

"A Historic Past"



"A Bright Future"

THE CITY OF DELAWARE CITY
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CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 21-0315-01

**ORDINANCE TO AMEND CHAPTER 46 OF THE CITY OF
DELAWARE CITY CODE BY AMENDING THE HPR DISTRICT USES
UNDER SECTIONS 46-28(a)(20), 46-28(a)(21) AND 46-28(a)(26) AND
ADDING SECTIONS 46-28(a)(42) AND (43) AND ADDING A SPECIAL
USE PERMIT FOR CERTAIN USES AND ASSOCIATED FEE**

WHEREAS, pursuant to Article V, Section 5-02(A) of the City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-01 of the Charter, the Mayor and the City Council of the City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal the City of Delaware City Code ("Code");

WHEREAS, the Mayor and the City Council, in accordance with the City of Delaware City Comprehensive Plan and with reasonable consideration, among other things, as to the character of the Historical Preservation and Redevelopment District ("HPR District") and its peculiar suitability for particular uses, desire to amend Chapter 46 of the City Code by deleting by-right references to multi-family housing within Sections 46-28(a)(20), 46-28(a)(21) and 46-28(a)(26), adding Sections 46-28(a)(42) and (43) regarding redevelopment of existing properties and residential units above commercial or office uses and adding special use permit for certain uses and an associated fee.

NOW THEREFORE, making the express finding that the below changes enhance and perpetuate the City of Delaware City's cultural, social, economic, religious, political or architectural history, as set forth in Chapter 49 of the Code, the Mayor and the City Council of the City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Section 46-28(a)(20) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

~~(20) One and two family residential dwellings permitted in the R-2 district, as set forth in Section 46-17(b), (c), and (d).~~

(a) One family residential, semidetached dwellings, each on a separate lot and townhomes in groups of three or four units, each on a separate lot.

Section 2. Section 46-28(a)(21) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

~~(21) Multi-family residential units permitted in the R-3 district, as set forth in Section 46-18(e), (f), (g), (h), and (j).~~

(a) 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.

(b) Any other multi-family residential units not permitted in the HPR District, whether they are new or existing structures, may be permitted subject to the 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 neighborhood and greater City of Delaware City; (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 City 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.

Section 3. Section 46-28(a)(26) of the Code is hereby amended by inserting the following underlined language:

(26) Condominium units, as set forth in Section 46-20 (t)-(u), only for uses permitted in the HPR District.

Section 4. Section 46-28(a) of the Code is hereby amended by adding a Section 46-28(a) (42) and (43) as follows:

(42) Redevelopment of existing properties shall be limited to uses permitted in the HPR District. Pursuant to the provisions in Section 21(b), a special use permit may be requested for a use that is otherwise not permitted in the HPR District.

(43) Notwithstanding any other permitted uses in the HPR District, no residential units shall be permitted above commercial or office uses. Pursuant to the provisions in Section 21(b), a special use permit may be requested for a use that is otherwise not permitted in the HPR District.

Section 5. Section 46-147 of the Code is hereby amended to add a \$500 fee for each Special Use Permit application.

Section 6. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the City Council's intent.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.

[Signature page follows]

ADOPTED BY THE MAYOR AND COUNCIL, this 5 day of August 2021.

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Solicitor

Paul H. [Signature]
Mayor

Betty Bauer
Council Member

Elizabeth Kouty
Council Member

[Signature]
Council Member

Robert J. Mahoney
Council Member

m [Signature]
Council Member

First Reading on 3/15/21.

Second Reading, Public Hearing, and Final Passage on 8/5/21.