

Chapter 46

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History: This Chapter was Ordinance 4010¹ (adopted April 23, 1973).

This Chapter was updated by Ordinance 14-0915-02 an Omnibus Ordinance (adopted March 4, 2015). Deleted Sections 46-108 & 46-109 and Added Sections 46-148 & 46-149. Removed New Castle County as Delaware City's Building Inspector and Code Enforcer and gave that authority to The City of Delaware City.

¹ As amended by Ordinances 4010C (adopted September 21, 1976), 4010D (adopted March 11, 1991), 4010E (adopted May 13, 1991), 03-0519-01 (adopted June 16, 2003), 03-0915-02 (adopted October 20, 2003), and 03-0915-04 (adopted October 20, 2003).

Article I Short Title

Section 46-1 Short Title

This Chapter shall be known and may be cited by the short form title of the “Zoning Code of Delaware City, Delaware”.

Article II Purpose**Section 46-2 Purpose**

The zoning regulations and districts as herein set forth have been made in accordance with a general comprehensive development plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health, morals and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout Delaware City.

Article III Definitions

Section 46-3 Definitions

For the purpose of this Chapter, certain words and phrases used herein shall be interpreted or defined as follows:

Words used in the present tense include the future tense; words in the singular number include the plural, and words used in the plural number include the singular; the word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual; the word "lot" includes the word "plot" or "parcel"; the word "building" includes the word "structure"; the word "shall" is always mandatory and not directory; the words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed to be used or occupied"; the word "Map", "Zoning Map" or "Delaware City Zoning Map" shall mean the "Official Zoning Map of the City of Delaware City, Delaware".

Accessory Building: A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot.

Accessory Use: A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult Day Care Center: A center that provides daytime care for two or more adults.

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 to be 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 or by other similar means.

Animated Sign: A mechanical or electronically illuminated or non-illuminated sign which displays letters, words, characters or symbols which are not stationary.

Area of a Building: The area of a horizontal section of a building taken at its greatest outside dimensions, excluding cornices, eaves, gutters, steps and balconies.

Automotive Garage: Any premise used for the repair of vehicles, but not including automotive wrecking.

Automotive Self-Service Station: An establishment where liquids used as motor fuels are stored and dispensed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

Automotive Sales Building: A building used for the sale or hire of automotive

equipment. It is interpreted to include auto accessory sales rooms but not the sale of “junked” automotive equipment.

Automotive Service Station: An establishment providing servicing for automobiles and other motor vehicles where all service and fuel are supplied by an attendant.

Automotive and/or Trailer Sales Area: An open area, other than a public or private street or way, used for the display or sale of new and used automobiles, trailers, trucks, or farm equipment and where no repair work is done except that which is minor and incidental, not including body and fender work.

Balloon Sign: A sign composed of an inflatable, nonporous bag.

Banner Sign: A fabric, plastic, or other sign made of non-rigid material without an enclosing structural framework. The manipulation of the aforesaid materials onto a solid surface(s) shall not constitute a sign of another description as defined herein.

Bank and Other Financial Institutions: An establishment for the custody, loan, exchange or issue of money for the extension of credit and for facilitating the transmission of funds.

Bed and Breakfast Facility/Tourist Home: A building in which there are no more than eight (8) guest rooms or suites of rooms available for temporary occupancy for varying lengths of time, with compensation to the owner, by the general public and in which meals may be prepared for them by the owner, provided, that no meals may be sold to persons other than such guests and that the owner or manager resides therein as his or her principal place of residence.

Billboard: A freestanding, off-site advertising sign between twenty-five (25) square feet and not to exceed fifty (50) square feet in size.

Buffer Area: A strip of required yard space adjacent to the boundary of a property or zoning district on which is placed year-around shrubbery, hedges, evergreens or other suitable plantings of sufficient height and density to constitute an effective screen and give maximum protection and immediate screening to an abutting property or zoning district. A buffer area may include a wall or fence or solid wall or fence not exceeding four (4) feet in height, provided that such wall or fence shall be screened or constructed in such a manner that it will not conflict with the character of the abutting zoning district.

Building: Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

Building Code: The current regulations, code or codes in effect in the City that govern the erection, alteration, maintenance, use and removal of buildings, structures, or signs.

Building Dimensional Requirements: Minimum specifications for any building or structure erected in a particular district, as set forth in the Dimensional Requirements Table in Article VI, Section 46-31.

Building Height: The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

Building Principal: A building in which is conducted the main use of the lot on which said building is located.

Building Setback Line: A line establishing the minimum allowable distance between the main wall of the building and the street or highway right-of-way line when measured perpendicularly thereto. Covered porches whether enclosed or not shall be considered as part of the main building and shall not project into the required yard.

Buildings, Attached: A building having two party walls, one opposite to the other.

Buildings, Detached: A building having no party wall. **Buildings, Semi-Detached:** A building having a side yard on one (1) side and a party wall on the opposite side. Provided, however, that two (2) semi-detached buildings having a common party wall and owned by the same person or persons shall for the purpose of this Chapter be considered a detached building.

Business: An 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.

Car Wash, Automated: A building that contains mechanical devices for washing and drying motor vehicles with or without attendants.

Car Wash, Self-Service: A use which provides equipment to enable customers to hand-wash motor vehicles themselves.

Certificate of Occupancy: A statement signed by a duly authorized officer setting forth that a building, structure or use legally complies with this Chapter and other applicable codes and regulations and that the same may be used for the purpose stated therein.

Clean Fill: A non-water soluble, non-decomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass and/or clay or ceramic products.

Club: An organization for social and fraternal purposes, whose buildings and services are for members and their guests only.

Code: Delaware City Zoning Code.

Customary Home Occupation: A use customarily carried on within a dwelling by the inhabitants thereof, which use is incidental and subordinate to the residential use. A home

occupation includes, but is not limited to art studios, dressmaking, professional offices of a physician, lawyer, architect, accountant or real estate broker. Home occupations shall not be interpreted to include barbershops, beauty parlors, beauty schools, tourist homes and convalescent homes.

Day Care Center: A center that provides daytime care or instruction for two (2) or more children eleven (11) years of age or under and operates on a regular basis.

Digital Sign: An electronic display that shows programmed images, information and/or other messages commonly controlled remotely by a computer or similar device.

Dimensional Variance (Area or Bulk Area Variance): A departure from the dimensional or physical requirements of this Chapter, including front, side, and rear set-backs, lot frontage, lot area, building height, off-street parking requirements, and lot coverage percentages.

Directional Sign: A sign regulating traffic, or a sign indicating entry or exit, loading or service area, fire lanes, parking, no trespassing or a similar sign incidental to the primary use and not itself advertising or naming that use except as required by law.

Dwelling, Multifamily: A building arranged, intended or designed to be occupied by three (3) or more families living independently of each other.

Dwelling, One-Family: A detached dwelling, including a manufactured home, on a single-family lot, designed for and occupied by a single family.

Dwelling, One-Family, Semi-Detached: A dwelling designed for and occupied by a single family having one party wall and one side yard.

Dwelling, Row or Group: A building consisting of a series of three or more non communicating one-family sections having a common wall between each two (2) adjacent sections.

Dwelling, Two-Family: A detached dwelling designed for and occupied by two (2) families living independently of each other.

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

Family: Any number of individuals legally related through blood, marriage, adoption or guardianship, including individuals placed for foster care by an authorized agency, or up to four (4) unrelated individuals living and cooking together and functioning as a single-housekeeping unit using certain rooms and housekeeping facilities in common.

Floor Area:

Residential use: The sum of the gross horizontal area of the several floors of a building and its accessory buildings, excluding cellar, basement and garage or carport floor areas not devoted to residence.

Office, commercial or manufacturing use, except shopping centers: The sum of the gross horizontal area of the several floors of a building and its accessory buildings.

Garage, Private: A garage accessory to a principal building, used for storage purposes only, and in which no business, service or industry connected directly or indirectly with motor vehicles is conducted.

Garage, Public: Garage, other than a private garage, available to the public, operated for gain, and which is used for the storage, repair or servicing of automobiles or other motor vehicles, not intended for the sale of gasoline.

Garden Apartments: A group of multi-family dwellings on a single lot designed for rental of the individual housekeeping units, having common open spaces, and designed, in accordance with the special requirements for such dwellings as set forth in this Chapter, to give the maximum amount of open space per family.

Half-Way House: A residential facility established to provide a residence for those persons re-entering society from an institution and such facility has all the state-required licenses and permits for that facility.

Hospital: An institution providing public health services primarily for inpatient medical or surgical care of the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central service facilities and staff offices which are an integral part of the facility.

Hotel/Motel: A building or group of buildings offering transient lodging accommodations on a daily rate to the general public. Additional services to be provided may include a restaurant, meeting rooms and recreational facilities.

Identification Sign: A sign on a private residence which lists the house number or address of the occupant.

Kennel: A structure or place used for the breeding or boarding of domestic animals.

Kindergarten, Pre-School, or Day Nursery School: A school which provides day-time care and instruction for two (2) or more children from two (2) to six (6) years of age inclusive, and operates on a regular basis.

Landscape Screen: A completely painted visual barrier composed of evergreen plants and trees arranged to form both a low-level and high-level screen. The high-level screen shall consist of evergreen trees planted with specimens having an initial height of not less than five (5)

feet and planted at intervals of not more than ten (10) feet on center. The low-level screen shall consist of evergreen shrubs planted at an initial height of not less than two (2) feet and spaced at intervals of not more than five (5) feet on center. The low-level screen shall be placed in alternating rows to produce a more effective barrier.

Loading Space: Accommodation off the street for loading and unloading of trucks in the form of one or more truck berths located either within a building or in open space on the same lot. The area of each berth shall be not less than two (200) hundred square feet and it shall have a minimum clear height, including access to it from the street, of fourteen (14) feet.

Lot: A parcel of land in single or common ownership and occupied or intended to be occupied by one (1) principal building or use or by a group of principal buildings together with any accessory buildings, including such yards or open spaces as are arranged or designed to be used in connection with such buildings.

Lot Area: The area of a lot taken at its perimeter exclusive of any portion within a public or private street right-of-way.

Lot Corner: Any lot which occupies the interior angle at the intersection of two (2) streets which make an angle of less than one hundred thirty-five (135) degrees with each other, the owner of a corner lot having the privilege of specifying which street lot line shall be deemed the front line and being required, when requesting a certificate of occupancy, so to specify.

Lot Coverage: That portion of the lot area that is covered by buildings; the building area divided by the lot area; e.g., a lot containing ten thousand (10,000) square feet has a principal and accessory buildings planned or existing whose area is two thousand five hundred (2,500) square feet; thus the lot coverage is twenty-five (25) percent.

Lot, Depth of: The average depth measured in the main direction of the side lot lines from the front street line to the rear lot line. The rear line shall be a minimum of seventy (70) percent of the lot width required for the zoning district. In applying this definition to a corner lot, the side street right-of-way line, as determined in accordance with the definition of a corner lot shall be considered to be a side lot line.

Lot Width: The horizontal distance between the side lot lines, measured across the rear of the required front yard. Where no front yard is required, lot width shall be measured along the street right-of-way.

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

Marina: A boat basin offering dockage and other service for small craft.

Mobile Home or Mobile Dwelling Unit: A transportable one-family dwelling larger than three hundred twenty (320) square feet, designed to be used as a year-round residence. This definition shall not include motor homes or travel trailers.

Motor Home: A travel vehicle that contains the living section and the power source in a single unit.

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

Nonconforming Building: A building or parts thereof lawfully existing at the time these regulations or subsequent amendment hereto, became effective which does not conform to the dimensional requirements of the district in which it is located.

Nonconforming Use: A use of land or use of a building lawfully existing at the time these regulations, or subsequent amendments hereto, became effective which does not conform to the use requirements of the district in which it is located.

Nursing or Convalescent Home: A facility providing nursing services on a continuing basis and which admits the majority of the occupants upon advice of a physician as ill or infirm persons requiring nursing services and provides for physicians' services or supervision and maintains medical records including also provisions for other and similar medical or nursing services. Care for the acutely ill or surgical or obstetrical services shall not be considered similar services under this definition nor shall hospitals be construed to be included in this definition.

Open Area: That portion of a lot excluding area set aside or used for buildings, parking, loading and streets. Land devoted to recreation purposes to include land for swimming pools tennis courts and similar recreation uses shall be considered totally enclosed buildings.

Open Storage: Goods, equipment or supplies held for the safekeeping or eventual sale or distribution, not entirely within totally enclosed buildings. T-structures, lean-to-type structures or roofed over, fenced-in areas shall not be considered totally enclosed buildings.

Parking Lot, Commercial: An area used for the storage or parking of automobiles, not including mobile home dwelling units, for any period of time and operated for gain.

Parking Space: Accommodation for the parking of a motor vehicle on a lot provided for restricted use in connection with a particular business or private enterprise, or as an adjunct to a housing development or private residence, whether operated for gain or not or whether cooperatively established and operated or not. Such parking spaces may consist of parking lots, private garages or other structures and accessories; they may be surface facilities or facilities above or under ground.

Paved Area: A portion of land paved with a weatherproofed surface for parking spaces, driveways, sidewalks or streets, in the computation of such, that area covered by buildings shall be excluded.

Payday/Title Loan Establishment: Any establishment which advances or lends a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds or (iv) title of a motor vehicle.

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.

Premises: Any lot, area or tract of land, whether used in conjunction with a building or not.

Projecting Sign: A sign that is perpendicular and adequately attached to and projects at an angle of not less than 45 degrees from the structure or building face. A projecting sign shall provide an 8 ft. clearance between its bottom edge and the ground if it hangs over a public right of way and shall not exceed twenty (20) sq. feet.

Residence Manufactured/Mobile Home Community: A parcel of land of at least eight (8) acres consisting of a series of lots to be rented or sold for the purpose of accommodating more than two (2) manufactured or mobile homes. A developer of over twenty-five (25) units shall have the option of declaring a section of the community either sales or rental within the same residence manufactured/mobile home community. Each sales or rental section must meet the minimum applicable standards and be designated on the record plan.

Right-of-Way: Shall mean that area shown and designated on an approved record as the area in which a street is dedicated for public or private use in accordance with the standards set forth in this Chapter. In no case shall a right-of-way be construed to mean easement.

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.

Rooming House: A dwelling or part thereof that is the primary residence of the owner containing not more than eight (8) rooming units designed to be used for sleeping accommodations and to be let, for compensation, by the owner thereof to persons who are not

legally related by blood, marriage, adoption or guardianship to all the other residents or to the owner of the rooming house.

School, Private: A duly organized school, other than a public school or a parochial school, giving regular instruction in subjects ordinarily taught in the public schools at least five (5) days a week for eight (8) or more months per year.

Setback: An area extending the full width of the lot line between the street right-of-way and the building setback line within which no buildings or parts of buildings may be erected.

Setback Line: A line extending between the two (2) side lot lines of a lot or parcel of land which is parallel to and a state distance from, a street line.

Shall: Mandatory.

Signs: Any form of publicity, visible from any public highway conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trade marks or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints or other devices erected on an open framework, or attached or otherwise applied to posts, stakes, poles, trees, buildings or other structures or supports.

Sign Area: The total "area" of a sign shall include all sides or area of display of a single-faced or multifaceted 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 code, signs which are composed of letters, words or representations only and which follow no square or rectangular pattern shall be considered to include in the "sign area" a square or rectangle as drawn at the outer limits of the letters, words, or representations.

Sign, Illumination: Lighted shall mean illuminated only by light cast upon the sign from a concealed light source. Luminous shall mean illuminated by any type of source.

Sign 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.

Special Exception: A use that would not generally be appropriate throughout the zoning district, but which may be permitted in specific circumstances without harm to the intent of the Zoning Chapter. Such uses may be permitted in zoning districts where provisions thereof are made by this Chapter.

Story: A story is that part of a building between the surface of one floor and the ceiling immediately above. A cellar, basement, or half-story (no more than 50% of which is above ground) shall not count as a story.

Street: A strip of land, comprising the entire area within the right-of-way, intended for possible use as a means of vehicular and pedestrian circulation to provide access to more than one (1) lot. The word "street" includes road, thoroughfare, parkway, avenue, boulevard, court, expressway, highway, land, throughway, place, square, alley or however designated within the above-mentioned right-of-way, however, the establishment of a common driveway for access purposes for no more than three (3) separate parcels contiguous to one another shall not be considered a street as that term is defined herein.

Street Line: The dividing line between a lot and the street.

Street, Private: Any street right-of-way not dedicated to public use.

Street, Public: Any street right-of-way dedicated to public use and/or maintained by the State Highway Department.

Street Right-of-Way: An area set aside or used as a means of ingress, egress or approach. No parts of private group parking no areas or driveways that service such parking areas are to be classified as street right-of-way.

Structural Alterations: Any change in supporting members of a building such as bearing walls, columns, beams or girders and floor joists, ceiling joists, roof rafters or stairways.

Swimming Club, Private (Commercial): A private club operated for profit, maintaining and operating a swimming pool and apparatus and equipment pertaining to the swimming pool, with specified limitations upon the number of members, for the exclusive use of members and their guests.

Swimming Club, Private (Nonprofit): A private club organized as a nonprofit club or organization, maintaining and operating a swimming pool for the exclusive use of members and guests.

Swimming Pool, Commercial: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, operated for profit, open to the public upon payment of an hourly, daily, weekly, monthly, annual or other fee.

Swimming Pool, Private: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, maintained and operated by an individual for the sole use of his household and guests without charge for admission and not for the purpose of profit or in connection with any business operated for profit, located on a lot as an accessory use to a residence.

Swimming Pool, Public: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, maintained and operated by a municipality or other unit of government for the general public, whether or not an admission fee is charged.

Telephone Central Office: A building and its equipment erected and used for the purpose of facilitating transmission and exchange of telephone or radio-telephone messages between subscribers and other business of the telephone company.

Temporary Sign: A sign which is erected for a time not to exceed a cumulative period of eight (8) weeks per calendar year unless approval is obtained from the City Manager or City Code Official for an extension of time.

Travel Trailer: A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use. For the purpose of this definition, travel trailers shall not include trailers in excess of twenty-eight (28) feet in length or in excess of four thousand five hundred (4,500) pounds gross weight.

Used Car Lot: An area used for the storage and display of used automobiles advertised for sale.

Variance: A departure from the terms of this Zoning Chapter.

Yard: An unoccupied space open to the sky on the same lot with a building or structure.

Yard, Front: A yard extending the full width of the lot between the front street line and the parts of the principal building erected thereon setting back from and nearest such street line.

Yard, Rear: A yard across the full width of the lot extending from the rear line of the building to the rear line of the lot. In the case of a corner lot, the rear yard shall not extend beyond the building setback line on the street side.

Yard, Side: A yard between the building and the adjacent side line of the lot and extending from the front yard to the rear yard.

Article IV Designation of Districts

Section 46-4 Classes For Districts

For the purpose of this Chapter, the portions of Delaware City for which the zoning map is adopted under this Chapter are hereby divided into the following twelve districts:

- R-1 District (one family residential)
- R-2 District (one and two family residential)
- R-3 District (multifamily)
- R-MM District (manufactured/mobile home)
- C-1 District (central commercial)
- C-1L District (commercial low impact)
- C-1M District (commercial marine)
- C-2 District (general commercial)
- OS-R District (open space and recreational)
- OS-BA (open space and buffer area)
- M-1 District (light industrial)
- HPR District (Historic Preservation and Redevelopment)

Section 46-5 Adoption of Zoning Map

The above said districts are as shown, defined and bounded on the “Zoning Map of Delaware City, Delaware,” adopted by the Mayor and City Council and certified by the City Manager. Said map and all explanatory matter thereon is hereby made a part of this Chapter, and will hereinafter be referred as the “zoning map.”

Section 46-6 Rules for Determining Boundaries of Districts

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

- a.) Where district boundaries are indicated as approximately following the center lines of the streets, or street lines, such center lines or street lines shall be construed to be such boundaries.
- b.) Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be such boundaries.

c.) Where the boundaries are neither lot lines nor center lines of streets, nor street lines, unless dimensioned or otherwise clearly indicated on the zoning map, they shall be determined by the use of the scale on said zoning map.

Section 46-7 Changes in the Zoning Map

If, in accordance with the provisions of Article XV of this Chapter and Chapter 3, Title 22 of the State Code, changes are made in the zoning district boundaries, such changes shall be made on the Official Zoning Map promptly after the change has been approved by the Mayor and City Council. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning Map.

Section 46-8 Replacement of Official Zoning Map

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Mayor and City Council may by resolution, adopt a new Official Zoning Map.

Sections 46-9 to 46-15 Reserved

Article V Use Regulations

Section 46-16 R-1 District (One-Family Residential)

In R-1 district, one-family residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

a.) One one-family dwelling per lot, framed on site, which conforms to the following requirements:

1.) It is permanently mounted on a solid foundation system and anchored in accordance with the building code of Delaware City.

2.) All utilities shall be permanently mounted in accordance with plumbing and mechanical codes of Delaware City.

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

4.) It complies with all other pertinent provisions of applicable building and housing codes, and the fire and health codes of the State of Delaware.

b.) Any public or private schools and public or private colleges, may be permitted, subject to the Special Use Permit Standards and Procedures, as outlined in Ordinance 21-0315-01, and set forth below

i. Special Use Permit Standards. Special use permits may be granted, but are not required to be granted, in the sole discretion of the City Council. In considering whether to grant a special use permit, all of the following factors should be considered: (aa) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (bb) consistency with the character of the property for the uses for which it has been proposed or restricted; (cc) consistency with zoning and use of nearby properties; (dd) suitability of the property for the uses for which it has been proposed or restricted; (ee) effect on nearby properties, including, without limitation, the visual impact on adjacent lands; (ff) adverse effect on the area; and (gg) whether it is detrimental to the health, safety, convenience or public welfare of persons living within the City of Delaware City.

ii. Special Use Permit Procedures.

aa. The owner or potential owner of the property must make written application

for a special use permit, including plans, supporting materials, and payment of the application fee, to the Mayor and the City Council.

- bb. The application shall be forwarded to the Planning Commission for consideration and recommendation to the City Council.
- cc. Thereafter, a public hearing on the application shall be held at the next available regular City Council meeting, adhering to notice requirements, no sooner than three (3) weeks following receipt of the recommendation of the Planning Commission, to allow time for the City Council and the County Engineer to review the application.
- dd. Any special use permit application must be granted by a majority vote of the City Council members, with the Mayor being permitted to cast the deciding vote in the event of a tie.

c.) Cemeteries.

d.) Libraries, museums and art galleries.

e.) Playgrounds, parks and buildings operated on a non-commercial basis for recreational purposes.

f.) Police and fire stations.

g.) Water towers, water storage tanks, water reservoirs, water pumping stations and water treatment plants if a special exception is granted by the Board of Adjustment.

h.) Substations, electric and gas, and telephone central offices, if a special exception is granted by the Board of Adjustment, provided that there shall be:

- 1.) No storage of materials and trucks, and no repair facilities or housing of repair crews except within completely enclosed buildings.

2.) The architectural design of the exterior on any building shall be in keeping with other structures in the neighborhood.

i.) Day-care centers, kindergartens, preschools, and day nursery schools, if a special exemption is granted by the Board of Adjustment, provided there shall be:

4.) Childcare facilities within Delaware City must meet the State of Delaware regulations and requirements for a Daycare Facility as outlined in the two State Guidelines by reference, and as may be amended.

A.) *DELACARE Regulations for Family and Large Family Childcare Homes – 2019*

B.) *DELACARE Regulations for Early Care and Education and School-Age Centers*

5.) For purposes of this section, the following definitions shall apply:

A.) Family daycare: Family childcare is a licensed childcare service offered by a person or a person who formed an entity. OCCL names this person or entity as a licensee. A licensee provides this service for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. There are two types of family childcare; a level I may have a maximum of five or six children depending on their ages and a level II may have a maximum of nine children depending on their ages. Children living in the home who do not attend kindergarten or a higher-grade count in these numbers. These regulations describe the ages of children allowed to be present in each type. A licensee provides care, education, protection, supervision, or guidance to children in his or her private home. Children provided only to a person's own children, grandchildren, nieces, nephews, or stepchildren does not require a family childcare license even if payment is received.

B.) Large family daycare: Large family childcare is a licensed childcare service offered by a person or entity such as a company. OCCL names this person or entity as a licensee. A licensee provides this service for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. A licensee may have a maximum of 12 children. The ages of the children will determine the number of staff needed. Children living in the home who do not attend kindergarten or a higher-grade count in these numbers. A licensee provides care, education, protection, supervision, or guidance to children in a private home or non-residential setting. Children provided only to a person's own children, grandchildren, nieces, nephews, or stepchildren does not require a family childcare license even if payment is received.

C.) Early Care and Education and School-Age Centers: Early Care and education and school-age centers provide care, education, protection, supervision, and guidance for 13 or more children, including children who are related to the licensee. This service is provided for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. This definition includes, but is not limited to, full- and part-time childcare or daycare, early care and education, preschool, nursery school, before- or after-school care, school

vacation or holiday care, and summer childcare.

6.) Family daycare facilities in the R-1, R-2 and HPR Districts, if a special exemption is granted by the Board of Adjustment, and it can meet all of the State requirements.

7.) Large Family daycare facilities may be located in the licensee's home in the R-1, R-2 and HPR Districts if a special exemption is granted by the Board of Adjustment, and it can meet all of the State requirements, as set forth in i.) 4.) A and B, above.

8.) Large Family daycare facilities may be located in a non-residential setting and Early Care and Education and School-Age Centers may be located in the C-1 and C-1L Districts if a special exemption is granted by the Board of Adjustment, and it can meet all of the State requirements, as set forth in i.) 4.) A and B, above.

A.) Plan review shall include consideration of parking for staff and the ability to safely discharge and pick-up children.

9.) Large Family daycare facilities may be located in a non-residential setting and Early Care and Education and School-Age Centers in the HPR District if it is located in a primarily commercial area and a special exemption is granted by the Board of Adjustment, and it can meet all of the State requirements.

A.) Plan review shall include consideration of parking for staff and the ability to discharge and pick-up children safely

j.) Nursing home, rest home, adult day care center or home for the aged if a special exemption is granted by the Board of Adjustment, provided that:

1.) The minimum lot area required for each four (4), or remainder over a multiple of four (4), resident patients or resident guests shall be the same as the minimum lot area requirement for each dwelling unit in the district in which the use is to be located, provided, however, that no lot contains less than ten thousand (10,000) square feet.

2.) The minimum lot width shall be one hundred (100) feet.

3.) No more than fifty (50) patients or resident guests shall be accommodated at one time on a lot in any residential district.

k.) Utility distribution line and transmission line.

l.) Swimming club, private (nonprofit and commercial); swimming pool, private; and swimming pool, public.

m.) Petroleum storage, accessory to a permitted principal use or building, subject to the Fire Prevention Code of the National Board of Fire Underwriters.

n.) Private garages.

o.) Professional office or studio of a physician, dentist, lawyer, architect, engineer, musician, artist, teacher, real estate broker, registered nurse or other similar professional person, subject to the following special requirements in addition to all other applicable requirements of this Chapter for the residential district in which such uses are located:

1.) The practice of such professional occupations shall be permitted in a dwelling provided the principal person so engaged is a resident thereof.

2.) Professional occupations shall be subject to the following standards:

a.) Three (3) off street parking spaces in addition to those otherwise required in this Chapter.

b.) No more than two (2) persons, except a resident, shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical or similar assistance.

c.) The area used for the practice of a profession shall occupy no more than twenty-five (25) percent of the total floor area.

d.) No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line.

e.) No storage of materials or products outside the dwelling unit shall be permitted unless completely housed.

f.) The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.

g.) No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.

h.) No display of products shall be visible from outside the building.

p.) Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this Chapter for the residential district in which such cases are located:

1.) The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.

2.) All home occupations shall be subject to the following standards:

a.) The area used for the practice of a home occupation shall occupy no more than twenty-five (25) percent of the total floor area.

b.) No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line.

c.) No storage of materials or products outside the dwelling unit shall be permitted unless it is completely housed.

d.) The home occupation shall be clearly incidental with the residential use of the dwelling and shall not change the essential residential character of the dwelling.

e.) No external alterations of the inconsistent with the residential use of the dwelling shall be permitted.

f.) No display of products shall be visible from outside the building.

q.) Accessory uses on the same lot with and customarily incidental to any of the permitted uses. The term “accessory uses” shall not include commercial uses but shall include professional offices. Such accessory uses shall not generate excessive noise, smoke, dust, smell or other conditions detrimental to the character of the surrounding area.

r.) Bed and Breakfast – tourist home subject to the following conditions:

1.) A special exception by the Board of Adjustment is required

2.) Resident Manager on site.

3.) At least one (1) full bathroom for the exclusive use of the occupants of each three (3) guest rooms or portion thereof, which shall be accessible from each guest room without going through another guest room or sleeping room.²

s.) Conversion of a one (1) family dwelling into dwelling units for two (2) families, if a special exception is granted by the Board of Adjustment as provided in Article XIII, Section 46-121, of this Chapter if such Board declares such dwelling to be structurally sound but too large to be in demand for one (1) family use and that conversion for the use of two (2) families would not impair the character of the neighborhood, subject to conformance with the following requirements:

1.) The dwelling shall have been constructed at least twenty (20) years before the date of the application.

2.) There shall be a lot area of at least four thousand (4,000) square feet for each family to be accommodated thereon.

¹ Section 46-16i) Amended by Ordinance 21-0816-03 (Adopted 11-15-21)

Section 46-16r) Amended by Ordinance 08-0507-01 (Adopted 6-16-08)

3.) There shall be a gross floor area, computed as the sum of those areas enclosed by the outside faces of all exterior walls surrounding each story used for the residence exclusive of any area used for an attached private garage, of at least five hundred (500) square feet per family to be accommodated therein.

4.) No dwelling shall be so converted unless in connection therewith it be placed in a reasonable state of repair and modernization.

5.) No addition shall extend within the front yard, side yards or rear yards required for the district within which it is located.

6.) Fire escape and outside stairways leading to a second or higher story shall, be located on the rear of the building and shall not be located on any building wall facing a street.

7.) One off-street parking space shall be provided for each additional dwelling unit created.

8.) The owner shall be one of the two (2) families living on the premises. When property is titled in more than one (1) name or is incorporated, the majority owner shall reside on the premises.

t.) One family, semi-detached dwellings shall be permitted if a special exception is granted by the Board of Adjustment.

Section 46-17 R-2 District (One and Two Family Residential)

In the R-2 district, one-family and two-family residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- a.) All uses permitted in the R-1 district.
- b.) One two-family dwelling per lot, framed on site.
- c.) One family, semi-detached dwellings.
- d.) Row houses, if a special exception is granted by the Board of Adjustment.

Section 46-18 R-3 District (Multifamily Residential)

In R-3 district, multifamily residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one (1) or more of the following uses:

- a.) All uses permitted within the R-1 and R-2 districts.

b.) A community garage consisting of one (1) or more groups of private garages, not more than one (1) story high, having a joint capacity of not more than six (6) cars, arranged in a row or surrounding a common means of access, used by owners or tenants of dwellings on nearby lots, and subject to the special regulations of Article VIII, Section 46-59, of this Chapter.

c.) Hospitals or sanitariums, other than those for the contagious diseases or for the care of epileptic, drug or alcoholic patients; charitable institutions which are not of a correctional nature and which are not intended for the care of insane or feeble minded patients; provided that no building so used shall be within fifty (50) feet of any lot line, and further provided that adequate parking space shall be provided in accordance with the requirements of Article XI of this Chapter, such space to be so located as not to be less than ten (10) feet from any lot line and to have a weatherproof surface.

d.) Hospitals for contagious diseases, correctional institutions, sanitariums or hospitals treating epileptic, drug or alcoholic patients and asylums for the mentally ill; if a special exception is granted by the Board of Adjustment as provided in Article XIII, Section 46-121 of this Chapter, and provided that no building so used shall be within two hundred (200) feet of any lot line, and further provided that adequate parking space shall be provided in accordance with the requirements of Article XI of this Chapter, such space to be located as not to be less than ten (10) feet from any lot line and to have a weatherproof surface.

e.) New or major modification of existing Multifamily dwellings including garden apartments are permitted subject the following Special Use Permit Standards and Procedures set forth below:

- i. Special Use Permit Standards. Special use permits may be granted, but are not required to be granted, in the sole discretion of the City Council. In considering whether to grant a special use permit, all of the following factors should be considered: (aa) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (bb) consistency with the character of the property for the uses for which it has been proposed or restricted; (cc) consistency with zoning and use of nearby properties; (dd) suitability of the property for the uses for which it has been proposed or restricted; (ee) effect on nearby properties, including, without limitation, the visual impact on adjacent lands; (ff) adverse effect on the area; and (gg) whether it is detrimental to the health, safety, convenience or public welfare of persons living within the City of Delaware City.
- ii. Special Use Permit Procedures.
 - aa. The owner or potential owner of the property must make written application for a special use permit, including plans, supporting materials, and payment of the application fee, to the Mayor and the City Council.
 - bb. The application shall be forwarded to the Planning Commission for

consideration and recommendation to the City Council.

- cc. Thereafter, a public hearing on the application shall be held at the next available regular City Council meeting, adhering to notice requirements, no sooner than three (3) weeks following receipt of the recommendation of the Planning Commission, to allow time for the City Council and the County Engineer to review the application.
- dd. Any special use permit application must be granted by a majority vote of the City Council members, with the Mayor being permitted to cast the deciding vote in the event of a tie.

1.) Number of dwelling units per building - the maximum number of dwelling units per building shall be twenty-four (24) for buildings up to three (3) stories in height.

2.) Lot coverage. The maximum lot coverage shall be thirty-five (35) percent of the lot area, which is to be developed for a multifamily complex.

3.) Number of dwellings per unit acre. The maximum number of dwelling units per gross acre shall be twenty (20) for buildings up to three (3) stories in height and the maximum number of dwelling units for buildings with elevator service of over three (3) stories in height shall be forty (40).

4.) Distance between buildings or groups of attached buildings. No portion of any side of any building or groups of attached buildings, shall be nearer than twenty-five (25) feet to any other building, or group of attached buildings, and no portion of the front or rear of any buildings, or group of attached buildings, shall be nearer than fifty (50) feet to any part of another building or groups of attached buildings. No more than three (3) buildings may be attached to one another.

5.) Street frontage. Each multifamily development shall have at least fifty (50) feet frontage along a public street.

6.) Minimum lot size – one (1) acre.

7.) Open area. At least twenty-five (25) percent of the lot area shall be devoted to open area.

8.) Setbacks. Each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be at least:

a.) Forty (40) feet from the line of all perimeter streets.

b.) Twenty-five (25) feet from the line of all interior streets.

9.) Parking and loading spaces. All parking and loading spaces shall be located at least ten (10) feet from all abutting perimeter streets and property lines. Parking bays adjacent to interior private streets are permitted.

10.) Plan approval. Before a building permit is issued for the erection of any building, a subdivision plan shall be reviewed and approved by the Planning Commission and Mayor and City Council, as complying with its policies and standards.

f.) Boarding house, rooming house, lodging house or dormitory.

g.) Office or studio of a physician, dentist, lawyer, architect, engineer, musician, artist, teacher, real estate broker, registered nurse or other similar professional person, provided that activity conducted inside the office or studio shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the office or studio.

h.) Social, fraternal, social service, union and civic organization.

i.) Accessory uses and accessory buildings.

j.) Row house dwelling.

Section 46-19 R-MM District (Manufactured/Mobile Home Residence)

In the R-MM District, residence manufactured/mobile home communities, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

a.) Residence manufactured/mobile home community, subject to the following regulations:

1.) Uses. A manufactured/mobile home community may include manufactured or mobile homes of single or multiple width or any combination thereof, but shall not include travel trailers or motor homes. Such a community may include lots for sale and/or rental.

2.) Density. The total number of manufactured and mobile homes in a manufactured/mobile home community shall not exceed six (6) dwellings per gross acre.

3.) Lot area. The minimum area of any residence manufactured/mobile home community shall be at least eight (8) acres. Each manufactured or mobile home shall be placed on a lot having an area of at least four thousand two hundred (4,200) square feet. The average area for all lots in the community designated for the placement of a mobile or manufactured home shall be not less than four thousand seven hundred fifty (4,750) square feet.

4.) Lot width. The minimum width of a lot designated for the placement of a manufactured or mobile home shall be forty-five (45) feet.

5.) No structure built or placed in a residence manufactured/mobile home community shall exceed a height of three (3) stories or a maximum of thirty-five (35) feet.

6.) Setback from perimeter boundary. No manufactured home, mobile home or any other principal or accessory structure may be located closer than twenty-five (25) feet to the perimeter boundary of a residence manufactured/mobile home community regardless of whether that boundary abuts a lot, water body, street or other right-of-way.

7.) Setback from streets and access ways. Each story or part of a manufactured home, mobile home or any other principal or accessory structure shall be set back not less than twenty-five (25) feet from all street lines or access ways lines.

8.) Side and rear yards. Two (2) side yards shall be provided on each interior lot so that the minimum width of such side yards shall be five (5) feet with an aggregate of two (2) side yards of twenty (20) feet. On a corner lot the side yard along the interior side lot line shall have a minimum width of five (5) feet, but the width of the side yard along the side street line shall be not less than the setback required by subparagraph a 7 above. The rear yard minimum depth shall be ten (10) feet. A side and rear yard of not less than five (5) feet shall be maintained for all detached accessory structures, except detached garages and storage sheds having party walls.

9.) Unit location. Manufactured and mobile homes shall be placed on individual lots in accordance with minimum setbacks and yards specified in subparagraphs 7 and 8 above, off-center placement of homes on the lots is encouraged so as to provide a large usable open yard space and outdoor living area in one (1) section of the lot.

10.) Parking. Each individual lot designated for placement of a manufactured or mobile home shall have at least two (2) lots in a paved off-street common parking compound located within six hundred (600) feet walking distance of the lots it is intended to serve. All required on-lot parking spaces and common parking compounds shall be paved with a suitable weatherproof surface.

11.) Streets. All streets in a residence manufactured/mobile home community of fee-simple sale lots shall be constructed in accordance with the state department of transportation standards. The minimum paved cartway width shall be thirty-six (36) feet for collector streets and twenty-seven (27) feet for all other streets within the community. Conversion for the fee-simple sale of lots shall require streets to conform to the state department of transportation standards.

12.) Lighting. All streets and parking compounds shall be lighted at night with electric lamps designed to produce a minimum of 0.3 foot-candle illumination throughout the street and parking system.

13.) Walkways. A paved on-lot walkway of a minimum width of three (3) feet shall be provided to each manufactured or mobile home from the parking spaces provided on the lot.

14.) Screening. Each residence manufactured/mobile home community shall be surrounded by a landscape screen at least twenty-five (25) feet in width along the perimeter property line for the community, including public road frontage; except that The Planning Commission may approve modifications to the landscape screen, where such modifications serve substantially to fulfill the function of a landscape screen, as defined.

15.) Outdoor living space. Appropriate outdoor living space, surfaced with a weather-resistant material, patio, deck, open porch or combination of these structures, having a minimum area of one hundred eighty (180) square feet, shall be provided adjacent to the manufactured or mobile home.

16.) Open space. Not less than ten (10) percent of the total area devoted to manufactured or mobile home lots shall consist of open space.

17.) Recreation area. A recreation area, utilizing developable land, shall be provided within the required open space. Nondevelopable land may be used if determined suitable by the Planning Commission. The total amount of recreation area shall not be less than three hundred (300) square feet for each lot within the residence manufactured/mobile home community. The recreation area may be provided by a series

of smaller recreation areas, the sum of which is equal to the required total. Furthermore, no recreation area shall be smaller in area than the average of the lot areas within the community and recreation areas having a width of less than one hundred (100) feet shall not exceed in length three (3) times their width. The open space and recreation areas shall be deed restricted to active and passive recreational uses at the time of recordation of the subdivision plan. If the residence manufactured/mobile home community is recorded and/or constructed in phases or stages, the required open spaces and recreation areas will be designated on the record plan and developed at the same proportion that the number of lots in the phase or stage bears to the total number of lots in the community.

b.) Vending machines for candy, soft drinks and similar refreshment items located within an enclosed building or under a roof in a protected breezeway.

c.) Coin-operated, self-service laundry for the use of residents of the residence manufactured/mobile home community located within an enclosed building.

d.) Accessory uses and buildings, including permanent-type structures and buildings to be used for the storage of maintenance equipment or other similar uses, community garages subject to the provisions of Article VIII, Section 46-59, and an existing permanent one-family dwelling for the use of the resident owner or manager.

e.) The uses set forth in Paragraphs b, c and d shall be permitted and not required uses in any residence manufactured/mobile home community.

Section 46-20 C-1 District (Central Commercial)

In the C-1 District, central commercial, no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- a.) All uses permitted in the R-1 District.
- b.) Recreation center, community.
- c.) Railway or bus passenger station.
- d.) Social, fraternal, social service, union and civic organization.
- e.) Office, business, professional or governmental.
- f.) Studio for artists, designers, photographers, musicians, sculptures and gymnasts.
- g.) Bakeries, retail, including preparation of goods for sale on the premises only.
- h.) Blueprinting and Photostatting.
- i.) Building for instruction of dramatics, musical or cultural activities.
- j.) Feed, retail stores.
- k.) Fertilizer, packaged retail sales.

- l.) Funeral home, embalming.
- m.) Post office.
- n.) Printing and photo processing.
- o.) Restaurant, excluding drive-in service.
- p.) Repair and servicing, in doors only, of any article for sale, which is permitted in this district, except, as otherwise indicated in this Section.
- q.) Retail stores and shops such as grocery stores, drugstores, variety stores, book stores, clothing stores, florist shops, beverage stores (including alcoholic beverages, subject to a special exception granted by the Board of Adjustment), gift and specialty shops, hardware stores, delicatessens.
- r.) Bank and financial institutions.
- s.) Churches and other places of worship, seminaries or convents, parish houses and Sunday School buildings.
- t.) Condominium “units” (as now or hereafter defined by the Delaware Uniform Common Interest Ownership Act, 22 *Del. C.* §81-101 et seq.) utilized for office, business or commercial purposes otherwise permitted in the underlying zoning district shall be permitted if a special exemption is granted by the Board of Adjustment. Any request for a special exception under this section shall be subject to the following requirements:
 - (i) Proposed condominium documents (including any code of regulations and enabling declarations as well as any rules and regulations) must be presented to the City Manager and City Solicitor at least ten (10) days in advance of the Board of Adjustment hearing;
- u.) Condominium “units” (as now or hereafter defined by the Delaware Uniform Common Interest Ownership Act, 22 *Del. C.* §81-101 et seq.) utilized for residential purposes (whether or not used in combination with condominium units utilized for office, business or commercial uses) shall be permitted if a special exception is granted by the Board of Adjustment. Any request for a special exception under this section shall be subject to the following requirements:
 - (i) Proposed condominium documents (including any code of regulations and enabling declarations as well as any rules and regulations) must be presented to the City Manager and City Solicitor at least ten (10) days in advance of the Board of Adjustment hearing.³
- v.) Bed & Breakfast – tourist home subject to the following conditions:
 - 1.) On-site manager.

³ Section 46-20 amended by Ordinance 05-0815-01 (adopted 10-17-05)

2.) At least one (1) full bathroom for the exclusive use of the occupants of each three (3) guest rooms or portion thereof, which shall be accessible from each guest room without going through another guest room or sleeping room.⁴

w.) Mixed uses consisting of permitted commercial uses on the first floor and a total of one (1) dwelling unit on the upper floor(s). Owners of properties in the C-1 District with a permitted commercial use on the first floor and multiple dwelling units on the upper floor(s) that are occupied and existing at the time of the adoption of this subsection (w) may apply to register such use with the City via a registration form approved by the City Manager on or before June 30, 2011. As a pre-condition to such registration, the City Manager may require an inspection of the subject premises or such other proof of the present existence and nature of such mixed use as he or she may deem appropriate. Such mixed uses with timely filed registration applications accepted by the City Manager shall be recognized by the City as permissible non-conforming uses pursuant to §46-53, subject, however, to all other provisions of this Chapter. Owners whose applications under this subsection are rejected by the City Manager may file an appeal to the Board of Adjustment within thirty (30) days of rejection pursuant to §46-118 of the Code. Nothing herein shall prohibit a property owner from seeking confirmation and registration of a non-conforming mixed use in the C-1 District from the City Manager at any time after June 30, 2011; provided, however, that strict proof of the continuous nature of such non-conforming use must be established from the time of the effective date of this Chapter, as opposed to the adoption date of this subsection (w).⁵

Section 46-21 Conversion of Storefront for Residential Use

No storefront existing at, or established after, the adoption of this Chapter may be converted for residential use without a special exception.

Section 46-22 C-1M District (Commercial Marine)

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

- a.) All uses permitted in the R-1 District.
- b.) All uses permitted in the C-1 District.

⁴ Section 46-20v.) Adopted by Ordinance 08-0507-01 (adopted 6-16-08)

⁵ Section 46-20w.) Adopted and Section 46-21 Amended by Ordinance 10-1018-01 (adopted on 11-15-10)

c.) Marinas, including the dispensing of fuel for marine use only, and the outdoor storage of boats and trailers and equipment, materials, and vehicles required for the normal operation of a marina.

d.) Sale and storage of boats, trailers, and marine parts and supplies.

e.) Indoor and outdoor storage of marine and commercial fishing materials and supplies.

f.) Maintenance and repair, indoors and outdoors, of boats and fishing equipment, including painting and fiberglass repair, provided that dust, odors, and fumes are contained onsite and that such activities are conducted in compliance with all state and federal environmental and workplace safety laws and regulations.

g.) Wholesale and retail sale of seafood products.

h.) Parking requirements for this district shall be the highest requirement for the actual use(s) on the premises as contained in Section 46-96 of the Code of the City of Delaware City.

i.) Signage requirements for this district shall be those prescribed for the C-1 District.

j.) A densely planted landscape screen at least eight (8) feet in height shall be established along all property lines separating the site from any lot zoned for residential use, the species of trees or other plantings to be approved by the City. In locations where a landscape screen is impractical or undesirable, as determined by the City, the City may require the erection of a solid fence or wall. Such landscape screen or solid fence or wall shall not extend into or beyond the building setback line of an adjoining residential district.⁶

Section 46-23 C-1L District (Commercial Low Impact)

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

a.) All uses permitted in the R-1 District.

b.) Mixed uses consisting of: (i) permitted commercial uses on the first floor and a total of one (1) dwelling unit on the upper floor(s); or (ii) one (1) dwelling unit comprising one or more floors of the building provided at least ten percent (10%) of the floor area of the first floor is continuously utilized for a permitted commercial use and provided, further that no first floor storefront conversions shall be permitted in the C-1L District.⁷

c.) Bed & Breakfast – Tourist home, subject to the following conditions:

1.) Resident manager on-site

⁶ Section 46-22 Amended by Ordinance 06-1016-01 (Adopted on 11-20-06)

⁷ Section 46-23 (b) Amended by Ordinance 10-1018-01 (Adopted on 11-15-10)

2.) A minimum of one (1) full bathroom for the exclusive use of the occupants of each three (3) guest rooms or portion thereof, which shall be accessible from each guest room without going through another guest room or sleeping room.

3.) A special exception by the Board of Adjustment is required.

d.) Studio and related retail space for artist, craft artist, artisan, designer, photographer, or musician.

e.) Personal services, including hair salon, day spa, and manicurist, but excluding tattoo or massage parlor.

f.) Fine dining restaurant, tea room, or coffee shop, not to include take-out, fast food, or drive-in restaurants, with a Special Exception granted by the Board of Adjustment.

g.) Retail, small boutique or shop, including books, prints, art, clothing, florist, gift, and specialty shops, provided that the residential character of the District is maintained.

h.) General or professional office, subject to the off street parking requirements of Section 46-96.

i.) Signage requirements for this district shall be those prescribed for the R-1 District.⁸

Section 46-24 C-2 District (General Commercial)

In the C-2 District, general commercial, no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following:

a.) All uses permitted in the C-1 District, except residences.

b.) Veterinary hospital, and kennel, provided buildings and runs are not within one hundred fifty (150) feet of any lot zoned for residential use.

c.) Laboratory, dental and medical.

d.) Armories for meeting and training of Federal and State military organizations.

e.) Automatic car wash establishment subject to the following special requirements:

1.) Minimum lot size – twenty-four thousand (24,000) square feet.

2.) Minimum lot width – one hundred and twenty (120) feet.

3.) Minimum depth of lot – two hundred (200) feet.

4.) Minimum setback from all street lines – forty (40) feet.

5.) Minimum distance from all property lines other than street lines – twenty (20) feet.

6.) Minimum distance between any buildings, including accessory uses, and any residential district – fifty (50) feet.

⁸ Section 46-23 Amended by Ordinance 06-1016-02 (Adopted on 11-20-06) All subsequent Sections renumbered

7.) Minimum distance between any access driveway and residential district – fifty (50) feet.

8.) Minimum distance between any access driveway and adjoining property line – ten (10) feet.

9.) Minimum distance between any access driveway and any access driveway of any of the following uses: church, library, school, college, nursing home, hospital, and similar uses – two hundred (200) feet measured along the same street line in the same block.

10.) A solid fence or wall a minimum of five (5) feet in height or a landscape screen shall be erected along all property lines separating the site from any lot zoned for residential use. Such solid fence or wall shall not extend into or beyond the building setback line of an adjoining residential district.

11.) Maximum width of curb cuts for access driveways – thirty five (35) feet.

12.) Parking requirements:

a.) A waiting or stacking area on the lot for incoming automobiles, accessible to the entrance end of the washing equipment to accommodate at least twenty-five (25) automobiles for each lane provided in the washing area.

b.) An area on the lot beyond the exit end of the washing equipment for at least ten (10) automobiles for each lane provided in the wash area.

c.) Parking space on the lot in addition to that required in a and b above in accordance with the following: One (1) parking space for each three (3) employees based on the maximum number of employees at any one time, and one (1) parking space for the owner or manager.

13.) Entrance access driveways shall not be located within three hundred (300) feet of the intersection of any two (2) street lines.

14.) Except for access driveway openings, where the curb shall be depressed, a raised curb at least six (6) inches in height shall be provided along all street lines, or within the right-of-way if approved by the State Highway Department (if required).

15.) Exterior lighting shall be shielded so that it is deflected away from adjacent properties and from passing motorists.

16.) All parking spaces and access drives shall be paved with a weatherproof material.

f.) Self-service car wash establishment subject to the requirements of an automatic car wash except for the following:

1.) Minimum lot size – eighteen thousand (18,000) square feet.

- 2.) Minimum lot width – one hundred twenty (120) feet.
- 3.) Minimum depth of lot – one hundred fifty (150) feet.
- 4.) Parking requirements:
 - a.) A waiting or stacking area on the lot for incoming automobiles accessible to the entrance end of the washing equipment, for at least six (6) automobiles for each lane provided in the washing area.
 - b.) An area on the lot beyond the exit end of the washing equipment for at least four (4) automobiles for each lane provided in the washing area.
- g.) Building for display of sample merchandise.
- h.) Bowling alley, billiard and pool parlor, skating rink, dance hall and other similar indoor recreation uses.
- i.) Engraving, including textile.
- j.) Exterminator.
- k.) Fabric samples assembly.
- l.) Fences and fencing material, excluding open storage.
- m.) Restaurant, with drive-in service, subject to the following:
 - 1.) A solid fence or wall a minimum of five (5) feet in height, or a landscape screen, shall be erected along all property lines separating the site from any lot zoned for residential use. Such solid fence or wall or landscape screen shall not extend into or beyond the building setback line of an adjoining residential district.
 - 2.) Exterior lighting shall be shielded so that it is deflected away from adjacent properties and from passing motorists.
- n.) Repair and service of any article, the sale of which is permitted in this district, except as otherwise indicated in this Section.
- o.) Riding academy.
- p.) School, proving adult training in any of the arts, sciences, trades and professions.
- q.) Sign painting, excluding manufacture of signs.
- r.) Theater, housed within an enclosed structure.
- s.) Business places of a builder, carpenter, caterer, cleaner, contractor, decorator, dyer, electrician, furrier, mason, optician, painter, photographer, plumber, roofer, tinsmith, upholsterer, and similar non-nuisance business, excluding open storage of materials and excluding open storage of motor vehicles.
- t.) A dry-cleaning and shirt service establishment conforming with the following special requirements:

1.) A synthetic dry-cleaning machine employing a solvent approved by the Fire Underwriters as safe and non-flammable is used.

2.) The cleaning and drying processes are carried out within single maximum fifty (50) pound capacity washer units.

3.) Noise or vibration is not noticeable outside the building.

4.) The solvent vapor that may escape within the plant during its operation shall not exceed an M.A.C. or Threshold Limit Value of one hundred (100) parts per million (1,000,000) as shown on a Davis Halide Meter.

5.) The outlet from any exhaust fan from the dry-cleaning room shall be located not less than eight (8) feet away from any lot line. If the exhaust outlet is within ten (10) feet of any window, than the outlet must be extended to a point two (2) feet above the roof line of any adjacent building.

u.) Motel, motor court, hotel.

v.) Automobile service station and public garage, including paint and body shop, subject to the following special requirements:

1.) Minimum lot size – fourteen thousand (14,000) square feet.

2.) Minimum depth of lot – one hundred (100) feet.

3.) Minimum lot width – one hundred twenty (120) feet.

4.) Minimum setback line from all street lines – forty (40) feet.

5.) Minimum distance from all property lines other than street lines – twenty (20) feet.

6.) Minimum distance between any buildings, including accessory uses, and any residential district – fifty (50) feet.

7.) Minimum distance between any access driveway and any residential district – fifty (50) feet.

8.) Minimum distance between any service station and repair garage access driveways and the following uses: church, library, school, college, nursing home hospital and similar uses – two hundred (200) feet, measured along the same street line in the same block.

9.) Minimum distance between gasoline pump islands, compressed air connections, and similar equipment and facilities and any street lines – twenty (20) feet.

10.) Maximum width of curb cuts for access driveways – thirty-five (35) feet.

11.) Spacing of access driveways:

a.) Minimum distance from adjoining property lines – ten (10) feet.

b.) Minimum distance from intersecting street lines – twenty (20) feet.

c.) Minimum distance between access driveways – twenty (20) feet.

12.) Except for access driveway openings where the curb shall be depressed, a raised curb of at least six (6) inches in height shall be provided along all street lines, or within the right-of-way if approved by the State Highway Department (if required).

13.) Hydraulic hoists, pits and all lubrication, greasing, washing and repair equipment shall be entirely enclosed within the buildings.

14.) A solid fence or wall a minimum of five (5) feet in height, or a landscape screen, shall be erected along all property lines separating the site from any lot zoned for residential use. Such solid fence or wall or landscape screen shall not extend into or beyond the building setback line of an adjoining residential district.

15.) Exterior lighting shall be shielded so that it is deflected away from adjacent properties and from passing motorists.

w.) Auctions.

x.) Catering service.

y.) Frozen food locker.

z.) Ice manufacture, storage and sales.

aa.) Parking lot, commercial.

bb.) Sign painting and manufacture.

cc.) Warehousing.

dd.) Retail sales with related storage and warehousing entirely within enclosed buildings.

ee.) Wholesale sales with related storage and housing, entirely within enclosed buildings.

ff.) Automobile, boat, bus, truck, mobile dwelling unit, camper, motorcycle, motorbike, utility trailer, rentals, retail and wholesale sales, subject to the special requirements for automobile service stations except:

1.) No minimums are set for lot size.

2.) No minimums are set for depth of lot.

3.) No minimums are set for lot width.

gg.) Accessory uses, including the sale of used merchandise in connection with the sale of new merchandise.

hh.) Marina.

Section 46-25 OS-R District (Open Space and Recreation)

In the OS-R District, Open Space and Recreation, no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following:

a.) Outdoor recreational areas and facilities.

- b.) Boating facilities.
- c.) Conservation areas.
- d.) Water retention basins, drainage improvement facilities.
- e.) Public utility rights-of-way and structures.
- f.) Accessory uses and structures clearly incidental and customary to and associated with the operation of the permitted uses.

Section 46-26 OS-BA District (Open Space and Buffer Area)

In the OS-BA District, Open Space and Buffer Area, no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- a.) Conservation areas.
- b.) Public utility rights-of-way and structures.
- c.) Accessory uses and structures clearly incidental and customary to and associated with the operation of the permitted use.
- d.) Pumping stations for waste water, waste water treatment facilities and waste water disposal structures, subject to the provisions in Article XIII, Section 46-121, Paragraph c 9.

Section 46-27 M-1 District (Light Industrial)

In the M-1 District, Light Industrial, no building shall be erected or altered which is arranged, intended or designed to be used, except for one (1) or more of the following uses:

- a.) Public utility rights-of-way and structures.
- b.) Accessory uses and structures clearly incidental and customary to and associated with the operation of the permitted uses.
- c.) Dock terminal facilities.

Section 46-28 HPR District (Historic Preservation and Redevelopment)

(a) In an HPR district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the following uses.

- (1) Historic uses and uses dedicated to historic preservation.
- (2) Laboratories and related facilities for research, basic and applied.

- (3) Hospitals, medical clinics, pharmacies, and drug stores.
- (4) Offices for professional services and administrative activities, including but not limited to, such uses as conference and corporate training centers, financial institutions and banks, personal services, and supply and storage facilities.
- (5) Technologically dependent or computer based facilities that are dedicated to the processing of data or the analysis of information.
- (6) Daycare centers with the following special requirements:
 - a. At least 100 square feet of outdoor play space per child shall be provided.
 - b. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or lands unsuited by other usage or natural features for children's active play space, fencing or other enclosures shall be a minimum height of four feet.
 - c. Thirty-five square feet of indoor area shall be provided per child, not including toilet rooms, kitchens, offices, storage spaces, hallways, and mechanical rooms, and other areas not used by children for sleep or play on a routine basis; the minimum lot area for such uses shall not be less than 10,000 square feet.
 - d. This use shall be primarily intended to serve the uses permitted in this district.
- (7) Restaurants, including cafeteria style and delicatessens, which do not have drive through service capabilities.
- (8) Recreation facilities, indoor and outdoor, incidental to and intended primarily to serve uses permitted in this district.
- (9) Conference facilities.
- (10) Utility distribution and transmission lines, substation, electric, gas and telephone central office.
- (11) Public transportation facilities, including bus or transit stops for the loading and unloading of passengers, stations and depots.
- (12) Accessory uses and accessory buildings, pursuant to the standards and definitions set forth in Section 46-16(q).
- (13) All residential uses permitted by Sections 46-16(a).

- (14) Retail and retail food stores up to 75,000 square feet in maximum floor area.
- (15) Playgrounds, parks, and buildings operated for recreational purposes.
- (16) Libraries, museums, art galleries.
- (17) Police and fire stations, municipal office and service buildings.
- (18) Public or private schools and public or private colleges and universities.
- (19) Nursing homes, rest homes, adult daycare and other uses outlined by Section 46-16(j) under the standards set forth therein.
- (20) One and two family residential dwellings permitted in the R-2 District, as set forth in Section 46-17 (b), (c), and (d).
- (21) Multi-family residential units permitted in the R-3 district, as set forth in Section 46-18 (e), (f), (g), (h), and (j).
- (22) Recreation center, community.
- (23) Railway, bus or passenger station.
- (24) Building for instruction of dramatics, musical, or cultural activities.
- (25) Post offices and similar package delivery services.
- (26) Condominium units, as set forth in Section 46-20 (t)-(u).
- (27) Marinas and marine uses permitted in the C-1M district, as set forth in Section 46-22 (c)-(j).
- (28) Veterinary hospitals.
- (29) Laboratory, dental and medical.
- (30) Armories for meeting and training of Federal and State military and emergency personnel.
- (31) Motel, motor court, hotel.
- (32) Gas stations and convenience stores.
- (33) All uses permitted in the Open Space Recreation (OS-R) District, and park uses.
- (34) All uses permitted in the Open Space and Buffer Area (OS-BA) District.

(35) Light industrial uses and Institutional uses as defined by the following NAICS Codes: 311811, 42 (except 4231, 4233, 4235, 4238, 42444, 42447, 4246, 4247, 42452 and 42459), 441222, 442, 443, 444 (except 44411, 44419), 445, 446, 447, 448, 451, 452, 453 (except 45393), 487, 491, 492, 51, 52, 53 (except 5321, 5324), 54, 55, 56 (except 562), 61, 62 (except 624221), 71 (except 7132), 72 (except 72112), 81 (except 811 – with only 81142, 81143, and 81149 permitted), 92 (except 92214).

(36) Bed and Breakfast Facility/Tourist Home.

(37) Churches and places of worship.

(38) Banks and financial institutions, excluding Payday/title loan establishments.

(39) Any combination of permitted uses on or within a given lot, parcel, structure or area.

(40) Installation or operation of any communications tower owned or operated by a federal or state governmental entity and utilized, at least in part, for military, emergency, or law enforcement purposes. Government towers authorized by this section are not subject to the special use requirements of Section 46-21 (b)(1) and are not subject to applicable height limits in the HPR district.

(41) Harboring and keeping of livestock, aquaculture, the growing and harvesting of crops, and other similar agricultural uses in non-residential areas.⁹

(b) The following uses require special use permits approved by the Board of Adjustment:

(1) Tower, broadcasting and telecommunications, subject to the following special requirements:

a. Tower applications shall be accompanied by a professional engineer's report containing the following:

1. A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed tower.

2. A technical evaluation of the feasibility of attaching the tower or antenna to existing buildings.

⁹ Ordinance 18-0716-01 Adopted Chapter 46, Section 28(a)(41) on 8-20-18.

3. Written certification of compliance with Federal Communications Commission Safety Standards for exposure to nonionizing electromagnetic radiation.

4. Copies of all applicable state and federal permits.

b. Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line of a church, library, school, nursing home, hospital, historic or residential lot not less than three times the height of the tower or 350 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use.

c. No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.

d. Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.

e. Towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.

f. Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least ten feet high. The landscaping shall consist of a minimum 25-foot wide planting strip with ground cover and/or grass, including at least one row of six-foot high evergreen trees providing a solid screen adjacent or proximate to the fence, and 15-foot high, two-inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Board of Adjustment approval. Towers located on top of buildings three stories or more in height and telecommunication antennas located on existing buildings shall be exempt from this subsection, except that a six-foot high solid evergreen screen shall be required between any telecommunications antenna or tower accessory building and

adjoining properties. A ten-foot high security fence and an adjoining six-foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires for guyed towers.

g. No outdoor storage shall be permitted at the tower site.

h. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection.

i. A tower shall be located so as not to encroach into any established public or private airport approach as established by the Federal Aviation Administration.

j. Towers higher than 100 feet must be a minimum of 500 feet from the nearest similar tower, measured from the base of the towers.

k. New telecommunication facilities may be attached to an approved tower without applying for an additional special use permit so long as the new facility is in compliance with the requirements and standards of this section.

l. No interference with existing television, cable television, radio signals, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.

m. If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the city shall arrange to have the facility dismantled and will assess the landowner all costs associated with the removal of the tower. If the full amount due the city is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the city, the city shall cause a special assessment to be recorded. The recordation of such special assessment shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.

n. That the owner of such tower shall provide proof to the city that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense

of the owner of the tower. If structural deterioration is found to be present, and such deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the building department.

o. In addition, the operator of such tower shall provide annual proof to the city that the tower has undergone field measurements to ensure compliance with all applicable Federal Communication Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the city, shall be conducted upon start up of the facility and annually thereafter; except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are to be performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the city.

p. The owner of such tower shall give proof to the city that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.

(c) Area regulations and other special requirements.

- a. Height of buildings. The permissible height for all buildings shall be set forth in the Table codified at Article VI, Section 46-31.
- b. Building Dimensional Requirements. Except as otherwise specified herein, each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be governed by the building dimensional requirements set forth in Section 46-31.

- c. Parking. Off-street parking requirements and loading space requirements shall be determined in accordance with the minimum standards for the proposed use as set forth in Sections 46-96 - 46-99.
- d. Building design. Regarding building design, the following standards shall apply:
 - a. Detailed elevation drawings of all proposed buildings shall be submitted including all signage; building materials; building height; the location, height and material of landscaping and screening walls and fences; outdoor trash and recyclable material storage areas; and electrical, mechanical and gas metering equipment.
 - b. To maintain a high standard of construction and appearance and to provide architectural unified and interesting design the exterior walls of each building are to be constructed of durable, permanent materials, (including appropriately selected brick, treated concrete, glass, and other architectural panels). Buildings should complement and harmonize with the overall design of the HPR District.
 - c. Signage, intended to guide motorists and pedestrians from perimeter streets, shall correspond to the overall design, color and finishing of the buildings upon which they are displayed; that is, signage shall be designed as integral architectural elements of proposed architecture.
- e. Site design. Regarding site design, except as otherwise specified herein, the following special regulations shall apply:
 - a. Sidewalk and pathways shall be installed and designed to enhance the pedestrian experience;

off road bicycle circulation paths shall be designed to complement pedestrian ways.

- b. Building sites and roadways shall be designed to facilitate way finding through the district.
- c. Exterior and interior lighting features shall be integrated to help provide visual understanding of the building's composition and function based on the following guidelines:
 - 1. Use lighting fixtures primarily for important building elements such as entries.
 - 2. Favor the use of defused lighting system over those generating a strong point source of lighting.
 - 3. Enhance the visibility of interior building lighting to the exterior giving a sense of light emanating from the building.
 - 4. Avoid dramatic changes of illumination levels which can produce glare and disorientation.
 - 5. Enhance the illumination, where appropriate, of landscape features.
 - 6. Lighting shall be designed to limit impact on adjacent properties.
- d. Landscaping or screening shall be installed to screen parking areas, mechanical equipment, refuse storage areas and related appurtenances and to enhance the visual appeal of the buildings and facilities in the district.

- e. New utility lines and related appurtenances shall be installed underground unless a variance is granted by the Board of Adjustment.
- f. Review of plans to determine compliance with the provisions of subsection (c) herein shall be performed by designated officials of the City of Delaware City, which shall issue approvals upon satisfaction that all such provisions, and other applicable provisions of the Delaware City Code have been met. Applications for subdivisions for the purposes of establishing lot and/or lease lines for real estate taxation and related purposes shall be subject to the procedural requirements of the Delaware City Code. All permitted uses in the HPR district shall be subject to applicable City and State Code requirements, standards, and procedural requirements (including, but not limited to, building, zoning, sidewalk, plumbing, mechanical, and subdivision standards).
- g. It is anticipated that the Ft. DuPont Redevelopment Authority will adopt its own use, design and construction standards, which may be more restrictive than the standards of the Delaware City Code. In case of conflict between the use, design and construction standards of the Ft. DuPont Redevelopment Authority and Delaware City standards, the stricter of the two standards shall govern.

(d) For the avoidance of doubt, the following uses are expressly prohibited in the HPR District:

(1) Manufacture of corrosive acids, gelatin, paint, oils, fertilizer, linoleum, cork products, bleaching compounds or soap; tanning or curing of hides; crude oil refining; rubber treatment or manufacture; ore smelting; blast furnace, garbage or offal reduction or dumping; asphalt manufacture or refining; abattoir; junk storage; automobile wrecking; animal rendering; oil storage; except for the exclusion of distribution or warehouse operations, unless such operations are incidental to and intended primarily to serve uses permitted in this district.

(2) Any use prohibited by the Delaware Coastal Zone Act, industrial, manufacturing, and institutional uses not expressly authorized herein, fossil fuel fired

power plants, trash to steam plants, concrete crushing, rock crushing, hot mix plants, drive through restaurants, and other similar uses.

(3) Any use determined by the Ft. DuPont Redevelopment Authority to be inconsistent with the Master Plan for Ft. DuPont and/or any use inconsistent with the purposes and requirements of HB 310 as may be amended from time to time.

(4) Uses not expressly authorized by Sections (a) and (b) above.¹⁰

(d) Subdivision Amenities

Notwithstanding the requirements of any other law, common areas not associated with a condominiums in the HPR district, such as roads, active open space, passive open space, recreational amenities, and parks as depicted and outlined on any subdivision or other land development plan (collectively "Subdivision Amenities") may be owned, maintained and operated by the State of Delaware or any of its agencies, the City of Delaware City, or any entity that is a public instrumentality of the State exercising essential governmental functions. Subdivision Amenities shall be governed by such requirements as established by ordinance and/or such other requirements as the owner of the Subdivision Amenities shall establish by rule, regulation, guidelines, or through recorded restrictions. If the owner of the Subdivision Amenities is the State of Delaware or any of its agencies, the City, or any entity that is a public instrumentality of the State exercising essential governmental functions, such owner may charge proportional assessments, common area maintenance fees, or other fees to subdivision property owners for the maintenance and upkeep of Subdivision Amenities and other similar amenities.¹¹

Sections 46-29 to 46-30 Reserved

¹⁰ Section 46-28 Created by Ordinance 14-0915-02 and adopted on March 4, 2015

¹¹ Section 46-28 (d) Created by Ordinance 17-1218-01 and adopted on January 22, 2018

Article VI Dimensional Requirements by Districts

Section 46-31 Dimensional Requirements by Districts

The following are the dimensional requirements by districts:

District	Minimum Lot Size		Minimum Yard Depth			Both Sides (ft)	Minimum Square Feet Per Family (sq ft)	Maximum Lot Coverage by Buildings (percent)	Maximum Height (stories/ft)
	Area (sq ft)	Frontage (ft)	Front Setback (ft)	Rear (ft)	One Side (ft)				
<u>R-1 (Single-Family, Residential)</u>									
One-family, Detached	6,000	60	20	25	5	15	6,000	30	2½ / 35
<u>R-2 (Single-Family and Two-Family, Residential)</u>									
One-family, Detached	6,000	50	20	25	5	15	6,000	30	2½ / 35
One-family, Semi-detached	3,000	25	20	25	7½	NA	3,000	35	2½ / 35
One-family, Attached	2,000	20	20	25	NA	NA	2,000	35	2½ / 35
Two-family, Detached	6,000	50	20	25	5	15	3,000	40	2½ / 35
Two-family, Semi-detached	4,000	35	20	25	10	NA	2,000	40	2½ / 35
Two-family, Attached	3,500	30	23	25	NA	NA	1,750	50	2½ / 35

R-3 (Multifamily Residential)

See the above for one and two-family detached, semi-detached and attached residential requirements.

R-MM District

See Article V, Section d of this Chapter

District	Minimum Lot Size		Minimum Yard Depth				Minimum	Maximum	Maximum
	Area (sq ft)	Frontage (ft)	Front		One	Both	Square Feet	Lot Coverage	Height
			Setback (ft)	Rear (ft)	Side (ft)	Sides (ft)	Per Family (sq ft)	by Buildings (percent)	(stories/
<u>C-1 (Central Commercial)</u>	5,000	50	15	20	— ⁺	— ⁺	—	—	3 /
<u>1M (Commercial Marine)</u>	5,000	50	15	20	15 #	—	—	35%	3 /
<u>1L (Commercial Low Impact)</u>	5,000	50	15	20	5 #	—	—	35%	3 /
<u>C-2 (General Commercial)</u>	5,000*	35	40	20	5	15	—	—	3 /
<u>O-R (Open Space and Recreation)</u>	Not Applicable								
<u>O-BA (Open Space and Buffer Area)</u>	Not Applicable								
<u>I-1 (Light Industrial)</u>	Not Applicable								

Footnotes:

+ No side yard is required in the C-1 District except along a side lot that forms a boundary line between such districts and a Residence District. A side yard shall be required to conform to the residential districts that it abuts as indicated above.

* In case of shopping center type of commercial center, minimum lot size is 30,000 square feet.

When abutting a Residential District.

The following are the dimensional requirements for the HPR District:

HPR Dimensional Requirements	Area	Frontage	Front Setback	Rear Primary	Rear Accessory	One Side	Both Sides	Min sf/family	Max lot coverage by Building	Max Height	
	Sq ft	ft	ft	ft	ft	ft	ft	Sq ft	%	Stories	Height
<u>District</u>											
<u>Canal District</u>											
One-family, Detached	6000	60	20	20	5	5	15	6000	50	2.5	45
One-family, Attached*	1760	22	10	20	5	5	10	1760	60	3	45
<u>Officers Row</u>											
One-family, Detached	7500	75	20	20	5	15	30	6000	35	3	45
Two-family, Attached*	7500	75	20	20	5	15	30	3000	40	3	45
<u>Marina Village</u>											
Multifamily and Commercial Mixed Use	5000	50	5	5	n/a	n/a	n/a	n/a	n/a	5	65
<u>Theater District</u>											
Commercial	5000	35	10	20	n/a	5	n/a	n/a	n/a	3	45
<u>Quartermaster Place District</u>											
Two-family, Attached*	4000	30	20	20	5	15	30	2000	60	3	45
Multifamily and Commercial Mixed Use	5000	35	10	20	n/a	5	n/a	n/a	n/a	2.5	45
<u>Barracks District</u>											
Two-family, Attached*	4000	30	10	20	5	5	10	2000	60	3	45
Multifamily and Commercial Mixed Use	5000	50	10	20	n/a	n/a	n/a	n/a	n/a	3	45
<u>Battery Row District</u>											
One-family, Detached	6000	60	20	20	5	5	15	6000	50	2.5	45
Two-family, Attached*	4000	30	20	20	5	15	30	2000	60	3	45
Commercial	5000	35	10	20	n/a	5	n/a	n/a	n/a	3	45
<u>Reeves Farm District</u>											
One-family, Detached	6000	60	20	20	5	5	15	6000	50	2.5	45
Two-family, Attached*	4000	30	20	20	5	15	30	2000	60	3	45
Multifamily and Commercial Mixed Use	5000	50	10	20	n/a	n/a	n/a	n/a	n/a	3	45

Footnotes:

*For "Attached" dwellings, the interior buildings shall have a zero (0) setback.¹²

¹² HPR Dimensional Requirements was adopted with Ordinance 17-0227-03 on March 20, 2017 and amended by Ordinance 19-0520-01 on June 17, 2019.

Article VII Application of Regulations**Section 46-32 Use**

Except as hereinafter provided no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the use regulations herein specified for the district in which it is located.

Section 46-33 Height and Density

Except as hereinafter provided, no building shall hereafter be erected or altered so as to exceed the height limit, nor shall any building or land be used or occupied hereafter in excess of the maximum density requirements of Article V of this Chapter, for the district in which it is located.

Section 46-34 Lot Occupancy

Except as hereinafter provided, no building shall hereafter be erected or altered so as to occupy a greater percentage of the lot area, nor shall any side, rear or front yard be narrower or smaller than is required for the district in which it is located.

Section 46-35 Yard Use Limitation

Except as hereinafter provided, no yard or other open space provided about any building for the purpose of complying with the regulations of this Chapter shall be included as a part of a yard or other open space for any other building.

Sections 46-36 to 46-40 Reserved

Article VIII General Provisions

Section 46-41 One Principal Building Per Lot

Within residential districts no more than one (1) principal building with its customary accessory buildings may occupy or be constructed upon any lot of record.

Section 46-42 Reduction In Lot Area

No lot may be reduced in area below the minimum lot areas as specified herein for the district within which it is located.

Section 46-43 Distance Between Buildings

Except as herein provided, no accessory building, except a garage, shall be located closer than ten (10) feet to a principal building or to any other accessory building. Accessory buildings may be located in rear yards to within seven (7) feet of a rear or side lot line.

Section 46-44 Street Access

No building shall hereafter be constructed on a lot that does not have frontage on a publicly dedicated, accepted and maintained street, or a private street that conforms to accepted street standards of the city.

Section 46-45 Interference With Traffic or Traffic Signals

In any district, no outdoor advertising sign or structure or tree shall protrude from any property over any street or create confusion around, or otherwise interfere with traffic or traffic signals.

Section 46-46 Vision Clearance at Corners

No fence, building, sign, planting or obstruction above a height of two and one-half (2 ½) feet shall be maintained within twenty (20) feet of the intersection of the right-of-way lines of two (2) streets.

Section 46-47 Frontage on Corner Lots and Double Frontage Lots

On corner lots fronting on more than one (1) street, the minimum front yard shall be provided for each street in accordance with the provisions of this Chapter.

Section 46-48 Utilities Location

Utilities such as sewage and water treatment plants and pumping stations and standpipe for public water supply may be located in any district. In such cases the following requirements shall be complied with:

- a.) Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which they are a part.
- b.) Any building or structure except an enclosing fence, shall be set back at least fifty (50) feet from any property line.
- c.) Open space on the premises shall be suitably landscaped and maintained.
- d.) When such facilities are located within any residential or commercial district, the open storage of vehicles and equipment on the premises shall be prohibited.
- e.) The surrounding area shall not be adversely affected by noise, odor, glare, dust, fumes, gas, smoke or vibration.
- f.) Suitable fencing of the utility may be required.
- g.) Such facilities are not permitted in the Historical district.

Section 46-49 Construction Trailers

The temporary use of construction trailers for office and commercial purposes only at a construction site shall be permitted if a special exception is granted by the Board of Adjustment. Permanent storage trailers are not allowed.

Section 46-50 Restoration

Nothing in the Chapter shall prevent the strengthening or restoration of a wall or a structural member in a nonconforming building when such action is lawfully directed by authorized official of the City of Delaware City for the interest of safety or health.

Section 46-51 Junk Yards

Junk yards shall not be permitted in any district.

Section 46-52 Prohibited Signs

The following signs are strictly prohibited: Billboards, Roof Signs, Animated Signs, and Balloon Signs.

Section 46-53 Nonconforming Uses Permitted

Except as herein specified, the use of any building or land existing at the time of the effective date of this Chapter may be continued although such use does not conform to the provisions of this Chapter.

Section 46-54 Change to Another Nonconforming Use Not Allowed

No nonconforming use may be changed to another nonconforming use.

Section 46-55 Repairs and Alterations

Repair and alteration of nonconforming uses shall be permitted; provided that no nonconforming use shall be enlarged or enhanced in any way and that no nonconforming use may be enhanced by combining with a conforming use.

Section 46-56 Destruction

A nonconforming building which is destroyed by fire, explosion or "Act of God" may be rebuilt and used for the same purpose, provided that:

- a.) The reconstruction of the building is begun within six (6) months of the date the building was destroyed and is carried through to completion without undue delay. The Board of Adjustment may grant an extension of not exceeding an additional six (6) months within which the reconstruction may be commenced in any case where the delay has been the result of causes outside of the control of the owner of the building.
- b.) The reconstructed building does not exceed in height and area the building destroyed.
- c.) If the building is nonconforming due to a use that is not appropriate for the zoning district, a special exception must be granted by the Board of Adjustment to allow use for the same purpose. For such, reconstruction is to begin within six (6) months of the order of the Board of Adjustment.

Section 46-57 Abandonment

Whenever a nonconforming use has been discontinued for a period of six (6) months, such use shall not thereafter be re-established, and a future use shall be in conformity with the provisions of this Chapter. As for any existing Sign, as defined in Article X of this section, that is

non-conforming and subsequently destroyed, for any reason, the use is forever destroyed and may not be re-established for any reason.¹³

Section 46-58 Construction Approved Prior to This Code

Nothing contained in this Chapter shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the actual construction of which has begun. Actual construction is hereby defined to mean the completion of the foundations of the structure except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual, provided that work shall be diligently carried on until completion of the building involved.

Section 46-59 Storage of Hazardous Materials

Neither refining nor storage of flammable, explosive or carcinogenic materials nor the manufacture or storage of gunpowder and fireworks is allowed in any district except as follows:

- a.) Motor fuel storage and use at approved automobile service stations and marinas.
- b.) Unloading, storage and loading of fuels and products having DNREC permits at the loading docks in the M-1 District.
- c.) Quantities of gunpowder for personal recreational use.
- d.) Products for personal, household or recreational use.

Section 46-60 Location of Private and Community Garages

A private garage constructed as an accessory use in a residential district shall be subject to the following special provisions in regard to its location:

- a.) It may be constructed within a rear yard provided it is distant at least seven (7) feet from the side lot.
- b.) In the case of a corner lot, it shall be distant at least seven (7) feet from the rear lot line, except that, if more than fifty (50) percent of a private garage extends within that half of the rear lot nearest the side street, it shall set back from the rear lot line a distance equal to the required minimum width of a side yard for the district within which it is located.
- c.) Upon mutual agreement between property owners, party-wall private garages may be built across a common lot line.

¹³ Section 46-57 was amended with Ordinance 16-1017-01 and adopted on 11-21-16.

d.) An attached private garage shall be subject to the yard requirement of the principal building.

e.) A private garage or group of private garages accessory to garden apartments shall, however, in exception to the above provisions of this Section, be distant at least ten (10) feet from any side or rear lot line.

f.) Community garages when built on the same lot as a principal building shall be located in conformance with the requirements of this Section for private garages, but when built as the principal use on a separate lot they shall conform to the setback provisions for a principal building for the district within which it is located and with the side yard and rear yard provisions for a private garage as given in paragraphs a and b of this Section; in any case there shall be a distance of six (6) feet between separate structures housing such garage space.

g.) Community garages when built as the principal building on a separate lot require a special exception of the Board of Adjustment.

Section 46-61 Location of Commercial Parking Lots

A commercial parking lot shall be subject to the following provisions:

a.) No commercial parking lot shall hereafter be erected or placed within one hundred (100) feet of any residential section.

b.) No commercial parking lot shall have an entrance or exit connected with a public street at a point closer than two hundred (200) feet measured along the same street line in the same block of any church, library, charitable institution, school, college, nursing home or hospital and similar uses of any entrance or exit thereto.

Section 46-62 Variances and Special Exceptions

Variances and special exceptions are subject to the following provisions:

a.) Construction shall begin within twelve (12) months from the date of an order of the Board of Adjustment or the variance or special exception is null and void.

b.) When the Board of Adjustment grants an exception for a nonconforming use, this use must commence within twelve (12) months or the exception is null and void.

Section 46-63 Subdivisions

Subdivisions are subject to the following provisions:

- a.) Each lot of a subdivision shall meet the minimum dimension, area and setback requirements for the district in which it is located.¹⁴
- b.) Any portion of a lot that has been subdivided shall not be further subdivided for a period of five (5) years from the date of the original subdivision. This provision does not apply to any lands zoned Historic Preservation and Redevelopment (HPR).¹⁵
- c.) A subdivision requires approval of a majority of all the members of council.

Section 46-64 Fences

No fence, wall, or other open enclosure shall be erected on any property which does not comply with the following requirements:

- a.) A permit or other written approval of the City must be granted prior to the construction, alteration, replacement, or removal of any fence, wall, or enclosure, provided, however, that non-permanent edging less than one foot (1') tall shall be exempt from this requirement.
- b.) Fences constructed within the Delaware City Historic District must also comply with the provisions of Chapter 49 of the Code of the City of Delaware City and are subject to review and approval by the Historic Preservation Commission.
- c.) No fence or other enclosure shall be erected or maintained in the public right-of-way without the written approval of the City.
- d.) Fences in side or rear yards shall be no more than six feet (6') high, measured from the surrounding grade.
- e.) Fences in front yards shall be no more than four feet (4') high, measured from the surrounding grade, unless otherwise required by this Chapter. Corner properties are considered to have two (2) front yards, when directly abutting public streets.
- f.) No fence in, or directly abutting, a residential district shall be constructed which contains barbed or razor wire.
- g.) The finished side of any fence shall face outward from the property.
- h.) Fences shall be set back from the front property boundary the same distance as the minimum building setback requirement for the zoning district in which the property is located, or to the actual building setback, whichever is less. Corner lots are considered to have two (2) front setbacks, provided, however, that the minimum setback for an open rail or picket fence no more than 4' (four feet) high on the secondary frontage (side yard) shall be three feet (3').

¹⁴ Section 46-63a) amended by Ordinance 04-0920-01 (adopted 10-18-04)

¹⁵ Section 46-63b) Amended by Ordinance 16-0620-01 (Adopted 7-18-16)

i.) For fences and walls within the Historic District, the Delaware City Historic Preservation Commission may permit a lesser setback, without the need for a variance from the Board of Adjustment, or may require a greater setback when it deems necessary.

j.) Fences located between the limits of the front or side façade plane of any principal use structure and an abutting public street shall be constructed of open rails or pickets (less than 80% solid), however open wire mesh may be installed on the property side of the fence for pet or child containment. Chain link, solid, privacy, or stockade type fencing is not permitted under this subsection.

k.) Fences proposed for construction within the Delaware City Historic District shall be subject to design review and approval by the Delaware City Historic Commission, prior to the issuance of a permit, as provided in Chapter 49 of this Code.¹⁶

Sections 46-65 to 46-70 Reserved

¹⁶ Section 46-64 Adopted by Ordinance 08-0128-01 (adopted 5-19-08)

Article IX Exceptions and Modifications

Section 46-71 Lot of Record

Where the owner of a lot of official record in any district at the time of the adoption of this Chapter or his successor in title thereto does not have sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Chapter, but such lot met the requirements for lot size of the former Chapter, such lot may be used as a building site, provided, however, that the other requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

Section 46-72 Front Yard Setbacks For Dwellings

The front yard setback requirements of this Chapter for dwellings shall not apply to any lot where the average setback of the existing building is located wholly or partially within one hundred (100) feet on either side of the proposed dwelling and on the same side of the same block and within the same use district and fronting on the same street as such lot is less than the minimum required front yard depth. In such case the setback on such lots may be less than the required setback as determined by the Planning Commission, and, if applicable, the Historic Preservation Commission.

Section 46-73 Group Projects

In the case of two (2) or more buildings to be constructed on a plot of ground of at least six (6) acres not subdivided into customary streets and lots and which will not be so subdivided, the application of the terms of this Chapter may be varied by the Board of Adjustment in a manner that will be in harmony with the neighborhood, provided:

a.) Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board authorize a use prohibited in the district in which the project is to be located.

b.) The overall density of land use is no higher, and the standard of open space is no lower than that permitted in the district in which the project is located.

c.) The distance of every building from the nearest property line shall meet the front yard setback and side yard requirements of the district in which the project is located.

d.) The building heights do not exceed the height limits permitted in the district in which the project is located.

e.) If the property lies within or abuts upon a residential district, and is to be used for a non-residential purpose, there shall be a densely planted landscape screen at least eight (8) feet in height along the rear and/or side lot lines abutting the residential properties. No such landscape screen shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.

Sections 46-74 to 46-80 Reserved

Article X Sign and Outdoor Advertising Regulations

The purpose of the adoption of these sign ordinances is to enhance the aesthetic appeal, and maintain the historical charm of Delaware City, as well as protect the health, safety, and welfare of its residents and visitors.

Section 46-81 R-1 District (Single Family Residential), R-2 District (One and Two Family Residential); C-1L (Commercial Low Impact)

The following signs are permitted:

- a.) Signs to regulate traffic.
- b.) Signs required to be posted by law.
- c.) Warning signs.
- d.) Signs established by governmental regulation.
- e.) Signs indicating bus stops, taxi stands and similar transportation facilities.

f.) One (1) sign located on premises used as a professional or business office or studio of a physician, dentist, lawyer, non-profit organization, architect, engineer, musician, artist, teacher, real estate broker, registered nurse or other similar professional person, for each such use. Such signs shall not exceed two (2) square feet in area, be motionless and shall not have illumination.

g.) One (1) temporary business or service related sign per parcel. No such sign shall exceed twelve (12) square feet in area and shall meet all other provisions of a temporary sign definition.

h.) Identification signs, in conjunction with residential usage or a C-1L area or a HPR area, to exceed one and one-half (1 ½) square feet in area.

i.) Directional signs.

j.) One (1) sign located on premises used as a Bed & Breakfast or tourist home, not to exceed six (6) square feet in area per frontage and no higher than the roofline of the structure.

k.) Animated signs, balloon signs, mural signs, digital signs, roof signs, and billboards are prohibited. No sign, other than directional signs, shall exceed twenty-five (25) square feet in size.

Section 46-82 R-3 District (Multifamily)

The following signs are permitted in any R-3 District:

- a.) All signs permitted within the R-1, R-2, and C-1L Districts.

b.) One (1) sign not to exceed twenty (20) square feet in area located on premises used as a garden or other existing apartment structure having a minimum of one hundred (100) feet of street frontage.

c.) Animated signs, balloon signs, mural signs, digital signs, roof signs, and billboards **are prohibited**. No sign, other than directional signs, shall exceed twenty-five (25) square feet in size.

Section 46-83 C-1 (Central Commercial) and C-1M (Marina)

The following signs are permitted in the C-1 and C-1M Districts:

a.) Signs located on premises used as a business, can be illuminated by any conventional method except that no animated, revolving, flashing, or moving lights shall be permitted.

b.) No sign shall be erected in such a manner as to interfere with vision from a motor vehicle using an access or egress to a commercial establishment.

c.) Animated signs, balloon signs, digital signs, roof signs, and billboards are prohibited.

d.) One (1) portable sign not to exceed (8) sq. feet in area, placed by a licensed business, and placed on the property where the business is located.

e.) Projecting Sign

Section 46-84 C-2 District (General Commercial)

The following signs are permitted in the C-2 District:

a.) All signs permitted within the C-1 District except identification signs in conjunction with residential usage.

b.) Animated signs, balloon signs, digital signs, roof signs, and billboards **are prohibited**.

Section 46-85 OS-R District (Open Space – Recreation) and OS-BA District (Open Space and Buffer Area)

The following signs are permitted in any OS-R and OS-BA District:

a.) One (1) sign, that does not exceed fifty square (50) feet in area.

b.) Section (a) notwithstanding, amateur athletic fields may have up to three signs (which may be digital, animated, and illuminated signs) per athletic field.

Section 46-86 HPR (historic Preservation and Redevelopment) Signage Standards

The following signs are permitted in the HPR Districts:

- (a) The Canal District shall allow all signs permitted in any R-1 and R-2 Districts.
- (b) Officers Row shall allow all signs permitted in any R-1 and R-2 Districts.
- (c) Marina Village shall allow all signs permitted in any R-3, C-1, and C-1M Districts.
- (d) Theater District shall allow all signs permitted in any C-1 District
- (e) Quartermaster Place District shall allow all signs permitted in any R-3, C-1 and C-1L Districts.
- (f) Barracks District shall allow all signs permitted in any R-3 and C-1 Districts.
- (g) Battery Row District shall allow all signs permitted in any R-3 and C-1 Districts.
- (h) Reeves Farm District shall allow all signs permitted in any R-3 and C-1 Districts.
- (i) Parade Grounds shall allow all signs permitted in any C-1 or OS-R Districts.
- (j) Grass Dale District shall allow all signs permitted in any C-1 District.
- (k) National Guard District shall allow all signs permitted in any C-1 District.¹⁷

Section 46-87 M-1 District (Light Industrial)

The following signs are permitted in any M-1 District:

- a.) All signs permitted within the OS-R District.

Section 46-88 R-MM District (Manufactured/Mobile Home Residence)

The following signs are permitted in any R-MM District:

- a.) All signs permitted in the R-1, R-2 and R-3 Districts.

Section 46-89 General Provisions

Unless herein provided, signs shall be placed behind the property line with the exception of signs to regulate traffic and direct traffic, or those required by law. No sign shall be located in public rights-of-way within the incorporated boundaries of the City.

¹⁷ Section 46-85 was amended and 46-86 was adopted with Ordinance 19-0128-01 Adopted 2-25-19

Section 46-90 Banners

a.) A permit for the use of a Banner Sign in the C1, C2, C-1M, C2 and M1 districts, must be received from the City prior to display. The size of a Banner Sign shall not exceed twenty (20) sq. feet. A banner permit issued under this subsection shall not be issued for a period of time lasting more than thirty (30) days. No more than two (2) banner permits shall be issued for any property, or individual or entity, in any calendar year.

b.) Subsection 2) the foregoing notwithstanding, the City Manager may grant a permit for a Banner Sign not to exceed 110 sq. feet for parades, neighboring community sponsored events and City sponsored special events, provided that the Banner Sign is required to be removed within thirty (30) business days of the installation of the special event or parade the Banner sign is associated with.

Section 46-91 Portable Signs

Portable signs as defined herein may be permitted and may not exceed eight (8) square feet in area. Such signs shall not block reasonable passage on sidewalks and are strictly prohibited in or on public streets, rights-of-way and/or alley ways.

Section 46-92 Digital Signs

Digital signs are only permissible on City owned property. Notwithstanding any provision of this Chapter, Digital Signs in existence prior to the adoption of the definition of Digital Signs shall be a legally existing non-conforming use which is grandfathered.

Section 46-93 Permits

All signs require a permit except for: (1) signs to regulate traffic, (2) signs required to be posted by law, (3) warning signs, (4) no trespassing signs, (5) signs established by governmental regulation, (6) signs indicating bus stops, (7) portable signs, (8) temporary signs. Permits shall be issued in accordance with a defined fee schedule set by the City Manager.

Section 46-94 Compliance and Penalties

(a) The City Manager or his or her designee shall have the authority to enforce the sign ordinance and impose fines as provided herein.

(b) All persons in violation of Article X of this code relating to signs shall be notified by certified mail or certificate of mailing and be given five (5) days to comply with requirements of

this code. An extension to said time period may be granted for due cause as determined by the City Manager or his or her designee.

(c) A fine in the amount of twenty-five dollars (\$25.00) per day per violation may be imposed for non-compliance with this Article X and shall commence on the sixth day after the five (5) day notice referenced herein is sent. In addition, the City Manager may direct the City Solicitor or special counsel to seek injunctive relief to abate any violation and/or seek removal of any sign not complying with this Code six (6) days after a violation notice is sent or at an earlier time if such sign is a danger to the public health, safety, or welfare.

(d) Decisions of the City Manager or his or her designee under this section may be appealed to the Board of Adjustment.

Section 46-95 Corner Lots

Relates to Commercial Corner lots that abut two streets.

In the C1, C2, C-1M and M1 districts, for properties that are corner lots abutting 2 streets such corner lots are permitted to have signs that face each street so long as the type of signs utilized are permitted in the underlying commercial or manufacturing zoning district. This section permits signs to be placed on a corner lot in commercial or manufacturing districts even if the underlying commercial or manufacturing zoning classifications allows one sign.¹⁸

¹⁸ Chapter 46 Article X was Adopted with Ordinance 18-0820-01 on September 17, 2018

Article XI Off-Street Parking and Loading Requirements

Section 46-96 Off-Street Parking Requirements

All uses permitted under this Zoning Chapter shall be subject to the following minimum requirements:

TYPES OF USES	STANDARDS
Retail stores, all types, supermarkets	One (1) space per two hundred (200) square feet of floor area used or designed for sales on ground floor plus one (1) space per three hundred (300) square feet of floor area used or designed for sales on all other floors plus one (1) space per each two (2) employees.
Banks and other financial institutions	One (1) space per two hundred (200) square feet of gross floor area.
Beauty and barber shops: personal services	One (1) space per two hundred (200) square feet of gross floor area.
Furniture and appliance stores	One (1) space per four hundred (400) square feet of floor area devoted to sales.
Roadside stands, new and used car and boat sales, mobile home dwelling unit sales, truck and trailer sales, outdoor equipment and machinery sales, commercial nurseries.	Four (4) spaces per salesperson, plus one (1) space per two (2) other employees during the period of greatest employment.
Funeral homes	One (1) space per sixty (60) square feet of floor area available for seating accommodations, plus one per employee.
Hotels and motels	One (1) space for each guest room plus one (1) space for each three (3) employees.
Bowling alley	Five (5) spaces for each alley.
Rooming and boarding house	One (1) space per roomer or boarder, in addition to normal requirements for the swelling unit.
Business, governmental and professional offices	One (1) space per three hundred (300) square feet of gross floor area.
Marina	Three (3) spaces for each ten (10) boats accommodated.
Indoor and outdoor commercial recreation	One (1) space for each one hundred fifty square (150 ²) feet of gross floor, building or ground area devoted to such use or one (1) space per four (4) seats of facilities available for patron use, whichever is applicable.
Restaurant with a drive-in facility or franchise with sit down service	Twenty-five (25) spaces minimum, plus one (1) space for each one hundred (100) square feet of gross area.
Restaurants, diners, and night clubs	One (1) space per three (3) seating accommodations plus one (1) space per two (2) employees on the shift of greatest employment.

Dwelling, single family	Two (2) space per dwelling unit.
Dwelling, two family	Two (2) space per dwelling unit.
Dwelling, multi-family	Two (2) spaces per dwelling unit.
Nursing home, convalescent home, rest home, home for the aged	One (1) space per four (4) patient beds, plus one (1) space for two (2) employees on the shift of greatest employment.
Automotive service station or public garage	One (1) space per one thousand (1000) square feet of gross floor area, plus one (1) space per employee during the period of greatest employment.
Hospital	One (1) space per three (3) beds intended for patients (except bassinets or beds in student nurses quarters) plus one (1) space per two (2) employees on the shift of greatest employment.
Churches	One (1) space per five (5) seats or one (1) space per ninety (90) feet of linear inches of pew space.
Museum and art gallery, and similar uses	One (1) space per four (4) seats in rooms for public assembly or for each one hundred fifty (150) square feet of gross floor area for use by the public, whichever is greatest plus one (1) space for each (2) employees on the shift of greatest employment.
Public Library, Post Office	One space per four hundred (400) square feet of gross floor area devoted to patron use, plus one (1) space per two (2) employees on the shift of greatest employment.
Fire Station	One (1) space per person on duty on a normal shift.
Elementary and junior high school	Three (3) spaces per room used for administration offices, plus one (1) space used for classroom instruction, plus one (1) space for five (5) seats in auditorium and other places of assembly or facility available to the public.
Senior high school, trade and vocational school, college and university	Five (5) spaces per room used for administration offices, plus one (1) space per room used for class instruction, plus one (1) space for each five (5) seats in auditorium and other places of assembly or facility available to the public.
Auditorium, stadium, assembly hall, gymnasium, theater, community recreation center	One (1) space for four (4) fixed seats in largest assembly room or area or for each forty square (40 ²) feet of floor area available for the accommodation of moveable seats in the largest assembly room, or one (1) space per one hundred fifty (150) square feet of gross floor area, whichever is applicable to the facility.
Social, fraternal, social service, union and civic organization building	One (1) space per sixty (60) square feet of assembly area, plus one (1) space per each employee.

Day nursery, kindergarten, pre-school and day care center	One (1) space per adult attendant, plus one (1) space per five hundred (500) square feet of gross floor area devoted to such uses.
Industrial, manufacturing and wholesaling establishment	One (1) space per two (2) employees on the shift of greatest employment, plus one (1) space per two hundred (200) square feet of floor area devoted to sales.
Dormitory	One (1) space per three (3) residents.
Department stores	One (1) space per one hundred (100) square feet of basement and first floor sales area plus one (1) space per two hundred (200) square feet of all other sales areas, plus one (1) space for each two (2) permanent employees.
Airport, railroad passenger station and bus terminal	One (1) space per four (4) seating accommodations for waiting passengers, plus one (1) space per two employees on the shift of greatest employment.
Indoor courts, shopping center	Seven (7) spaces per court plus five and half (5½) spaces per thousand (1000) square feet of gross leasable floor area.
Bed & Breakfasts	To be determined on a case by case basis by the Board of Adjustment taking into consideration the unique facts and circumstances of each case and the requirements of Charter 46, Article XIII, Section 46-121 c.) 7.) as part of the Special Exception approval process. ¹⁹
All Dwelling Units	Garages do not count as a parking space(s) for any type of dwelling unit.
All Residential Dwelling Units	On-street parking shall not be considered as off-street parking, unless: - A.) Approved by the Board of Adjustment. - B.) Dwelling units shall not take credit for on-street parking if there is impact upon parking for commercial properties.

Section 46-97 Loading Spaces

No building or structure shall be erected in any district for the uses listed below unless loading space for the accommodation of trucks is provided on the premises in accordance with the following regulations:

¹⁹ Section 46-96 Amended by Ordinance 08-0507-01 (adopted 6-16-08)

a.) For retail stores, markets, wholesale and jobbing establishments, and storage warehouses, the number of berths based on the gross floor area devoted to such use is as follows:

- 1.) 5,000 to 8,000 square feet of floor area One (1) berth
- 2.) 8,000 to 20,000 square feet of floor area Two (2) berths
- 3.) Each additional 20,000 square feet or fraction thereof up to a maximum of 60,000 square feet of floor area One (1) additional berth

b.) For office buildings and hotels, the number of berths based on the gross floor area devoted to such uses is as follows:

- 1.) 8,000 to 20,000 square feet of floor area One (1) berth
- 2.) Each additional 50,000 square feet of or major fraction thereof up to a maximum of 120,000 square feet of floor area One (1) additional berth

c.) Each manufacturing and industrial establishment with a total of five thousand (5,000) square feet of gross floor area devoted to such uses shall provide loading space adequate, in the opinion of The Planning Commission, to accommodate the normal demands for loading and unloading incidental to the type of use proposed on the premises. A statement outlining these demands and a plan showing the location on the lot of the space to be provided shall accompany the application for a certificate of occupancy. No such certificate shall be issued unless the required loading space shall have been provided in accordance with that designated on the approved plan.

Section 46-98 General Provisions

a.) Parking spaces in driveways. Driveways shall be considered as constituting off-street parking spaces in residential districts, provided that sufficient spaces are available on such driveways to meet the requirements of this Article.

b.) Locations of parking spaces for commercial uses: Parking spaces shall be located so that no spaces are a greater distance than six hundred (600) feet from the building or use to which they are assigned; provided that this requirement shall not apply to parking spaces assembly; wholesaling establishments; hospitals.

c.) Parking spaces assigned to one use. The parking spaces for separate buildings or uses, satisfying the location requirement of Section b, may be combined in a single lot provided the number of parking spaces in the lot shall equal the sum of the parking spaces required for each building and use, except, that the parking spaces required for places of assembly may include parking spaces assigned to other uses provided that the place of assembly shall not be used at a time when the other uses are carried on.

d.) Parking plans required. Plans for public lots, garages, storage area operated on a commercial basis and parking areas accessory to multi-family, commercial and office uses shall show the number of spaces and arrangements of parking aisles, location of driveway entrances, provisions for vehicular and pedestrian circulation, locations of sidewalks and curbs on or adjacent to the property, utilities, barriers and such other information or plans as the circumstances may warrant and shall be submitted with the application for a building permit or certificate of occupancy. Any building permit issued in connection with such use shall be conditional upon compliance with such plans, and no certificate of occupancy shall be issued unless the required parking facilities shall have been provided in accordance with those designated on the approved plan.

e.) Barriers required. Barriers shall be erected on all parking lots; the barriers to be so designed and located to prevent parked vehicles from extending beyond property lines of parking lots.

f.) Parking lot and garage maintenance. Ground cover, shrubs and trees shall be located and maintained so as not to interfere with vehicular and pedestrian traffic on the property or with sight clearance at entrances and exits.

g.) Fractional space. When the application of a unit of measurement for parking space or loading space to a particular use or structure results in a fractional space, any fraction under one-half ($\frac{1}{2}$) shall be disregarded, and fractions of one-half ($\frac{1}{2}$) or over shall be counted as one (1) parking space or loading space.

h.) Parking space standards. Parking spaces and aisle ways shall be designed in accordance with the following dimensional standard:

Parking Angle	Stall Width	Aisle Way to Curb	Aisle Way Width
90 degrees	9 feet	18 feet	18 ft for one-way traffic
60 degrees	9 feet	18 feet	18 ft for two-way traffic
45 degrees	9 feet	18 feet	14 ft for one-way traffic 18 ft for two-way traffic
Parallel	8 feet	22 feet	14 ft for one-way traffic 22 ft for two-way traffic

In addition, all parking spaces for use in conjunction with public parking lots, garages, and storage areas operated on a commercial basis and parking areas accessory to multifamily, commercial, industrial and office uses shall be appropriately striped.

i.) Paving standard. All off-street parking shall be paved with a suitable weatherproof surface.

j.) Application. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in all districts.

Section 46-99 Handicap Parking

All real property uses in the City of Delaware City, other than residential uses not served by on-lot parking, shall provide parking spaces for motor vehicles which transport disabled persons in accordance with this Section's standards and the Americans with Disabilities Act ("ADA"), as may be amended from time to time, whichever is more restrictive. Notwithstanding the foregoing, lawful real property uses not serviced by on-lot parking and residential use containing four or fewer dwelling units need not comply with this Section's standards unless otherwise required by subsection E hereof.

a.) Handicap parking spaces shall be a minimum of eight (8) feet wide by eighteen (18) feet long with an adjacent parallel access aisle five (5) feet wide. The adjacent parallel access aisle may be shared by two (2) accessible parking spaces. One (1) in every eight (8) accessible spaces shall have an access aisle a minimum of eight (8) feet wide (rather than five (5) feet) and shall be designated by sign as "van accessible".

b.) Handicap parking spaces shall be located as close as possible to an entrance which allows such persons to enter and leave the parking area and building without assistance. Where feasible, this means locations where there is no need to cross vehicular access lanes or aisles. Ramps shall be provided at curbs.

¹ Section 46-96 & 46-98(b) Added by Ordinance 21-0816-01 (adopted 11-15-21)

c.) Handicap parking spaces shall be posted and marked with both a ground-mounted sign and pavement markings which includes the international symbol for barrier free environments and a statement informing the public that the parking spaces are reserved for use by disabled persons.

d.) The required number of off-street handicap parking spaces for each use shall be determined by the following schedule:

<u>Total No. of Parking Spaces Provided</u>	<u>Number of Handicap Spaces Required</u>
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501 or more	2% of total

e.) Single family residential units with on-lot parking and designed to accommodate disabled persons shall provide one (1) on-lot handicap parking space for each dwelling unit designed for such occupancy.

f.) Off-street parking spaces required for the disabled by this section shall count toward fulfilling this Chapter's total off-street parking requirements.

g.) Other Code guidelines for handicap accessibility to public facilities shall be in accordance with regulations issued by federal agencies, including the United States Department of Justice, under the Americans with Disabilities Act of 1990. The City Manager shall be authorized to adopt reasonable rules and regulations to implement the provisions of this Section and such federal regulations.

h.) Whosoever shall violate any of the provisions of this Section or otherwise violate any of the rules and regulations adopted pursuant to this Section shall be guilty of a violation punishable by a fine of one hundred dollars (\$100.00) for each occurrence. Notwithstanding the foregoing, no person or artificial entity shall be guilty of such violation unless the City Manager or law enforcement officer of the City of Delaware City shall first have issued a written warning

to such person or artificial entity which warning shall allow for at least 30 days to come into compliance. Thereafter, each day of non-compliance hereunder shall represent a separate and independent violation and the City Manager or law enforcement officer of the City of Delaware City may issue a summons or apply for a warrant of arrest in the name of the offending individual or artificial entity.²⁰

Sections 46-100 to 46-105 Reserved

²⁰ Section 46-99 Added by Ordinance 04-0126-02 (adopted 3-15-04)

Article XII Interpretation and Administration

Section 46-106 Interpretation of Regulation

In their interpretation and application the provisions of this Chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity or general welfare; for the lessening of congestion in the streets or roads or reducing the waste of excessive amounts of roads; for securing safety from fire and other dangers, providing adequate light and air and preventing excessive concentration of population, excessive and wasteful scattering of population or settlement; for promoting such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate and provide adequate provisions for public requirements, transportation, water flowage, water supply, drainage, sanitation, educational opportunities, recreation, soil fertility and food supply; and for the protection of the tax base, securing economy in governmental expenditures, fostering agricultural and other industries, and the protection of both urban and non-urban developments.

It is not intended by this Chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing law or any rules or regulations made by a Department of the State of Delaware or other applicable laws regulating the use or construction of buildings, the provisions of yards, courts or other open spaces or the provisions of sanitary facilities; provided, however, that where the provisions of this Chapter require larger yards or courts, lesser heights or bulks of buildings or provide more extensive sanitary facilities than do the aforementioned laws, rules or regulations than provisions of this Chapter shall govern.

Section 46-107 Enforcement and Penalties

This Chapter shall be enforced by the Mayor and City Council of Delaware City. No building permit or certificate of occupancy shall be granted by the City of Delaware City for any purpose except in compliance with the provisions of this Chapter, or a decision of the Board of Adjustment, or the courts.

For any and every violation of the provisions of this Chapter, the owner, general agent, lessee or contractor of the building or premises where such violation has been committed or shall exist and the owner, general agent, contractor, lessee or tenant of any part of the building or premises in which a part of such violation has been committed or shall exist, and any other person who knowingly commits, takes part or assists in such violation or who maintains any building or premises in which any such violation shall exist, for each and every violation and for each and

every day that such a violation continues shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) or be imprisoned for not more than ten (10) days or both. Each and every day during which such an illegal erection, construction, reconstruction, alteration, maintenance or use continues shall be deemed a separate offense.

In the case of any such violation, the Mayor and City Council of Delaware City, the attorney thereof or any owner of real estate within the district in which such building, structure or land is situated, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

Section 46-108 Reserved

Section 46-109 Reserved

Section 46-110 Payments to City, County and School District

All rezoning requests, building, alteration, subdivisions plans and other development proposals, including special exceptions, site plan review and approvals and any special exceptions or variances by the Board of Adjustment and/or the City of Delaware City shall not become effective and final until the applicant has provided the City of Delaware City with proof of payment in the form of a certification from the City of Delaware City and New Castle County that all City application fees, municipal taxes, municipal water charges, fees and expenses and all other amounts due the City of Delaware City and New Castle County taxes and school district taxes have been paid on the land, which is the subject of the rezoning, building, alteration, subdivision plans and other development proposals, including special exceptions, site plan review and approvals and any special exceptions or variances by the Board of Adjustment and/or the City of Delaware City.

Section 46-111 Notice to Abutting and Adjacent Property Owners

All requests for subdivision, development plan, variance, special exception or rezoning shall require that the City of Delaware City send by certified mail, return receipt requested, a copy of the public notice for the public hearing to all abutting property owners of the tax parcel involved in such request and all adjacent property owners across any public or private right of

way from the tax parcel involved in such request. Such notice by US Certified Mail, return receipt requested, shall be mailed by the City Hall at least ten (10) days prior to any public hearing scheduled to consider any request for subdivision, development plan, variance or rezoning. In addition to notice by US Certified Mail, return receipt requested, all properties for which a request for subdivision, development plan, variance, special exception or rezoning has been formally made to the Mayor and Council or the Board of Adjustment of the City of Delaware City shall have a notice of the public hearing prominently posted at, on or in front of the property to be considered at such public hearing at least ten (10) days prior to public hearing to consider such action.

Section 46-112 Permits for Properties with Unresolved Issues

No building permit will be issued if there are any unresolved issues concerning zoning, building or housing code violations. This applies not only to the property applied for, but to any and all properties located in the City of Delaware City in which the applicant has a vested interest.

Sections 46-113 to 46-115 Reserved

Article XIII Board of Adjustment

Section 46-116 Membership, Terms, Removals, Vacancies

The Board of Adjustment of Delaware City shall consist of five (5) members who shall be residents of Delaware City and who shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the City. The Mayor shall appoint such members of the Board of Adjustment, and all such appointments shall be confirmed by a majority vote of the members of City Council.

Each member of the Board of Adjustment shall be appointed for a period of three (3) years, except that one (1) of the initial members shall be appointed for a one (1) year term, one (1) of the initial members shall be appointed for a two (2) year term, and one (1) of the initial members shall be appointed for a three (3) year term. All subsequent appointments to the Board of Adjustment shall be for a period of three years unless such appointments increase the number of members of Board of Adjustment. In the event subsequent appointments to the Board of Adjustment increase the number of members of the Board of Adjustment, the length of such members' terms shall be determined and established in such a way that no more than two (2) members' terms expire in any given year.²¹ A vacancy occurring other than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment. The Board of Adjustment so selected shall elect from among its own members a chairperson and a secretary.

Any member of the Board of Adjustment may be removed from office by the City Council for cause after a hearing by a majority vote of all the City Council.²²

Section 46-117 Procedures

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Chapter. Meetings shall be scheduled as needed. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. A quorum shall consist of two (2) members. All meetings shall be open to the public.

The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and such records

²¹ Section 46-116 Amended by Ordinance 19-0916-03 Adopted October 21, 2019

²² Section 46-116 Amended by Ordinance 13-0225-01 Adopted on March 18, 2013

of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the board.

Section 46-118 Appeals, Hearings and Notice

Appeals to the Board of Adjustment concerning interpretations or administration of this Chapter may be taken by any persons aggrieved or by any officer, department, board, bureau of the governing body of Delaware City or affected by any decision relating to zoning, subdivision, building or other construction. Such appeals shall be submitted by the 20th day of each month for hearing the following month, subject to meeting requirements, by filing a notice of appeal specifying the grounds thereof, with the City Manager acting for the Board of Adjustment. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting a record upon which the action appealed from was taken. The Board of Adjustment shall designate a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest. At the hearing, any party may appear in person or by agent or attorney.

Section 46-119 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the City Manager certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by court of record on application, or notice to the City Manager on due cause shown.

Section 46-120 Explanation of Decisions

On all appeals, application and other matters brought before the Board of Adjustment, said board shall inform, in writing, all the parties involved in its decision and other reasons therefore.

Section 46-121 Powers and Duties

The Board of Adjustment shall have the following powers and duties:

a.) Administrative Review. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination, or notice of violation made by an administrative official of the City in the enforcement or application of this Chapter, Chapter 8,

Article II, or Chapter 31 of the Code of the City of Delaware City, or any Chapters or sections supplement thereto or amendatory thereof.²³

b.) Special Exceptions. To hear and decide only such special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this Chapter, and to grant special exceptions with such additional conditions and safeguards as are appropriate under this Chapter, or to deny special exceptions when not be granted by the Board of Adjustment unless and until:

1.) A written application for a special exception is submitted indicating the section of this Chapter under which the special exception is sought and stating the grounds on which it is requested.

2.) A public hearing shall be held. Notice of such a hearing shall be posted on the property for which the special exception is sought, at City Hall, and in one other public place at least fifteen (15) days prior to the public hearing. The owner of the property for which the special exception is sought or his agent shall be notified by certified mail.

c.) Original Jurisdiction. The Board of Adjustment, after public hearing, upon determining 1.) that a proposed use on a specific lot or parcel is reasonably necessary for the convenience and/or welfare of the public and 2.) that the proposed use on the lot or parcel involved is not detrimental or injurious to the neighborhood or the City may grant a special exception, subject to such conditions as the Board of Adjustments deems necessary to protect the health, safety and welfare of the neighborhood and the city, to permit any of the following uses in the designated districts as provided in the preceding Articles of this Chapter as follows.

1.) In an R-1, R-2, R-3 or C-1 District, the conversion of a one (1) family dwelling into dwelling units for two (2) or more families subject to the special procedures and requirements of Article V, Section 46-16, Paragraph s.

2.) In an R-1, R-2, R-3, C-1 or C-2 District, water towers, water storage tanks, water reservoirs, water pumping stations and water treatment plants per Article V, Section 46-16, Paragraph g.

3.) In an R-1, R-2, R-3, C-1 or C-2 District, a sub-station electric and gas and telephone central office subject to the special requirements of Article V, Section 46-16, Paragraph h.

4.) In an R-1, R-2, R-3, C-1 or C-2 District, day care centers, kindergartens, preschools, day nursery schools and orphanages, subject to the requirements of Article V, Section 46-16, Paragraph i.

²³ Section 46-121 Amended by Ordinance 05-0321-01 (adopted 4-11-05)

5.) In an R-1, R-2, R-3 or C-1 District, a nursing home, rest home or home for the aged, subject to the special requirements of Article V, Section 46-16, Paragraph j.

6.) In an R-3 District, hospital or sanitariums, hospitals for contagious diseases, correctional institutions, sanatoriums or hospitals treating epileptic, drug or alcoholic patients, and asylums for the mentally ill, in each case subject to the special requirements of Article V, Section 46-16, Paragraph d.

7.) In R-1, R-2, R-3 or C-1L District a bed and breakfast, subject to the special requirements in Article V, Section 46-16 r.) and 46-23 c.) respectively, provided, however, that the Board shall ensure that one (1) parking space for each guest room, the Resident Manager and all full time employees is provided in the following order of preference: a.) off-street on-site where feasible and in the public interest; b.) improved on-street parking; c.) improved off-street off-site parking within 600 feet of the proposed bed and breakfast or some combination of the above and the Board may impose such operating and other conditions on the applicant as it deems in the public interest.²⁴

8.) In R-2, R-3 or C-1 a row house per Article V, Section 46-17, Paragraph c.

9.) In an OS-BA District (Open Space and Buffer Area), pumping stations, treatment facilities and disposal structures for materials and substances other than waste water, only on specific approval of each substance or material and only after receipt and consideration of a report from the Delaware City Planning Commission, and the Delaware State Planning Office.

10.) In a C-1 District, the conversion of an existing storefront for residential use.

11.) In any zoning district in the City, the wholesale or retail sale of beer, wine and/or other alcoholic beverages, whether such sales are made at a package store, tavern, taproom, bar, restaurant, bed and breakfast, private club, social hall, public or private event or otherwise. Notwithstanding the foregoing, no special exception may be granted by the Board of Adjustment if the underlying use proposed for the lot or parcel in question is not otherwise permitted in the zoning district where such lot or parcel is located or is otherwise not permitted as a matter of law. By way of example, if a property owner desires to sell alcoholic beverages in conjunction with the operation of a bed and breakfast operation, and a bed and breakfast operation is not permitted in the zoning district in question, then the Board shall have no authority to grant a special exception to permit the sale of alcoholic beverages on such property.

²⁴ Section 46-121 c.) 7.) amended by Ordinance 08-0507-01 (adopted 6-16-08)

12.) In an R-1 zone, one family, semi-detached dwellings per Article V, Section 46-16 t.).

13.) In a C-1 zone, condominium units used for residential, office, business or commercial purposes per Article V, Section 46-20(t) and Section 46-20(u).²⁵

d.) Variances. To hear and decide in specific cases such variances from the provisions of any zoning ordinance, code or regulations that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of the provisions of any zoning ordinance, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map.

e.) Procedures for Requesting a Variance. Requests for variances shall be submitted in writing with the City Manager acting for the Board of Adjustment. The City Manager shall, subject to applicable noticing requirements, cause the variance request to be placed on the agenda for the next regularly scheduled meeting of the Planning Commission. At the same time, the City Manager shall cause a hearing before the Board of Adjustment to be scheduled and any applicable notifications to be given. Upon receipt, the City Manager shall forward the minutes of the Planning Commission meeting to the Board of Adjustment.

Section 46-122 Appeals From the Board of Adjustment Decision

Any person or persons, or any board or bureau of Delaware City aggrieved by any decision of the Board of Adjustment, may present to the Superior Court a petition, duly verified, setting forth that such a decision is illegal, and specifying the grounds of the illegality. Such petition shall be presented to the Court within thirty (30) days after filing of the decision of the Board. Upon the presentation of the petition, the Court may allow a writ of certiorari directed to the Board to review such decision of the Board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than (10) days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the Board of Adjustment, unless it appears to the

²⁵ Section 46-121 amended by Ordinance 05-0815-01 (adopted 10-17-05)

Court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

Section 46-123 Notice Requirements for the Board of Adjustment

In addition to the aforementioned requirements regarding notice and posting, the Board of Adjustment shall adhere to the requirements of Article XII, Interpretation and Administration, Section of the Zoning Chapter of the City of Delaware City.

Sections 46-124 to 46-130 Reserved

Article XIV Historical District Regulations

Section 46-131 Historic Preservation Commission

The purpose of the commission is to safeguard the heritage of Delaware City by protecting and preserving buildings and sites within an area which reflects elements of the city's cultural, social, political and architectural heritage; to promote the educational, cultural and economic value to the public by maintaining the area as a landmark to the city's history and architecture.

Ordinance No. 4014, enacted in 1985, now Chapter 49 of the Code of the City of Delaware City) established a Historic Preservation Commission, and specifically defines the requirements for review and administration of historic regulations and guidelines.

Section 46-132 to 46-135 Reserved

Article XV Amendments**Section 46-136 Authority**

The regulations, restrictions, boundaries and provisions of this Chapter may from time to time be amended, supplemented, changed, modified or repealed by the Mayor and City Council of Delaware City.

Section 46-137 Procedures for Amendment

A request for a zoning classification change for particular properties or areas may be initiated by the Mayor and City Council, the Planning Commission, any department or agency of the City of Delaware City, by the owner of any property or the prospective owner of the property.

Any petition for an amendment to a zoning classification submitted by the owner of any property or the prospective owner of any property for a change to the zoning map or a comprehensive plan designation shall be filed with the City Manager at least ten (10) days prior to the date on which it is to be introduced to the Mayor and Council. All such petitions must be signed or joined by the owner of the property. The petition shall be signed, be in duplicate, and shall contain at least the following:

- a.) The applicant's name in full, applicant's address or description of the property to be rezoned.
- b.) Applicant's interest in the property and the type of zoning classification change requested.
- c.) An accurate diagram of the property proposed for a zoning classification change showing:
 - 1.) All property lines with dimensions including North arrow.
 - 2.) Adjoining streets with rights-of-way and paving widths.
 - 3.) The location of all structures, the use of all land.
 - 4.) The zoning classification of all abutting zoning districts.
 - 5.) Comprehensive site plan if the application is for commercial, industrial or multi-family development.
- d.) A statement regarding the changing conditions, if any, in area or in the city generally, that make the proposed amendment reasonably necessary to the promotion of public health, safety, and general welfare.
- e.) All required fees.

The City Council shall, in its discretion, determine if the petition for a zoning classification change should be referred to the Planning Commission for review. If the City Council does not refer the petition to the Planning Commission, the application fee shall be refunded to the applicant and no further action shall be taken regarding the petition.

Following affirmative referral by the City Council of the zoning classification change request to the Planning Commission for review and recommendation, at the request of the applicant, an ordinance to change the zoning classification shall be proposed for a first reading before the Council following receipt of the Planning Commission's recommendation. If the zoning classification change also requires an amendment to the City's comprehensive development plan, the Planning Commission shall not provide any recommendation to City Council until after a public hearing, submission of the application to the Preliminary Land Use Service Review ("PLUS"), and the Planning Commission's consideration of written comments received from PLUS. The applicant shall bear all costs and expenses incurred by the City for PLUS review. Upon recommendation of the Planning Commission, the application will be scheduled for a second reading, public hearing and vote by City Council in accordance with this Code and/or the City Charter.²⁶

Section 46-138 Protest Against Changes

Any petition for an amendment to this Chapter may be withdrawn at any time at the discretion of the person initiating such a request, upon written notice to the City Manager.

When the Mayor and City Council shall have denied any application for the change of any zoning district, it shall not, thereafter, accept any other application for the same change of zoning district affecting the same property, or any portion thereof, until the expiration of six (6) months from the date of the previous denial.

In the case of a protest against an amendment, supplement, change, modification or repeal signed by the owners of twenty (20) percent or more of the area of the lots in the proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment, supplement, change, modification or repeal shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Mayor and City Council.

²⁶ Section 46-137 Amended by Ordinance 15-1221-01 and Adopted on 2-1-16

Section 46-139 Public Hearing

No such amendment, supplement, change, modification or repeal shall become effective until a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notices of such hearing shall be posted at Delaware City Town Hall and other areas throughout the town, and published once each week for two (2) consecutive calendar weeks in a newspaper of general circulation in the City of Delaware City; said notice to be published in the first time not less than fifteen (15) days prior to the date established for such public hearing.

Section 46-140 Notice of Amendments to the Zoning Code

In addition to the requirements as set forth above, any amendment to the Zoning Chapter, which changes the zoning of a particular parcel, shall comply with the requirements of Article XII, Interpretation and Administration, Section 46-110 of the Zoning Chapter of the City of Delaware City.

Sections 46-141 to 46-145 Reserved

Article XVI Schedule of Fees

Section 46-146 Authority

The Mayor and City Council shall establish a schedule of fees, charges and expenses and a collection procedure for appeals and other matters pertaining to this Chapter. The schedule of fees listed below shall be posted in the City Hall, and may be altered or amended by the Mayor and City Council by Resolution. Delaware City building permit fees established by the Mayor and Council shall be doubled if a building permit is not acquired prior to the start of any construction.²⁷

Section 46-147 Schedule of Fees

No permit, special exception, variance, hookup, review, or approval shall be issued unless or until such costs, charges, fees or expenses listed below have been paid in full, nor shall any action be taken by the applicable official, the applicable board, the City, or the Mayor & Council, until required charges and fees have been paid in full.

Payable to New Castle County

Such fees, charges, costs, or expenses as may be due under New Castle County laws or regulations.

Payable to the City of Delaware City

<u>Fee Type</u>	<u>Fee</u>
Property Maintenance Code Appeal	\$100
Property Maintenance Code Show Cause Hearing	\$100
Violation of Property Maintenance Code (including, but not limited to, Sections 302.4, 302.7, 302.8.3, Property Maintenance Code (including, but not limited to, Sections 302.4, 302.7, 302.8.3, 302.8.4, 302.8.6, 302.10, 302.12, and 303.1))	There is no fee charged if violation is remedied within 5 business days of first notice of violation. Failure to remedy violation within 5 business days of first notice = \$50.00 Failure to remedy violation within 5 business days of second notice=\$50.00 Failure to remedy violation within 5 business days of third and final notice = \$500.00 plus \$50.00 per day for each day that violation continues.
Violation by Nuisance Property	\$500.00

²⁷ Ordinance 12-0716-03 Adopted on 8-20-12

Application for New Construction Building Permit for Residential Use (R-1, R-2, R-3 or R-MM)	The greater of (a) \$100 or (b) \$50.00 plus \$0.35 per sq. ft. (based on GFA)*
Application for Building Permit for residential addition, alteration and structural repair for Residential Use (R-1, R-2, R-3 or R-MM)	The greater of (a) \$100.00 or (b) 2.5% of anticipated costs of construction
Application for Building Permit for utility and other miscellaneous work (decks, sheds, swimming pools, garages, retaining walls, etc.) Residential Use (R-1, R-2, R-3 or R-MM)	The greater of (a) \$100.00 or (b) 2.5% of anticipated costs of construction
Application for New Construction Building Permit for Commercial Use (C-1, C-2, C-1M, C-1L, M-1, HPR)	The greater of (a) \$200 or (b) \$85 plus \$0.45 per sq. ft. (based on GFA)*
Application for Building Permit for Commercial Use (C-1, C-2, C-1M, C-1L, M-1, HPR) for alterations and repairs which does not increase square footage and/or area	First \$1,000 of construction costs = \$150; Each additional \$1,000 or fraction thereof of construction costs = \$30.00
Electrical Permits (Minimum Permit Fee)	The greater of (a) \$75.00 or (b) the aggregate amount of electrical permit items as itemized below (i.e., rough wiring, final wiring, etc.)
Electrical Permits (Service and Feeders)	200 AMP or less...\$45.00 201 AMP to 400 AMP...\$60.00 Over 400 AMP...\$15.00 per 100 AMP Sub-feeders or Sub-panels...1/4 of above fees Over 600 volts...double above fees
Electrical Permits (Rough Wire)	1 to 25 switches receptacles and lighting outlets...\$25.00 Each additional 10... \$10.00
Electrical Permits (Finished Wiring)	1 to 25 switches receptacles and lighting outlets...\$25.00 Each additional 10... \$10.00
Electrical Permits (Heating, Cooling, Cooking, Appliances, Equipment Motors, Generators, Transformers, Capacitors, Etc.)	Less than 1/3 hp, kw, kva... see Electrical Permits (Finished Wiring above) Over 1/3 hp, kw, kva: 1/3 to 1.0.....\$12.00 1.1 to 5.0.....\$15.00 5.1 to 10.0....\$20.00 10.1 to 30.0...\$25.00 30.1 to 50.0...\$30.00 50.1 to 100.0..\$35.00 Over 100...\$1.00 per hp, kw, kva

	Over 600 volts...double above fees
Electrical Permits (Signaling, Communication and Alarm Systems)	1 to 10 devices...\$40.00 Each additional device...\$2.00
Demolition Permit	\$150
Sign Permit	Greater of \$100.00 or \$5.00 sq. ft. of size of sign
Trailer (Mobile Home, Construction, etc.) Placement	\$100
Construction Dumpster	\$50.00
Temporary Storage Units (i.e. Pods)	\$25.00 for 30-day permit
Reinspection Fee	\$100
Dimensional Variance for existing residential structure	\$350
Rezoning Application	\$500
Special Exception	\$350
Special Use Permit	\$35
Water Impact Fee	\$750 per dwelling unit
Water connection/hook-up fee	Fee charged by administrator (pass through)
Floodplain Review	\$300 plus outside technical or engineering costs, if any.
Floodplain Certificate Application	\$500 plus outside technical or engineering costs, if any.
Floodplain Appeal	\$500 plus outside technical or engineering costs, if any.
Floodplain Inspection (required or requested by Owner)	\$50
Floodplain Reinspection	\$50
Certificate of Occupancy (Residential)	\$25
Certificate of Occupancy (Commercial)	\$50
Certificate of Compliance (Residential)	\$25
Certificate of Compliance (Commercial)	\$50
Floodplain Map Interpretation	\$100
Floodplain Variance Application	\$250
Mechanical Permits	The greater of (a) \$100 or (b) \$50 for the first \$1,000.00 or fraction thereof of installation costs and \$20.00 for each additional \$1,000.00 or fraction

	thereof of installation costs.
Plumbing Permit	The greater of (a) \$100 or (b) \$50 for the first \$1,000.00 or fraction thereof of installation costs and \$20.00 for each additional \$1,000.00 or fraction thereof of installation costs.
Preliminary Major Subdivision Plan Application	\$250 per lot, plus outside technical or engineering costs, if any. **
Concept Subdivision Plan Application	\$100
Resubdivision/Minor Subdivision Plan Application	\$250 per lot, plus outside technical or engineering costs, if any. **
Final Subdivision Plan Application	\$500 plus outside technical or engineering costs, if any.
Resubmission of Subdivision Application	\$100
Determination Letter for Zoning or Non-Conforming Status	\$300
All other Variances or Appeals of Subdivision or Zoning Interpretations	\$500
Other Appeals not otherwise specified herein, Beneficial Use Appeals, Special Hearings or required fees not otherwise specifically enumerated	\$500, plus outside technical or engineering costs, if any, and actual legal, advertising and mailing costs, if any. **
Application for Building Permits in the R-1, C-1L, C-2 or C-1M Zoning Districts located within the Downtown Development District.	The greater of (a) \$100 or (b) 2% of anticipated costs of construction.
Application for Building Permits in the (C-1) Zoning District located within the Downtown Development District.	The greater of (a) \$100 or (b) 1.5% of anticipated costs of construction.
Sprinkler System Inspections	\$50.00 for the first \$1,000 of system construction valuation, and \$20.00 for each additional \$1,000 of system construction value.
Re-inspections for any item requiring an initial inspection	Residential - \$25.00, per visit Commercial - \$50.00, per visit

Major Site Plan Review	Project Cost less than \$10k = \$75 Project Costs \$10-\$50k = \$150 Project Cost \$50k-\$100k = \$300 Project Cost Over \$100k = \$300 plus \$1.50 per \$1k over \$100k Applicant to cover all costs of specialized personnel required to review and evaluate a site plan.
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Section 46-147 amended by Ordinance 20-0817-01 (adopted 10-19-20)

***GFA** – Gross Floor Area defined as the total square footage of all floors within the perimeter of the outside walls, including basements, cellars, garages, roofed patios, breezeways, covered walkways and attics with floor to ceiling height of 6'6" or more.

****Engineering costs** will be estimated and applicant will be required to pay the estimated engineering costs at the time of application. Such estimated amounts will be held in escrow during the duration of the project and will be drawn down by the City of Delaware City to pay engineering costs as they become due and payable. The City of Delaware City may request the escrow funds to be replenished at any time during the project. Any unused monies in escrow will be returned to applicant upon final completion of the project.²⁸

Sections 46-148 Beneficial Use Appeals

A. Definition. A "beneficial use appeal" is a process by which the City of Delaware City evaluates an allegation that no beneficial use remains in a property and determines that some level of relief from the provisions of the Delaware City Code is warranted.

B. Who may apply- A landowner who alleges that the application of this chapter or any provision of the Delaware City Code denies all, or substantially all, economically viable use of property may apply for relief after exhausting all other available avenues of appeal (including variance requests) to the Board of Adjustment.

C. Application submission.

²⁸ Ordinance 15-0420-01 Adopted 5-18-15 Amended Section 46-147

(1) Filing. Applications shall be filed with the Administrative Official or the City Manager in the Office of the Board of Adjustment. The Board, the City Manager, or the Administrative Official may provide forms to facilitate application processing.

(2) Fee. The City Council shall establish a fee schedule in an amount significant enough to cover all publication and other administrative costs, as set forth in Section 46-147.

(3) Content. Applications shall be made in writing and shall provide the following information:

- (a) Information about the owner and applicant;
- (b) Documentation of the purchase date and price of the property;
- (c) A description of the physical features of the property, total acreage, and present use, the use of the property and any known prior uses;
- (d) A description of the specific portions of the Delaware City Code that allegedly eliminate all or substantially all economically viable use of the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the City related to the property;
- (e) A description of the use that the landowner believes represents the minimum beneficial use of the property and all documentation, studies, and other evidence supporting that position;
- (f) If the property has been listed for sale, originals or copies of all bids, offers to purchase, and other correspondence regarding the sale of such property;
- (g) Plans or drawings that support or clarify the relief or permission requested; and
- (h) Other information requested by the Board of Adjustment, including, but not limited to, survey information.

(4) Incomplete applications.

- (a) No application is complete until all required items are received.
- (b) Incomplete applications may be rejected.

D. Burden of proof on applicant. Every applicant shall have the burden of presenting the information needed by the Board of Adjustment to make a beneficial determination use.

E. Board of Adjustment hearing.

(1) Scheduling. The Board of Adjustment shall schedule a public hearing.

(2) Public notice.

(a) Newspaper notice. The City shall advertise the public hearing in a newspaper of general circulation. The notice shall appear at least 15 calendar days prior to the public hearing date and shall contain the following information:

[1] The type of application;

[2] A short description of the proposed action;

[3] A description of the parcel and the approximate street location or address;

[4] The location, date, and time of the public hearing; and

[5] Information on where full details of the application may be obtained, including the hours of availability and phone number.

(b) Notice to owner/applicant. The City shall notify by mail the owner and/or applicant of the time and place of the hearing.

(3) Public hearing. The hearing shall take place no fewer than 15 days following publication of the legal notice.

F. Deprivation standards. In determining if a landowner has been deprived of the beneficial use of property, the Board of Adjustment shall take into account the following factors:

(1) Diminution in value. The property value shall be compared to the property value with the regulations as applied. A mere decrease in value does not deprive the landowner of all or substantially all beneficial use of property. The diminution in value must be such that it effectively deprives the landowner of all or substantially all viable use or enjoyment of the property;

(2) Common land uses. A use common to the City and/or the area of the subject site, although it may not involve further development of the land, may be considered a beneficial use. Attention shall also be given to land uses considered to be the lowest intensity in the City or adjoining areas, but which uses still provide for occupation and living by the landowner;

(3) Subsidy. A minimum beneficial use of the land may be a use where a governmental subsidy is provided. If such a subsidy exists, its value should be reflected in the considered minimum beneficial use on a valuation basis. The cumulative public costs of a subsidy should be considered payment to the landowner for the restriction on the property if the annual subsidy enhances the economic return of the existing use to the landowner. The value of the proposed use shall be adjusted to reflect the degree to which a subsidy enhances the property value by determining the value of the use without the subsidy;

(4) Adverse impacts. The extent to which this code protects users, future users, or neighbors from threats to health, safety or general welfare shall be considered. A use that seriously threatens the health, safety or general welfare of current or future residents or neighbors shall not be considered a use the property owner is entitled to enjoy and shall not, when restricted by this code, constitute a denial of all or substantially all economic viable use of the property;

(5) Expectations. Expectations shall, in general, not be considered. Only expectations backed by reasonable investments made prior to the adoption date of the regulations in question may be considered;

(6) Nuisances. In no case shall a use that is a nuisance per se, or a use that in that particular location constitutes a nuisance, constitute grounds for relief; and

(7) Other. The Board of Adjustment may also take into account any factors that have been considered by a federal court or a Delaware court in determining whether all, or substantially all, economic use of a property has been denied a landowner who has made a takings claim pursuant to the Federal or State Constitution.

G. Granting relief.

(1) If the finding is that a landowner has been denied all or substantially all economic viable use of the property, the Board of Adjustment shall grant relief. In the alternative, the Board of Adjustment may also find that some beneficial use of the property remains. The Board of Adjustment shall grant only that level of relief necessary to provide for a beneficial use of the property.

(2) Minimum increase. In granting relief, the landowner shall be given the minimum increase in use intensity or other possible concessions to permit a beneficial use of the land. The following guidelines shall be used to determine the minimum beneficial use of the property:

(a) The reality of limited development potential, given the natural condition of the property, shall not be attributed to the regulations applied to the property; and

(b) The potential for damages to either future residents or property shall be assessed in determining a beneficial use. Conditions shall be placed on sites where damage from hazardous conditions is likely. The conditions may include location restrictions, size limitations, and increased building standards.

Sections 46-149 Good Standing

(l) No land use application, subdivision, zoning, building or other approvals shall be granted by any board, official, department, manager, or the City Council if any of the following parties, having an interest in the application or the property the application is filed for, are not in good standing with Delaware City:

1. Applicant;
2. Property owner;
3. Equitable owner;
4. Permit holder; and
5. Any individual with a controlling interest in the property
(controlling interest means the acquisition of sufficient

dominance to determine the operational and financial policies, including disposition of its assets, of any legal entity that is a party listed Subsections 1 through 4, but excluding mortgage holders).

(b) Not in good standing means that at the time of the request, any of the above enumerated parties are delinquent in the payment of monies owed to the City or have been found to be in violation of the City Code or have failed to pay taxes and/or fees owed after notice and an opportunity to be heard. If a board, official, department, manager, or the City Council denies an application or approval based upon the fact that a party/parties is not in good standing, such decision must be sent to the party/parties in writing outlining the basis for the conclusion within ten (10) days. Such decision may be appealed to the Board of Adjustment within thirty (30) days of the written conclusion.

Sections 46-150 Reserved

Article XVII Legal Status**Section 46-151 Conflict with Other Laws**

When the regulations of this Chapter impose more restrictive standards than are required in or under any other statute or local code or regulation, the requirements of the Chapter shall govern. When the provisions of any other statute, local code or regulation impose more restrictive standards than are required by this Chapter, the provisions of the statute, local code or regulation shall govern.

Sections 46-152 to 46-155 Reserved