neither for profit nor to render services customarily carried on by commercial businesses.

COLLEGES AND UNIVERSITIES

Institutions authorized by the state to award associate, baccalaureate, or higher degrees.

COMMUNITY CENTER

A facility used for recreational, social, educational, and cultural activities, open to the public or a designated part of the public.

A. COMMUNITY CENTER, PRIVATE

A community center owned and operated by other than a public or nonprofit group or agency.

B. COMMUNITY CENTER, PUBLIC

A community center owned and operated by either a public or nonprofit group or agency.

COMMUNITY GARDEN

Land used for agricultural uses (as defined herein) by organized groups of community members.

COMPREHENSIVE PLAN

A document in text and maps prepared and adopted by the municipality in accordance with 22 Del. C. § 702.

COUNTRY CLUB

A recreational facility, usually restricted to members and their guests, which generally includes a clubhouse, dining and eating establishments, and recreational facilities such as golf courses, tennis courts, and swimming pools.

COUNTY

Sussex County, Delaware.

CONDOMINIUM

A legal form of real estate ownership—not a type of dwelling unit or building style—where a building, or group of buildings, in which dwelling units, offices, or floor area is owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

DAY-CARE CENTER

An establishment providing for the care, supervision, and protection of persons away from their homes.

DAY-CARE CENTER, ADULT

An establishment providing health, social, and related support services for the elderly and/or functionally impaired adults in a protective setting for part of a day, including, but not limited to, those facilities licensed and regulated by the State Department of Health and Social Services pursuant to 16 DE Admin. Code Ch. 4402.

DAY CARE, CHILD

Child day care includes the following types of facilities.

A. FAMILY CHILD-CARE HOME

A private home in which care, education, protection, supervision, and guidance is provided on a regular basis for one to six children, including, but not limited to, those facilities licensed by the State Department of Services for Children, Youth and Their Families pursuant to 9 DE Admin. Code Ch. 103.

B. LARGE FAMILY CHILD-CARE HOME

A private home in which care, education, protection, supervision and guidance is provided on a regular basis for seven to 12 children, including, but not limited to, those facilities licensed by the State Department of Services for Children, Youth and Their Families pursuant to 9 DE Admin. Code Ch. 104.

C. CHILD DAY-CARE CENTER

A place that provides care, protection, supervision and guidance for seven or more children, including, but not limited to, those facilities licensed by the State Department of Services for Children, Youth and Their Families pursuant to 9 DE Admin. Code Ch. 101.

DEVELOPMENT

Development means any of the following:

- A. Subdivision pursuant to Chapter 170 of the Code of the City of Lewes.
- B. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure.
- C. Any mining excavation, landfill, or land disturbance.
- D. Any use or extension of the use of land.
- E. Any action requiring "development plan approval" as provided for in this chapter

DISTRIBUTION CENTER

An establishment that stores and distributes goods, products, cargo, and materials, including shipment by boat, rail, air, or motor vehicle.

DISTRICT

See "zoning district."

DWELLING

A building used as a place of residence, containing sleeping, cooking, and sanitary facilities, excluding commercial lodging facilities.

DWELLING, ATTACHED

A single-family dwelling that is attached to or shares a common vertical wall with one or more single-family dwellings.

DWELLING, DETACHED

A building containing one dwelling unit that is not attached to any other dwelling by any means, is surrounded by open space or yards, and does not have any roof, wall, or floor in common with any other dwelling unit.

DWELLING, MANUFACTURED HOME

A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at a building site and bearing a label certifying that it is built in accordance with Federal Manufactured Home Construction and Safety Standards, which became effective on June 15, 1976.

DWELLING, MOBILE HOME

A transportable dwelling unit fabricated in an off-site manufacturing facility, designed to be a permanent residence and built prior to June 15, 1976, on which the Federal Manufactured Home Construction and Safety Standards became effective.

DWELLING, MODULAR

A dwelling fabricated in an off-site manufacturing facility in accordance with the City of Lewes, Delaware, Residential Code (IRC). Modular homes also include, but are not limited to, panelized, prefabricated, and kit homes.

DWELLING, MULTIPLE-FAMILY

A building containing three or more attached dwelling units, not to exceed eight units, with shared hallways and egress.

DWELLING, SINGLE-FAMILY DETACHED

A building containing one dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards.

DWELLING, TOWNHOUSE

A single-family dwelling unit constructed in a group of three to seven units in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

[Amended 6-10-2013]

DWELLING, TWO-FAMILY

A building containing two dwelling units arranged side by side, where each unit is totally separated from the other by an unpierced wall extending from ground to roof.

DWELLING UNIT

One or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

DWELLING UNIT, APARTMENT IN CONJUNCTION WITH COMMERCIAL USE AND ONLY ON FLOOR ABOVE STREET LEVEL

One or more apartments located only above a commercial use and only located on floors above street level.

EASEMENT

Authorization by a property for another to use the owner's property for a specified purpose.

EDUCATIONAL INSTITUTION

See "colleges and universities" and "schools."

ENGINEER

An individual licensed to practice the profession of engineering by the State of Delaware.

EROSION

Detachment and movement of soil or rock fragments or the wearing away of the land surface by water, wind, ice, or gravity.

ESTABLISHED BUILDING HEIGHT (EBH)

See "building height, established."

ESTABLISHED BUILDING LINE (EBL)

See "building line, established."

FAMILY

A single person occupying a dwelling unit and maintaining a household or two or more persons related by blood or marriage or adoption occupying a dwelling unit, living together and maintaining a common household, or not more than three unrelated persons occupying a dwelling unit and maintaining a common household.

FAST-FOOD RESTAURANT

See "restaurant, fast-food."

FILL

Sand, gravel, earth, or other materials of any composition whatsoever placed or deposited by humans usually to form an embankment or raise the elevation of the land surface.

FLOODPLAIN

Any land area susceptible to being inundated by floodwaters from any source.

FLOOR AREA

Definitions are as follows:

A. FLOOR AREA, GROSS

The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the center line of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than seven feet.

B. FLOOR AREA, NET

The total of all floor areas of a building, excluding stairwells and elevator shafts, equipment rooms, interior vehicular parking or loading; and all floors below the first or ground floor, except when used or intended to be used for human habitation or service to the public.

C. FLOOR-AREA RATIO (FAR)

The gross floor area of all buildings or structures on a lot divided by the total lot area.

GARAGE

A deck, building, structure or part thereof, used for the parking and storage of vehicles.

GASOLINE STATION

- A. Shall include any building, land area, premises, or portion thereof, where gasoline or other petroleum products or fuels are sold and light maintenance activities such as engine tune-ups, lubrication, incidental repairs and carburetor cleaning may be conducted.
- B. Shall not include premises where heavy motor vehicle maintenance activities such as engine overhaul, motor vehicle painting, and body or fender work are conducted.

GASOLINE STATION AND CONVENIENCE CENTER

A gasoline station (see "gasoline station"), fast-food restaurant (see "restaurant, fast-food"), and convenience store (see "retail store, convenience"^[2]) located on the same lot and planned, operated, and maintained as an integrated planned development.

GAZEBO

A freestanding structure with a roof which shall come to an apex at the ridge with eave heights not to exceed eight feet and a maximum height of 15 feet as measured from the midpoint of the building at the grade to the midpoint of the apex, and which structure will be open on its sides, such that all areas of the building above four feet shall consist of either windows or screening. A gazebo shall not exceed 200 square

feet. The structure shall not contain any of the following: sleeping facilities, restrooms, shower facilities, kitchen.

GEOLOGIST

An individual who is registered in the State of Delaware to practice the profession of geology.

GOLF COURSE

A tract of land laid out for at least nine holes for playing the game of golf that may include a clubhouse, dining and snack bars, pro shops, and practice facilities.

GOVERNMENT FACILITIES AND SERVICES

Definitions are as follows.

- A. Local: provided by the Mayor and Council of the City of Lewes or the Board of Public Works to promote the health, welfare, and public safety of the citizens of Lewes.
- B. Nonlocal: provided by a governmental entity other than the Mayor and City of Lewes or the Board of Public Works subject to the review and approval of the Mayor and Council.

HEALTH CARE FACILITY

A facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions, including but not limited to general or specialty hospitals, public health centers, diagnostic centers, treatment centers, rehabilitation centers, extended care facilities, long-term care facilities, residential health care facilities, outpatient clinics, and dispensaries and customary accessory uses such as laundries, restaurants, gift shops, laboratories, pharmacies, and medical offices.

HEIGHT

The vertical distance of a building measured from a point where the center line of a building to be erected intersects with the center line of the street on which the building will face to the highest point of the highest roof. See § 197-55.

HOME-BASED BUSINESS

Any business, occupation, or activity undertaken for gain and conducted entirely within a dwelling unit by the residents thereof which is clearly incidental and secondary to the use of the structure for dwelling purposes. The home-based business shall be conducted entirely within either the dwelling or an accessory building, but not both. See § 197-45.

HOSPITAL

A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care, for not less than 24 hours in any week, of four or more nonrelated individuals suffering from illness, disease, injury, or deformity or a place devoted primarily to providing for not less than 24 hours in any week of obstetrical or other medical or nursing care for two or more nonrelated individuals requiring a license being issued under 16 Del. C. Ch. 10, § 1003, but does not include sanatoriums, rest homes, nursing homes, or boarding homes.

HOTEL or MOTEL

A building having six or more rental rooms, which may include individual cooking facilities, for transient guests. An office for the renting and management of accommodations and a restaurant designed primarily for the use of overnight guests may be included.

INDUSTRY

Those fields of economic activity including forestry, fishing, hunting and trapping, mining, construction, manufacturing, transportation, communications, electrical, gas, and sanitary services, and wholesale trade.

IN PUBLIC VIEW

That portion of a structure that is visible, or could be visible in the absence of a fence or landscaping, from the section of a public right-of-way or public street upon which the dwelling fronts. If the dwelling is located on more than one street, then that portion of a structure that is visible, or could be visible in the absence of a fence or landscaping, from any section of a public right-of-way or public street abutting a property line of the property on which the structure exists.

[Amended 7-9-2012]

LANDSCAPE ARCHITECT

An individual licensed to practice the profession of landscape architecture by the State of Delaware.

LAND SURVEYOR

An individual licensed to practice the profession of land surveying by the State of Delaware.

LOT

A designated parcel, tract, or area of land established either by plat, subdivision, or considered as a unit of property by virtue of a metes and bounds description, to be separately owned, used, developed, or built upon.

A. LOT, CORNER

A lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than 135°.

B. LOT, FLAG

A lot where access to the public road is by a private right-of-way or driveway.

C. LOT, INTERIOR

A lot other than a corner lot.

D. LOT LINE

A line of record bounding a lot that divides one lot from another lot, a public street, or any other public space.

(1) LOT LINE, FRONT

The lot line separating a lot from a street right-of-way.

(2) LOT LINE, REAR

The line opposite and most distant from the front lot line.

(3) LOT LINE, SIDE

Any lot line other than a front or rear lot line.

E. LOT, THROUGH

A lot that fronts on either two parallel streets or two streets that do not intersect at the boundaries of the lot, i.e., a corner lot; also called a "double-frontage lot."

LOT COVERAGE

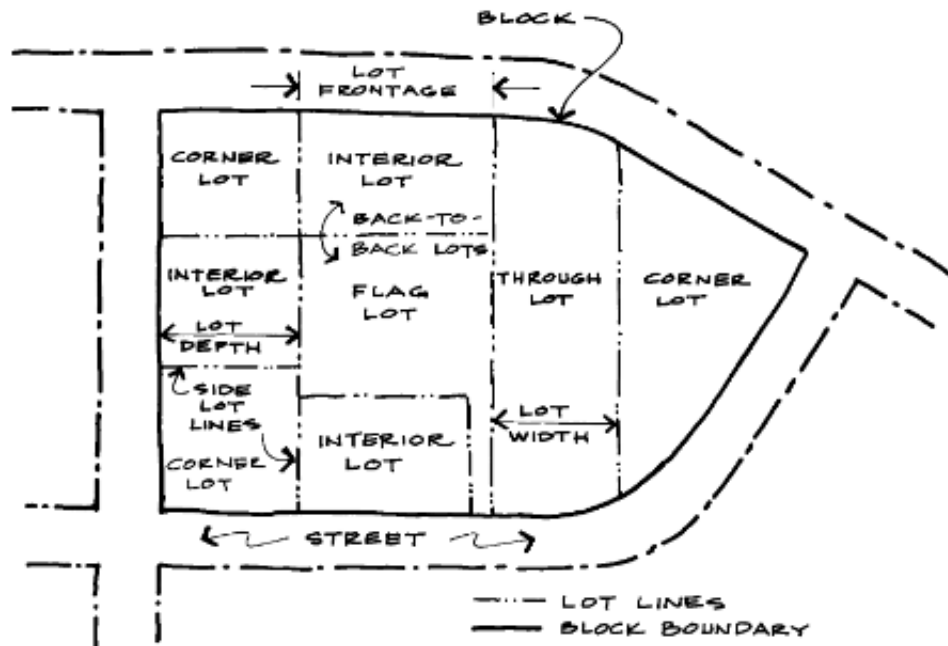
The percentage of a lot which is covered, or planned to be covered, with impervious surfaces. "Lot coverage" shall include off-street parking areas and driveways, but not public streets.

LOT DEPTH

The average distance measured from the front lot line to the rear lot line.

LOT FRONTAGE

The length of front lot line measured at the street right-of-way line.



LOT OF RECORD

A lot that exists either by virtue of a metes and bounds description or by depiction on a plat or deed recorded in the office of the Sussex County Recorder of Deeds.

LOT WIDTH

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line, i.e., the buildable width of a lot.

MANUFACTURING

- A. Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors.
- B. Includes all mechanical or chemical transformations regardless of whether the new product is finished or is semifinished as a raw material for further processing.

MARINA

A facility for the storing, servicing, fueling, berthing, and securing of boats or providing services to boats and the occupants thereof, and sale of fuel and supplies. If the marina is in an Open Space District, the following uses and services shall not be permitted:

- A. On-land storage of boats.
- B. On-land boat repair.
- C. Fuel sales.

- D. Retail sales of items other than ice and soft drinks.

MEDICAL CLINIC

An establishment where patients are admitted for examination and treatment on an outpatient basis by one or more physicians, dentists, other medical personnel, psychologists, or social workers and where patients are not lodged overnight.

MOBILE HOME

See "dwelling, mobile home."

MODULAR HOME

See "dwelling, modular."

MOTOR VEHICLE

A self-propelled device licensed as a motor vehicle used for transportation of people or goods over roads.

MUSEUM

A museum is a permanent institution or building in the service of society open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment, for the purposes of education, study, and enjoyment.

NURSING AND SIMILAR CARE FACILITIES

- A. Residential facilities providing shelter and food to more than one person who:
- (1) Because of physical and/or mental condition, require a level of care and services suitable to their needs to contribute to their health, comfort, and welfare; and
 - (2) Are not related within the second degree of consanguinity to the controlling person or persons of the facility.
- B. Include, but are not limited to, facilities licensed and regulated pursuant to 16 Del. C. Ch. 11, such as nursing facilities (commonly referred to as "nursing homes"), assisted living facilities, intermediate care facilities for persons with mental retardation; neighborhood group homes; family care homes; and rest residential facilities.

NURSING HOME

A facility offering in-patient beds and medical services, including continuous nursing services, to provide various levels of treatment for patients who do not currently require continuous hospital services and including, but not limited to, facilities licensed and regulated by the State Department of Health and Social Services pursuant to 16 Del. C. Ch. 11.

A. **NURSING HOME, INTERMEDIATE CARE**

A nursing home that provides care to residents who may need a minimum of medical care but require a great deal of physical and emotional support to return them to a previous level of, or a new stage of, independence or to prevent regression; can involve direct aid given in getting out of bed, walking, bathing, dressing, feeding and administration of medications, and similar forms of assistance on a regular basis, including those licensed and regulated by the State Department of Health and Social Services, Division of Long Term Care Residents Protection, pursuant to 16 DE Admin. Code Ch. 3201 and whose characteristics include the following:

- (1) Patients require fewer services than provided by skilled care nursing homes but more than residential rest homes (3230)^[3] or family care rest homes (3315).^[4]

- (2) Care is given in accordance with a physician's orders, updated at least every 60 days.
- (3) Service may be provided by nursing aides under the supervision of a registered professional nurse or licensed practical nurse.

B. NURSING HOME SKILLED CARE

A nursing home that provides the highest level of nonhospital care, including those licensed and regulated by the State Department of Health and Social Services, Division of Long Term Care Residents Protection, pursuant to 16 DE Admin. Code Ch. 3201 and whose characteristics include the following:

- (1) Care is given in accordance with a physician's orders, updated at least every 30 days.
- (2) Twenty-four-hour nursing service is provided under the direction of a full-time registered professional nurse.

OFFICE

A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communications equipment.

ONE-HUNDRED-YEAR FLOOD

Same as "base flood."

OVERLAY ZONE

A zoning district that encompasses one or more underlying (i.e., base) zones and that imposes additional requirements above those required by the underlying zone.

PARKING FACILITY

A. PARKING LOT

A collection of five or more parking spaces (as defined herein) at grade with an all-weather surfaced area and connected with a street or alley by a paved driveway that affords ingress and egress for a motor vehicle without requiring another motor vehicle to be moved.

B. PARKING GARAGE

A collection of parking spaces (as defined herein) that is on more than one level with an all-weather surfaced area and connected with a street or alley by a paved driveway that affords ingress and egress for a motor vehicle without requiring another motor vehicle to be moved.

PARKING SPACE

That area required to park one vehicle. The minimum requirement is 162 square feet, measured with a minimum width of nine feet and a minimum length of 18 feet.

PARKS

Land, a playground, recreation center, or any other public area in the City owned or used by a public entity and devoted to active or passive recreation.

PERMANENT OPEN SPACE

A parcel or parcels of land or an area of water, or a combination of land and water, which is permanently protected, by legal means, from development. "Permanent open space" may be public or common space or may be part of a private lot.

PLACE OF WORSHIP

A building or structure, or groups of buildings or structures, that by design and construction are primarily

intended for conducting organized religious services and associated accessory uses.

PLANNING COMMISSION

A body appointed by the Mayor and Council to oversee the City Subdivision Ordinance^[5] and advise Mayor and Council on zoning matters, among other duties. See § 197-18.

PREMISES

A lot, parcel, tract, or plot of land together with the buildings and structures on them.

PUBLIC BUILDING

A building, owned or leased, occupied and used by an agency or political subdivision of the federal, state, county, or City government.

PUBLIC SAFETY FACILITY

A building or structure used for the provision of public safety services, such as fire protection, emergency medical service, and rescue operations.

PUBLIC SERVICE ORGANIZATION

An organization that helps furnish, maintain, or protect the public's health, safety, welfare or education. The goals of public service organizations foster the core values of the City of Lewes.

PUBLIC UTILITY SERVICE

The generation, transmission, and/or distribution of electricity, gas, steam, communications, and water; the collection and treatment of sewage and solid waste; and the provision of mass transit to the public.

A. PUBLIC UTILITY SERVICE FACILITY

Any use or structure associated with the provision of utility services.

B. PUBLIC UTILITY SERVICE LINES

The system of lines, pipes, wires, or tracks that distributes, transmits, or provides a utility service. This includes equipment that is incidental and necessary to the lines and that is located on the lines.

PUBLIC WATER AND SEWER SYSTEMS

Any system, other than an individual septic tank, tile field, or individual well, that is operated by the City, a governmental agency, a public utility, or a private individual or corporation approved by the City and licensed by the appropriate state agency, for the collection, treatment, and disposal of wastes and the furnishing of potable water.

RECORDER OF DEEDS

The Recorder of Deeds for Sussex County, Delaware.

RECREATION FACILITY

A place designed and equipped for the conduct of sports and leisure-time activities.

A. RECREATION FACILITY, COMMERCIAL

A recreation facility operated as a business and open to the public for a fee.

B. RECREATION FACILITY, PERSONAL

A recreation facility provided as an accessory use on the same lot as the principal permitted use and designed to be used primarily by the occupants of the principal use and their guests.

C. RECREATION FACILITY, PRIVATE

A recreation facility operated by a nonprofit organization and open only to bona fide members and

guests of such nonprofit organization.

D. RECREATION FACILITY, PUBLIC

A recreation facility open to the general public.

RESEARCH AND DEVELOPMENT

Discovering new knowledge about concepts, methods, processes, materials, products, and services and then applying that knowledge to create new and improved methods, processes, materials, products, and services that fill market needs. This can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. The accessory development, fabrication, and light manufacturing of prototypes, or specialized machinery and devices integral to research or testing, may be associated with these uses.

RESIDENTIAL PLANNED COMMUNITY (RPC)

A large-scale development, not less than or equal to 30 acres, creating a suitable living environment through a combination of dwelling types, and may have amenities such as community buildings, recreational facilities (tennis courts, swimming pool, bike or multi-use trails) and may support commercial establishments. The RPC shall adhere to the goals of the Comprehensive Land Use Plan. Commercial uses of convenience and necessity to the development may be allowed. Such uses and accessory off-street parking and loading spaces incident to such commercial uses shall not exceed one acre for each 100 dwelling units in the planned community.

RESTAURANT

- A. Establishments where food and drink are prepared, served, and sold primarily for consumption within the principal building; and
- B. Establishments where food and/or beverages are sold in a form ready for consumption, where all or a significant portion of the consumption takes place or is designed to take place outside of the confines of the restaurant, and where ordering and pickup of food may take place from a motor vehicle.

RESTAURANT, FAST-FOOD

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in vehicles on the premises, or off the premises.

RETAIL SALES

Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods and whose characteristics include the following: 1) Usually business places engaged in activity to attract the general public to buy; 2) Buy and receive as well as sell merchandise; 3) May process or manufacture some products—a jeweler or a bakery—but processing is secondary to principal use; and 4) Generally sell to customers for personal or household use:

A. RETAIL STORE, CONVENIENCE

Any retail sales establishment consisting of 5,000 square feet or less selling primarily food products, household items, newspapers, magazines, candy, and beverages, and a limited amount of freshly prepared foods, such as sandwiches and salads, for off-premises consumption.

B. SHOPPING CENTER

A group of commercial establishments planned, constructed, and managed as a total entity in accordance with an approved plan, with customer and employee parking provided on site, provision

for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage.

C. **SHOPPING MALL**

A shopping center with stores on both sides of an enclosed or open pedestrian walkway.

RIGHT-OF-WAY

Land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or another special use.

SCENIC BYWAY

A transportation route designated by the Delaware Department of Transportation (DelDOT) which is adjacent to or travels through an area that has particular intrinsic scenic, historic, natural, cultural, recreational, or archaeological qualities. It offers an alternative route to major highways, while telling a story about Delaware's heritage, recreational activities, or beauty. A scenic byway can also be called a "scenic and historic highway."

SCHOOLS

Any building, or part thereof, that is designed, constructed, or used for education or instruction in any branch of knowledge, other than a college or university; includes, but is not limited to, elementary, secondary, vocational, business, arts, and culture.

SEDIMENT

Deposited silt (see definition in this article) that is being or has been removed by water, ice, wind, gravity, or other means of erosion.

SEDIMENTATION

- A. The depositing of earth or soil that has been transported from its site of origin by water, ice, wind, gravity, or other means as a natural product of erosion.
- B. In wastewater treatment, the settling out of solids by gravity.

SELF-STORAGE FACILITY

A building or group of buildings containing separate, individual, and private storage spaces of varying sizes leased or rented on individual leases for varying amounts of time.

SERVICES

Establishments primarily engaged in providing assistance, as opposed to products, to individuals, businesses, industry, government, and other enterprises, including hotels and other lodging places; personal, business, repair, and amusement services; health legal, engineering, and other professional services' educational services; membership organizations; and other miscellaneous services:

A. **SERVICES, BUSINESS**

Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing; building maintenance; employment services; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photofinishing; and personal-supply services.

B. **SERVICES, HEALTH CARE**

Establishments providing support to medical professionals and their patients, such as medical and dental laboratories, blood banks, oxygen, and miscellaneous types of medical supplies and services.

C. SERVICES, PERSONAL

Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel.

D. SERVICES, RETAIL

Establishments providing services or entertainment, as opposed to products, to the general public for personal or household use, including eating and drinking places, hotels and motels, finance, real estate and insurance, personal service, motion pictures, amusement and recreation services, health, educational, and social services, museums, and galleries.

E. SERVICES, SOCIAL

Establishments providing assistance and aid to those persons requiring counseling for psychological problems, employment, learning disabilities, and physical disabilities.

SETBACK LINE

The line that is the required minimum distance from any lot line and that establishes the area within which the principal structure must be placed. See also "yard."

SILT

Finely divided particles of soil or rock, often carried in cloudy suspension in water and eventually deposited as sediment.

SLIP

A water area that is used for the wet storage or temporary docking of a single watercraft in conjunction with a pier, dock, piling, buoy or other similar facilities and shall include the following:

[Added 8-12-2013]

- A. The water area between piers, pilings, buoys and other similar facilities, excluding internal channels; and
- B. The water area encompassed by the potential circular swing of a watercraft secured to a single piling or buoy.

STADIUM

A large open or enclosed place used for games and major events and partly or completely surrounded by tiers of seats for spectators.

STATE

The State of Delaware.

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between such floor and the ceiling next above it. A basement shall be counted as a story for the purpose of height measurement if its ceiling is over five feet above the level from which the height of the building is measured or if it is used for business purposes other than storage.

STORY, HALF

A partial story under a gable, hip, or gambrel floor, the wallplates of which on at least two opposite sides are not more than two feet above the floor of each story.

STREET

Any vehicular way that is 1) an existing state, county, or City roadway; 2) shown upon an approved plat; 3) approved by other official action; 4) shown on a plat duly filed and recorded in the office of the Sussex County Recorder of Deeds prior to the grant of power to review plats. A street includes the land between the right-of-way lines, whether improved or unimproved.

A. **STREET, ACCESS**

A street designed to provide vehicular access to abutting property and to discourage through traffic.

B. **STREET, ALLEY**

A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

C. **STREET, CENTER LINE OF**

The center line of any street shown on any official City, county, or state records.

D. **STREET, COLLECTOR**

A street that collects traffic from local streets and connects with minor and major arterials.

E. **STREET, CUL-DE-SAC**

A street with a single common ingress and egress with a turnaround at the end.

F. **STREET, DEAD-END**

A street with a single common ingress and egress.

G. **STREET, PRIVATE**

A street that has not been accepted by the City or the state.

H. **STREET, SERVICE**

A street running parallel to a freeway or an expressway that serves abutting properties but restricts access to the freeway or expressway.

STREET FRONTAGE

See "lot frontage."

STREET LINE

The line between a lot, tract, or parcel of land and an adjacent street.

STRUCTURE

A combination of materials to form a construction for use, occupancy, or ornamentation, including but not limited to buildings, sheds, outbuildings, fences, storage tanks; signs; bulkheads; jetties; groins, whether installed on, above, or below the surface of land or water.

SUBDIVISION

See Chapter 170 of the Code of the City of Lewes.

SUPERMARKET

A retail establishment primarily selling food and convenience or household goods

SUPPORT COMMERCIAL

"Neighborhood shopping" provides sites for convenient retail and personal service establishments for a small area, with a minimum impact upon adjoining or surrounding residential development. Preferably, each portion of the district should be small and compact in area. Permitted uses include a retail store or shop for the performance of personal services; provided that:

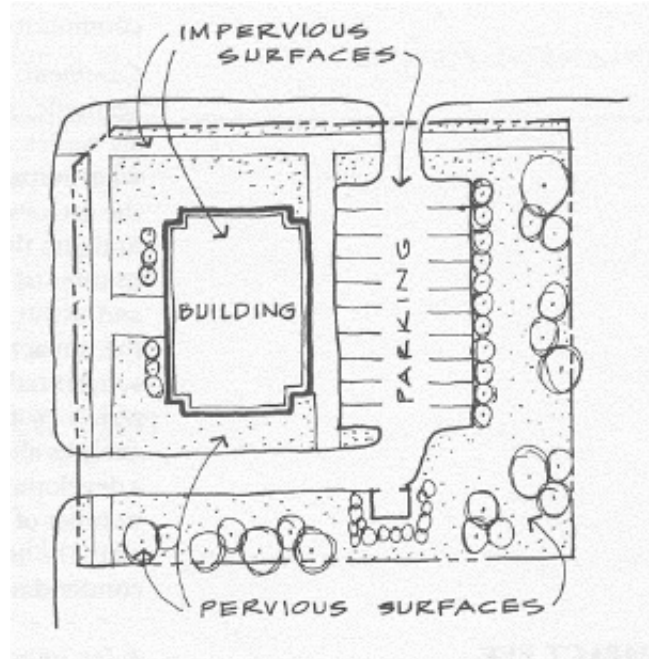
- A. No manufacturing, wholesaling or jobbing shall be carried on therein.
- B. There shall be no restaurant or lunchroom and retail food sales.
- C. No merchandise shall be carried other than that intended to be sold at retail on the premises.
- D. Operations shall be limited to the hours between 6:00 a.m. and 12:00 midnight.
- E. Motor vehicle parking for occupants or customers of the building permitted are subject to the provisions of Article **VII**.
- F. Any sign is subject to compliance with Article **VIII**.

SURFACE, IMPERVIOUS

A surface providing negligible infiltration such as pavement, buildings, recreational facilities (by example, but not by limitation, tennis courts, swimming pools) and covered driveways.

SURFACE, PERVIOUS

Any material that permits full or partial absorption of stormwater into previously unimproved land.



SURGICAL CENTER

A facility where outpatients come for simple surgical procedures and are not lodged overnight.

THEATER

A building or part of a building used to show motion pictures or for drama, dance, musical, or other live performances.

UNIVERSITY

See "colleges and universities."

USE

The purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

A. **USE, ACCESSORY**

A use of land, or a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

B. **USE, PRINCIPAL**

The primary or predominant use of any lot or parcel.

VARIANCE

A variance from the strict application of the provisions of this Code and granted by the Board of Adjustment. See Article II, § 197-19C(3) and Article XII, § 197-92.

VETERINARY HOSPITAL

A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

WAREHOUSE

A building used primarily for the storage of goods and materials.

WHOLESALE TRADE

Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

YARD

An open space that lies between the principal building or buildings and the nearest lot line.

A. **YARD, FRONT**

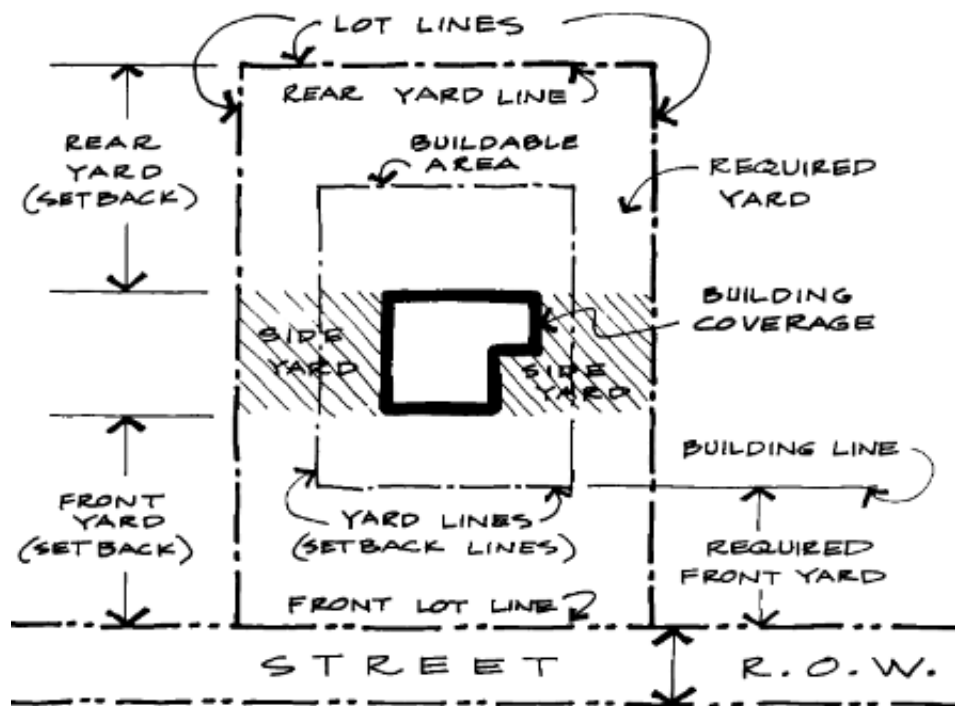
A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building to the closest point of the front lot line.

B. **YARD, REAR**

A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line.

C. **YARD, SIDE**

A space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building.



ZONING DISTRICT

A specifically delineated area in the City within which uniform regulations and requirements govern the use, placement, spacing, area, height, and bulk of land and buildings.

- [1]: *Editor's Note: See also § 197-9, Interpretation of language.*
- [2]: *Editor's Note: See the definition of "retail sales," Subsection A.*
- [3]: *Editor's Note: See 16 DE Admin. Code Ch. 3230.*
- [4]: *Editor's Note: See 16 DE Admin. Code Ch. 3315.*
- [5]: *Editor's Note: See Ch. 170, Subdivision and Land Development.*

Article XVII. Small Wind Energy Systems

[Added 10-21-2013]

§ 197-107. Applicability.

This article applies to small wind systems no greater than 60 kilowatts of rated nameplate capacity. This article does not apply to roof-mounted, building-integrated, building-mounted or architectural wind systems. It covers stand-alone, tower-mounted wind energy systems on private property within the City of Lewes.

§ 197-108. Definitions.

The following definitions shall apply to this article.

AMBIENT NOISE LEVELS

The normal, everyday sounds that are generated by community and vehicular activity.

DECIBELS (dBA)

A unit used to measure the power of a signal such as an electric signal or sound.

HEIGHT

The height of a wind turbine measured from natural grade to the tip of the blade at its highest point, or blade-tip height.

RATED NAMEPLATE CAPACITY

The maximum rated output of electric power production equipment. Typically, this output is specified by the manufacturer by means of a "nameplate" on the equipment itself.

SMALL WIND ENERGY SYSTEM

All equipment, machinery and structures utilized in concert with the conversion of wind to electricity. This includes, but is not limited to, storage of electrical collection and supply equipment, transformers, as well as wind turbines that are rated at 60kW capacity or less.

WIND TURBINE

A device that converts kinetic wind energy into rotational energy. A wind turbine typically consists of a tower and nacelle body with two or more blades.

§ 197-109. General requirements.

- A. Parcel size. Any self-standing small wind energy system shall be permitted only on a parcel at least 1/2 acre in size. Parcels may be combined, but in such case only one wind turbine will be permitted. Wind turbines attached to structures or roof mounted will be addressed on a case-by-case basis depending on the structural integrity of the structure to be determined by a licensed structural engineer. Wind turbines on residences are discouraged.
- B. Building Inspector issues permit. No small wind energy system shall be erected, constructed, installed or modified without first obtaining a building permit from the City Building Official. All such wind energy systems should be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.
 - (1) The application for a City building permit for small energy wind energy systems must be accompanied by manufacturer-supplied drawings of the wind turbine structure and stamped engineered drawings of the tower base, footings and foundation as provided by the manufacturer.
 - (2) Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components as supplied by the manufacturer in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. In addition, a completely executed interconnection agreement with the Lewes Board of Public Works must accompany the building permit application.
 - (3) Such permits may also impose reasonable conditions, safeguards, and limitations on use, and may require the applicant to implement all reasonable measures to guard against unforeseen adverse impacts of the small wind energy system, should they occur.
- C. Compliance with laws, ordinances and regulations. The construction and operation of all such proposed

small wind energy systems must be consistent with all applicable local, state and federal requirements, including, but not limited to, all applicable safety, construction, environmental, electrical, community and FAA aviation requirements.

- D. Only one private wind turbine tower per each legal lot shall be allowed.

§ 197-110. General siting standards.

- A. Setbacks. Each wind turbine shall be set back from the nearest property line a distance no less than 1.1 times its total height, unless appropriate easements are secured from adjacent property owners. Each wind turbine shall be set back from the nearest aboveground public utility lines a distance no less than 1.1 times its total height, determined from the existing utility lines.
- B. Tower height. For property lots between 1/2 acre and one acre, the tower height shall be limited to 65 feet. For lots of one acre or more, the tower height limit is 80 feet. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two-hundred-fifty-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- C. Noise. Except during short-term events, including utility outages and severe wind storms, small wind energy systems facilities shall be designed, installed and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than six dBA at the nearest property line to any proposed wind turbine facility. In the event the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus a maximum of five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- D. Electrical services. All on-site electrical services associated with the system shall be installed underground, except "tie-ins" to the BPW distribution system. Electrical connections must be in accordance with requirements of the electric tariff of the Lewes Board of Public Works and its construction standards, rules and regulations.
- (1) The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.
- E. Speed controls. All private wind energy systems shall be equipped with manual and/or automatic overspeed control with automatic shut down above 50 miles per hour. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.

§ 197-111. Design standards.

- A. Appearance, color and finish. The wind generator and tower shall remain painted or finished in nonreflective finish that was originally applied by the manufacturer, unless otherwise approved in the building permit. The system and its components shall blend into the surrounding landscape to the greatest extent possible. The tower shall not significantly impair a scenic vista or scenic corridor as described in the Lewes Scenic Historic Byway plan.
- B. Lighting and signage. Wind turbines shall be lighted only if required by the FAA. Lighting of any other part of the small wind energy system shall be limited to that required for safety and operational purposes, and shall

be reasonably shielded from adjacent properties. Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall comply with Article VIII, Chapter 197, of the City Code.

§ 197-112. Safety.

- A. Unauthorized access. Wind turbines or other structures as part of the small wind energy system shall be designed to prevent unauthorized access. For example, the tower shall be designed and installed to not provide step bolts or include a ladder readily accessible to the public for a minimum of eight feet above the ground.
- B. Controls. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades and turbine components.
- C. Insurance. Proof of insurance coverage must be provided.

§ 197-113. Monitoring and maintenance.

- A. Maintenance. Once built, the owner shall maintain the small wind energy system in good condition. Maintenance shall include but not be limited to painting, structural repairs and other prudent measures.
- B. Abandonment and removal. Any small wind energy system that has reached the end of its useful life or has been abandoned shall be removed by the owner of the property on which it is located. A small wind energy system shall be considered abandoned when it fails to operate for six months. Upon notice by the Building Official, the owner will have 90 days to provide sufficient evidence that the system either has not been abandoned or take steps to dismantle the small wind energy system. If the 90 days elapse with no action by the owner, the City shall have the authority to enter the property and remove the system at the owner's expense.