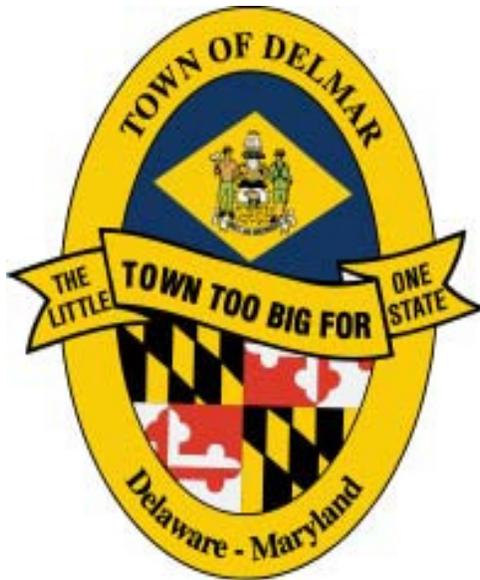


# PLANNING & ZONING REGULATIONS

## TOWN OF DELMAR, DELAWARE & MARYLAND

2015



# Town of Delmar Planning & Zoning Regulations

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# Town of Delmar Planning & Zoning Regulations

## Section 1 – Introduction

### 1. A. Authority

In accordance with Title 22, Chapter 3, of the Delaware Code, Article 66B of the Maryland Code and pursuant to the powers granted in the Charters of Delmar, Delaware and Delmar, Maryland this regulation shall become effective upon the date of its adoption.

### 2. B. Purposes

All such zoning regulations and maps shall be enacted for the purpose of:

1. To control congestion in the streets
2. To increase safety from fire, panic and other dangers
3. To promote health and the general welfare
4. To provide adequate light and air
5. To prevent the development of undesirable noises and other nuisances, as well as the overcrowding of land
6. To avoid undue concentration of population
7. To minimize and/or eliminate rainwater flooding on properties and streets
8. To facilitate the adequate provision of transportation, water, sewerage, gas, parks, schools and other public requirements

## Section 2 – Definitions and Word Usage

Definitions and interpretation of language:

For the purpose of interpreting this ordinance, certain terms are herein defined as applicable within the corporate limits of the Town of Delmar, Delaware and Delmar, Maryland. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word “shall” means a mandatory requirement; and the word “may” indicates an action which is permitted, but not required. The term “occupied” or “used,” as applied to any building, shall be construed as though followed by the words “or intended, arranged or designed to be occupied or used.” Unless otherwise specified, all distance shall be measured horizontally and at right angles to the line in relation to which the distance is specified. The word “lot” includes the word “plot”; and the word “used” shall be deemed also to include “designed, intended, or arranged to be used”; the term “erected” shall be deemed also to include “constructed”, “reconstructed”, “altered”, “placed”, or “moved”. The term “land use” and “use of building” shall be deemed also to include “building use” and “use of building”. The word “adjacent” means “nearby” and not necessarily “contiguous”. The word “Town” shall mean the “Town of Delmar”. The terms “Joint Council” “Mayor and Council”, “Mayor and Commissioners”, “Planning Commission”, “Board of Adjustments”, “Board of Zoning Appeals”, “Code Enforcement Officer” and “Town Manager” shall mean the respective Officers, Board, Commissioners and Councilmen of said Town within their jurisdiction. The term “Land Records” shall mean the Clerk of the Circuit Court of Wicomico County, Maryland, and the Office of the Recorder of Deeds of Sussex County, Delaware.

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**Abandoned Vehicle** – means any motor vehicle, including, but not necessarily limited to, automobiles, trucks, vans, trailers, motor homes, motor cycles, yard equipment, farm equipment or road equipment, which remains in one location for ten(10) days, and having one or more of the following conditions: one or more flat tires, one or more broken, cracked, or missing window, or if the vehicle is missing a door, hood, trunk, fender, engine, transmission, or if the vehicle is substantially dismantled or wrecked, inoperable, or if the vehicle is unlicensed or unregistered as required by law.

**Accessory Living Quarters** - an accessory building used solely as the temporary dwelling of guests of the occupants of an existing principal use; such dwelling having no kitchen facilities and not rented or otherwise used as a separate dwelling unit.

**Accessory Structure** - a detached building or other structure, the use of which is secondary and not essential to that of the principal structure (main building) or land use on the same lot. When the term "accessory" is used in this ordinance, it shall have the same meaning as "accessory use".

**Accessory Use** - a use conducted on the same lot as the primary use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with such primary use.

**Adult Uses** - a lawful sexually oriented use or activity (for example, but not limited to: Adult Book Store, Adult Motion Picture Theater, Adult Toy or Paraphernalia Store, Adult Video Store, and an Establishment which displays Live Nudity for its Patrons) conducted on one or more lots or within one or more structures on these lots that is restricted to only those individuals who have attained the legal age of maturity.

**Agriculture** - The bona fide use of a parcel of land of five acres or more for the cultivation of land, raising of poultry and livestock or similar agrarian activity and the related buildings, structures and appurtenances necessary to carry out the aforementioned activities. A parcel of land reduced to less than five acres as a result of subdivision shall not be defined as agricultural, for the purpose of this ordinance. A division into parcels for agricultural use where each parcel shall contain more than five acres, and no new street is involved, shall not be deemed a subdivision.

**Alley** - a public street, under the ownership of the development occupants and not maintained by the Town, or a private way, with public easement, affording secondary means of access to abutting property.

**Apartment** - a part of a building containing cooking and housekeeping facilities, consisting of a room or suite of rooms intended, designed, and used as a residence by an individual or single family.

**Apartment Building** – single residential structure containing three or more specific dwelling units. Each apartment shall have a separate entrance. Additionally, each apartment shall have its own food preparation area, sleeping

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area, water line and other utilities including meters, cut off valves, electricity and wastewater discharge line.

**Apartment Project** - A group of two or more apartment buildings constructed in accordance with a Comprehensive Development Plan.

**Applicant** - The owner of land proposed to be subdivided or his representative. Consent shall be required from the legal owner or the premises.

**Area, Building** - the area included within surrounding exterior walls (or exterior walls and firewalls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if included within the horizontal projection of the roof or floor above.

**Assisted Living** – A living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication.

**Automobile Sales Lot** - Any place outside a building where two or more vehicles are offered for sale or are displayed for sale or advertising purposes.

**Automobile Service Station** - an establishment where liquids used as motor fuels are stored and dispensed into the fuel tanks of motor vehicles, and may include facilities for automobile repairs, and may also include facilities for the sale of other retail products.

**Back Yard** – see Yard, Rear.

**Bar** - A business establishment that is licensed to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

**Basement** - that portion of a building which is partly below and partly above grade, and having one half or more of its height above grade. (See cellar.)

**Bed and Breakfast** - a dwelling or part thereof where meals and/or lodging is provided for compensation for transient persons and designed for or used exclusively as the primary residence of one family.

**Bedroom** - a room not less than 80 square feet which, because of limited access and separation from the living areas, is intended or may be used for sleeping.

**Block** - a portion of land lying within the corporate limits of the Town of Delmar, which is in no way divided by the adjacent lines of any public roads, parks, zoning district or corporate limits.

**Board** - the Board of Zoning Appeals in Maryland and the Board of Adjustments in Delaware established hereunder.

**Boarding House** - a dwelling containing not more than 6 guestrooms or suites of rooms, where lodging is provided with or without meals, for compensation.

**Buffer Zone** - A strip of land, required where a commercial or industrial district adjoins a residential district and is the minimum distance, in feet, between any

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structure on the non-residential property to the adjoining residential property line, wherein a planting strip, a minimum width of five feet (5') shall be planted with evergreen shrubs or trees, a minimum of four feet (4') high at the time of planting, spaced 10' apart, for the purpose of providing a screen.

**Buildable Area** - the area of that part of the lot not included within the yards or open spaces herein required.

**Building** - a structure used or intended for supporting or sheltering any use or occupancy.

**Building, Accessory** - a building subordinate to the principal building on a lot and used for purposes customarily incidental to those of the principal building.

**Building Coverage, Maximum** - the maximum ratio obtained by dividing the ground floor area of all principal and accessory buildings on a lot by the total area of the lot upon which the buildings are located, including covered porches, carports and breezeways but excluding open patios.

**Building Setback Line** - the line, as prescribed by this ordinance, beyond which the building shall not extend.

**Building, Height of** - the vertical distance from the average finished grade at the building line to the highest point of the coping 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 or principal use of the lot on which it is situated.

**Caregiver** - the person responsible for the direct care, protection, supervision, and guidance of the children in a daycare home or facility. A caregiver is also a person, such as a physician, nurse, social work, or a family member, who assists another person in daily affairs of life.

**Care Home** - Includes rest and Long-term care facility homes, convalescent homes, and boarding homes for the aged, established to render domiciliary care for chronic or convalescent patients, but excludes child care homes or facilities predominantly for the care of mentally retarded, mentally disturbed, epileptic, alcoholic, and drug addicted patients.

**Carnival** – a traveling amusement show usually including rides, games, and sideshows.

**\*Casino** – a facility that houses and accommodates certain types of gambling devices and gambling table activities.

**Cellar** - a story having more than one-half (1/2) of its height below average finished grade. A "cellar" is counted as a story for the purpose of height regulations only if used as a separate dwelling.

**Cemetery** - shall mean land used or intended to be raised for the burial of the deceased, including columbiums, crematories, mausoleums, including mortuaries when operated in conjunction with the cemetery and within the boundaries.

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**Certificate of Compliance** - this certificate, issued by the Code Enforcement Officer, certifies that the shell is approved. A certificate of occupancy must be obtained prior to moving into a building which received a certificate of compliance.

**Certificate of Occupancy** - the certificate issued by the Code Enforcement Officer which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulations or conditions of the building permit.

**Child** - any person who is less than eighteen (18) years old.

**Child Care Home** - private, public or semi-public facility licensed for the housing and care of children.

**Church** - shall mean a building used exclusively for residential, educational, burial, recreational or other uses normally associated with worship.

**Circus** - an arena often covered by a tent and used for variety shows usually including feats of physical skill, wild animal acts, and performance by clowns. This could also include carnival games, food booths, and rides. In no event would the duration of such an event exceed ten (10) days.

**Clinic, Outpatient** - any institution receiving outpatients only, and rendering medical services.

**Club** - shall mean an organization, chartered by the State for social or fraternal purposes, whose buildings and services are for members and their guests only.

**Cluster Development** - a residential development that permits variation in lot sizes in order to preserve open space and the natural features of the property.

**Code Enforcement Officer** – carries out the Town’s code enforcement program whereby properties in violation of Town codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures.

**Commercial Use** – activity involving the sale of goods or services carried out for profit.

**Commission** - the Planning and Zoning Commission of the Town of Delmar.

**Community Center** – a center where members of a community can gather for social or cultural activities.

**Community Impact Statement** - A report addressing all expected changes to the general quality of life (Refer to Section 25 - Development Plan).

**Community Use** – A facility or land used for public recreation, safety, cultural, or educational activities, which is owned and managed by a public, semi-public or non-profit organization.

**Comprehensive Plan** – A long range plan for the physical development of the community, as adopted by the Planning Commission and Council, pursuant to

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State law, and including any part of such plan separately adopted and any amendment to such plan or parts thereof.

**Conditional Use** - a use that may be permitted in a specified district under certain conditions. The conditions, to be determined in each case by the terms of this ordinance and by the Town after public hearing, shall be in accordance with the procedures specified by this ordinance.

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

**Construction, Start of** - the combining of labor and material into any portion of the structure on the site thereof.

**Contractor's Yard** - the use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, or vehicles, or parts thereof, which are for use by a construction contractor.

**Convalescent Center** – a facility that provides short-term, primarily in-patient care, treatment, and/or rehabilitation services for persons recovering from illness or injury who do not require continued hospitalization.

**Court** - an open, unoccupied and unobstructed space, other than a yard, on the same lot with a building or group of buildings.

**Day-Care Center** – a nursery school or childcare facility providing adult supervision and care for not fewer than five (5) persons not members of the caregiver's family in the caregiver's home or in a building outside of the home.

**Day-Care, Residential** – a dwelling unit in which daytime adult supervision is provided for up to six (6) children not members of caregiver's family under the age of sixteen and in which the dwelling is the primary residence of the caregiver.

**Date of Consideration** – The initial hearing or further hearings if deemed necessary by the Board or Commission.

**Design** – Layout, engineering and planning street alignments, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and minimum lot area and width.

**Development** - any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations.

**Development Plan** - A comprehensive set of plans, specifications and measures for the private and/or public development of an industrial park, housing development, cluster development, apartment project, shopping center or other planned development permitted in this code.

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**District** - a designated geographical area of the municipality within which certain uniform regulations and requirements, or various combinations thereof, apply under the provisions of this chapter.

**Domiciliary Care Unit** – any institution, which admits four or more non-related aged or disabled persons, maintains the necessary facilities and provides a protective institutional or home-type environment to persons of advanced age or mental or physical disability. This shall not include “limited dwellings”.

**Dump** - Any lot or parcel of land on which garbage, refuse, trash or junk is deposited.

**Duplex** - a building containing two single-family dwelling units. Each unit shall have its own separate entrance. Additionally, each unit shall have its own food preparation area, sleeping area, water line and other utilities including electricity and wastewater discharge line. Each unit must be metered and have its own cut off valves.

**Dwelling** - a building or portion thereof, designed or used exclusively for residential occupancy, but not including travel trailers, motor homes, mobile homes, hotels, motels, tourist courts or tourist homes (also see Single-Family ... Dwelling).

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

**Dwelling, Single-Family** - a detached building designed for or used exclusively for residence purposes by one (1) family or housekeeping unit.

**Dwelling, Two-Family** – a building on a single lot containing two dwelling units, each of which is totally separated from the other by a solid (unpierced) wall extending from ground to roof and an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units.

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

**Dwelling, Mobile Home** – a transportable dwelling unit fabricated in an off-site manufacturing facility, designed to be a permanent residence and built prior to June 15, 1976 on which the Federal Home Construction and Safety Standards became effective. Mobile Homes built after June 15, 1976 are also known as Manufactured Homes (see above). For the purpose of this ordinance, a mobile home shall be defined as any transportable dwelling that looks and functions like the pre-1976 mobile home, is not permanently installed on a fixed foundation like a traditional house, and has attached some or all of its tailoring hardware (i.e., wheels, undercarriage, and trailer hitch).

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**Dwelling, Multifamily** - a detached building designed for or used exclusively for residence purposes by more than two (2) families or housekeeping units.

**Dwelling, Townhouse** – a single-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over or under another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

**Dwelling, Limited** - a dwelling unit consisting of no more than two (2) rooms, exclusive of bath facilities, designed or intended for retirement living or temporary assisted living, including extended or long-term care facility, assisted living facilities and retirement housing having shared dining and recreational facilities.

**Easement** - the right to use the real property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes.

**Essential Services** – services and utilities for the health, safety, and general welfare of the community, such as underground, surface, or overhead electrical, gas or other combustible fuel, telephone, steam, water, sewerage, and other utilities and the equipment and appurtenances necessary for such systems to furnish an adequate level of service for the area in which they are located.

**Extended Care Facility** – A long-term facility or a distinct part of a facility licensed or approved as an extended or long-term care facility, infirmary unit or home for the aged, or a governmental medical institution.

**Family Daycare Home** - a private home which provides at any one time, child daycare for two (2) to twelve (12) children who are not relatives of the caregiver.

**Family** - two or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities, or a group of not more than four persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost sharing basis. Domestic servants, employed and residing on the premises shall be considered as part of the family.

**Farm** - a parcel of land not less than five (5) acres in size used for agricultural purposes as defined herein.

**Farm, Accessory Building** - accessory building for bona fide farm uses are structures which are necessary in the execution of the agricultural process. These buildings are not intended to include food processing or a manufacturing use of a related nature.

**Fence** - a fixed structure designed to define a designated area or property.

**Festival or Fair** - A celebration; a gathering of people where there is entertainment, things are exhibited, often competitively, and items are sold, often for charitable purposes.

**Final Plat** – A map prepared by a surveyor in accordance with the provisions of this Ordinance, which map is designed as a complete and exact subdivision plan for

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official recording in the office of the Clerk of the Circuit Court of Wicomico County, Maryland or Land Records Office of Sussex County Delaware.

**Fire Wall** - a wall, running from the roofline to an area below the floor, which provides fire protection to the adjacent areas. In the event of a fire, the fire wall shall prevent the fire from spreading to the adjacent structure for at least four hours. The fire wall shall be constructed so that it will remain standing even if one or both of the adjacent structures collapse under fire conditions.

**Floor Area, Residential** - the sum of the gross horizontal areas of the several floors of a dwelling, exclusive of garages, basements, cellars, attics, and open porches, measured from the exterior faces of the exterior walls.

**Floor Area; Commercial, Business and Industrial Buildings or Buildings Containing Mixed Uses** - the sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) buildings but not including: 1) attic space including attic bedrooms providing headroom of less than seven (7) feet five (5) inches; 2) basement or cellar space of less than seven (7) feet five (5); 3) accessory steps or fire escapes; 4) accessory water towers; 5) accessory off-street parking spaces; and 6) accessory off-street loading spaces.

**Floor Area, Net** - the aggregate area of all floors included within the outer walls of a building, measured at the interior of such walls, excluding basements, cellars, rooms for furnace equipment, garages, carports, and unenclosed porches, breezeways, and including only such floor area under a sloping ceiling for which headroom is not less than 5 ft. 6 in. and then only if at least 50% of such floor area has a ceiling height of not less than 7 ft. 4 in. and if any floor that is situated above another story has access to the floor below by a permanent built-in stairway.

**Floor Area, Gross** - the aggregate area of all floors including the area of the outside walls and measured to exterior of such walls.

**Frontage** - the dimension of a lot measured along the front street line thereof; or if said front street line is curved, along the chord of the arc. The shorter street line of a lot abutting on more than one street shall be deemed to be the front street line thereof, regardless of the location of the principal entrance of a building on the lot.

**Front Yard** – See Yard, Front.

**Front Yard, Least Width** - the shortest distance, measured horizontally, between any part of a building and the front lot line.

**Gambling and Gaming** – to wager or risk money and/or something of material value on an event that has an uncertain outcome with the primary intent of winning additional money and/or material goods; or dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game or games or games of chance.

**Gambling Devices** – means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling or gaming activity,

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whether such activity consists of gambling or gaming by a person involving the playing of a mechanical or electronic machine.

**Garage, Parking** - A building, or part thereof, other than an accessory or repair garage, used for the storage of passenger vehicles and may include **(a)** servicing of said vehicles as an incidental use, but not the repair thereof, and **(b)** keeping any such vehicles for hire.

**Garage, Private** - an accessory building or an accessory portion of the main building, including a carport, which is intended for and used for storing the privately owned motor vehicles, boats, trailers or other personal property of the occupant or occupants of the premises, and in which no commercial or industrial activities are conducted. If completely enclosed, the space therein may be used for the storage of not more than one commercial vehicle of not more than two-ton capacity.

**Garage, Public** - a space or structure other than a private garage for the storage, sale, hire, care, repair or refinishing of self-propelled vehicles or trailers.

**Garage, Repair** - a building or part thereof, other than an accessory or parking garage, used for the storage, care, or repair of motor vehicles.

**Garden or Low-Rise Apartment** - a multifamily dwelling containing six (6) to twelve (12) dwelling units and not exceeding three stories in height.

**Golf Course** - shall mean an open area and its necessary buildings, used for the playing of golf, not including a driving range, miniature course, or eating facilities in a separate building operated for additional profit.

**Group Home** - a community based residential dwelling for handicapped or elderly persons operated with a single-family orientation in which more than four (4), but not more than nine (9), unrelated individuals live together, prepare their meals together, and function as a single housekeeping unit using certain rooms and housekeeping facilities in common. Staffing is required as outlined by the appropriate state licensing or approval agency.

**Height, Story** - the vertical distance from the bottom of the finished floor surface of the first floor to the tip of the ceiling joists, or, when there is not a ceiling, to the top of the roof rafters.

**Historic District** - a zoning district with state requirements that are designed to maintain the historic character of the buildings and neighborhood.

**Home Occupation** - an accessory use of a dwelling for an occupation, profession, enterprise or activity which is clearly incidental and secondary to the use of the premises for dwelling purposes conducted solely by one or more members of a family residing on the premises who may employ one additional nonresident for the conduct of the home occupation. There shall be no exterior evidence of the home occupation and adequate off-street parking must be provided as stipulated in this chapter.

**Homeowner's Association** - An organization comprising neighbors concerned with managing the common interests of a subdivision or condominium complex.

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The homeowners' association is also responsible for enforcing any covenants, conditions & restrictions that apply to the property.

**Hospital** - Any institution receiving inpatients and rendering medical care, including those wherein mentally retarded, mentally disturbed, epileptic, alcoholic, drug addicted, chronically ill and physically handicapped patients are treated or cared for.

**Hotel, Motel or Inn** - a building or structure operated for profit providing lodging, food and/or service to transient traveling public and may include restaurants, taverns, clubrooms, public banquet halls, ballrooms or meeting rooms, but the individual units shall not contain kitchen facilities.

**Improvement** – All physical improvements installed, or required to be installed by the developer in accordance with the provisions of this Ordinance.

**Improvements Construction Plan** – Engineering drawings and specifications of improvements required by the Town Engineer.

**Inclusionary Zoning (IZ)** - sometimes called "inclusionary housing," requires developers to make a percentage of housing units in new residential developments available to low- and moderate-income households. In return, developers may receive non-monetary compensation-in the form of density bonuses, zoning variances, and/or expedited permits-that reduce construction costs. By linking the production of affordable housing to private market development, IZ expands the supply of affordable housing while dispersing affordable units throughout a city or county to broaden opportunity and foster mixed-income communities.

**Industrial Park** - a tract of land subdivided and developed according to a comprehensive development plan, in a manner, which provides a park like setting for industrial establishments.

**Joint Council** – The Town of Delmar Joint Council is comprised of the Delaware Mayor, Delaware Councilors, the Maryland Mayor, and Maryland Commissioners setting in joint session.

**Knox Box** – A wall-mounted safe that holds building keys for fire fighters to retrieve in emergencies.

**Land use plan** - the long-range plan for desirable use of land, as officially adopted and as amended from time to time by the Commission and the Town Council/Commission, the purpose of such plan being, among other purposes, to serve as a guide in zoning and progressive changes in the zoning of land to meet changing community needs, in the subdividing and use of undeveloped land and in the acquisition of rights-of-way or sites for such public facilities as streets, parks, schools and public buildings.

**Landscape** - (1) An expanse of natural scenery; (2) lawns, trees, plants, and other natural materials, such as rock and wood chips, and decorative features, including sculpture, patterned walks, fountains, and pools.

**Landscaping Plan** – a component of a development plan on which are shown:

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- proposed landscape species (such as number, spacing, size at time of planting, and planting details)
- proposals for protection of existing vegetation during and after construction
- proposed treatment of hard and soft surfaces
- proposed decorative features
- grade changes
- buffers and screening devices
- any other information that can reasonably be required for an informed decision to be made by the Commission (Refer to each zoning district in this Ordinance for additional requirements.).

**Loading Space** - area in commercial and industrial districts designated for loading and unloading cargo, supplies, material, etc.

**Long Term Care Facility** – an institution or a part of an institution that is licensed or approved to provide health care under medical supervision for twenty-four (24) or more consecutive hours to two (2) or more patients who are not related to the governing authority or its members by marriage, blood, or adoption.

**Lot** - any plot or parcel of land occupied or intended to be occupied by a principal building or use, or a group of buildings conforming to the regulations of this chapter and its accessory buildings and uses, including all open spaces required by this chapter, and having frontage on a street as defined herein. In the case of a farm or estate, five (5) acres or more in size, the "lot" shall be deemed to be that part of the property on which the principal building and its accessory buildings and uses are located, together with the yards and other open spaces required by this chapter, and such lot need not front directly on a public road if connected therewith by a private lane or road which serves no other "lot."

**Lot Area** - the area contained within the boundary lines of a lot.

**Lot Depth** - the mean horizontal distance between the front and rear lot lines.

**Lot, Interior** - a lot other than a corner lot.

**Lot Line** - a line bounding a lot which divides one lot from another or from a street or other public or private space.

**Lot Line, Front** - the line separating the lot from the street right-of-way upon which it fronts.

**Lot Line, Rear** - the lot line opposite and most distant from the front lot line.

**Lot Line, Side** - any lot line other than the front or rear lot line.

**Lot Line, Street or Alley** - any lot line separating the lot from a street or alley.

**Lot, Through** - a lot that fronts on two (2) parallel streets or that fronts on two streets that do not intersect at the boundaries of the lot, as distinguished from a corner lot.

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**Lot Width** - the width of the lot measured at right angles to its centerline at the front setback line.

**Manufacture** - an activity involving the processing or production of materials, goods or products.

**Manufactured Home** - a structure, which may be transported in one (1) or more sections. Manufactured homes are built on a permanent chassis. Manufactured homes are designed for use either with or without a permanent foundation. A recreational vehicle is not considered a manufactured home.

**Mini-Storage Facilities** - a building or group of buildings in a controlled-access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled-access stalls or lockers for the dead storage of customer's goods or wares.

**Mobile Home** – a movable residential dwelling that was fabricated in an off-site facility, designed to be a permanent residence, and to be installed on a mobile home lot. (Also see Dwelling, Mobile Home.)

**Mobile Home Lot** – a parcel of land within a mobile home park that provides essential services for a single mobile home.

**Mobile Home Park** – a site containing spaces (lots) with required improvements and utilities that are leased for the placement of mobile homes.

**Mobile Home Park Office** – a building used primarily for conducting the business affairs of a mobile home park.

**Mobile Home Park Recreational Facility** – A structure (e.g., club house, pool, playground equipment) maintained by the mobile home park, used primarily for the enjoyment of the mobile home park residences.

**Mobile Home Stand** - That part of an individual mobile home lot which has been reserved for the placement of the mobile home, appurtenant structures or additions.

**Modular Home** - a factory-built home constructed to be placed on a permanent foundation and certified as meeting the building code as applicable to modular housing. Once certified as meeting the standards of the building code, the home shall be subject to the same standards as site-built homes.

**Multifamily Home** – See Dwelling, Multifamily.

**Motel** – See Hotel.

**Neighborhood Shopping Establishment** - Retail sales or service businesses primarily directed toward providing neighborhood services to surrounding residential area. Such establishment may include, but are not limited to, grocery store, beauty or barber shop, dry cleaning, laundromat, drug store.

**Non Combustible** - as applied to building construction material means a material which, in the form in which it is used, is either one of the following:

## Town of Delmar Planning & Zoning Regulations

- Material of which no part will ignite and burn when subjected to fire. Any material conforming to specifications in the building code in effect in the Town and other applicable codes shall be considered noncombustible.
- Material having a structural base of noncombustible material as defined in item 1 above, with a surfacing material not over 1/8 inch thick, which has a flame-spread rating of 50 or less.

**Nonconforming Use** - an existing building, structure or premises legally devoted to or occupied by or for a use that does not conform to the use provisions of this chapter, or amendments thereto, for the district in which it is located.

**Occupancy** - the purpose for which a building, or part thereof, is used or intended to be used.

**Office** - Space within a building used for transaction of business or the discharge of professional services. Examples of business and professional offices include but are not limited to insurance or employment agency, travel bureau, real estate, governmental, doctor, attorney, engineer, etc.

**Off-Street Parking Space** – A temporary storage area for a vehicle that is directly accessible to a street, but is not part of or on a street.

**On-Street Parking Space** – A temporary storage area for a vehicle that is located on a street, but does not block nor hinder normal traffic flow.

**Open Porch** - any first floor porch open to light and air.

**Open Space** - the area of a lot or parcel unoccupied by principal or accessory structures, streets, driveways or parking areas, but including areas occupied by walkways, patios, and porches without roofs, playgrounds, outdoor recreation or play apparatus, gardens or trees, which allows public access. Refer to Section 4, letter H.

**Owner** - any person, agent, firm, or corporation having a legal or equitable interest in the property.

**Parcel** - a contiguous quantity of land in possession of, owned by, or recorded as property of the same claimant person or company.

**Parking Lot, Commercial** - a surfaced area of one (1) or more parking spaces designed or used for the parking of vehicles and available to the public whether for a fee or as an accommodation to clients or customers.

**Parking Lot** – an area which is privately owned, used for parking four (4) or more motor vehicles for a period of 24 hours or less.

**Parking Space** - a surfaced area either within a structure or in the open, exclusive of access drives, for the parking of one (1) vehicle.

**Person** – an individual or a partnership company or a corporation. Also, included in this definition are heirs, successors and/or agents of the aforementioned persons.

## Town of Delmar Planning & Zoning Regulations

**Permanent Structure** – a structure which is attached to the ground or some other permanently attached structure or is not easily moved without the aid of mechanical equipment.

**Permit** - a legal document giving official permission to do something.

**Permit, Building** - a document authorizing the holder to construct a building or structure in accordance with approved plans on a particular lot.

**Planned Unit Development (PUD)** - a residential and/or commercial development guided by a total design plan in which one or more of the zoning or subdivision regulations, other than use regulations, which may be waived or varied by the Commission to allow flexibility and creativity in site and building design and location in accordance with general guidelines.

**Plat** – a sketch, map or survey of a lot(s), tract or parcel of land including lot lines, street right-of-way, and easements with the dimensions of these features inscribed thereon.

**Preliminary Plat** – A map prepared by a surveyor in accordance with the provisions of this Ordinance for the purpose of showing the proposed street and lot layout of the subdivision and the existing conditions in and around it as a basis for consideration and improvements prior to preparation of a final plat and need not be based upon an accurate or detailed final survey of the property.

**Premises** - any lot, area or tract of land, whether used in connection with a building or not.

**Principal Structure (a.k.a. Primary Structure)** – the main and largest structure located on a lot, or intended to be installed, and serves the main or primary use of the lot on which it is located.

**Principal Use** - for the purpose of this ordinance, the primary structure or activity occurring on a lot shall be considered the principal use.

**Private Club** - An association for civic, social, cultural, religious, literary, political, recreational, or like activities, operated for the benefit of its members and not open to the general public.

**Public Notice** - a notice placed in a newspaper of general circulation in the Town of Delmar. The public notice shall be published at least 15 days prior to any public hearing. The public notice is to advise the public of the purpose, date, time and place of a public hearing.

**Public Utility** - organization supplying water, electricity, sewer services, transportation, etc., to the public operated by a private corporation under government regulation or by the government directly.

**Public Works Agreement (PWA)** – a document specifying the performance agreement between a developer and the Town of Delmar. This document identifies the specific public works improvements, or in lieu thereof provide adequate security, a developer must provide in advance in order to receive plan approvals, permits, and plat recordation.

## Town of Delmar Planning & Zoning Regulations

**Recreational Equipment or Vehicle** - for purpose of these regulations, major recreational equipment is defined as including boats, boat trailers, trail trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwelling, tent trailers and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

**Recreational Ground** - any establishment operated as a commercial enterprise in which facilities are provided for all of the following: Camping, lodging, picnicking, boating, fishing, swimming, outdoor games and sports, and activities incidental and related to the foregoing, but not including miniature golf grounds, golf driving ranges, or any mechanical amusement devices.

**Relative** - a person having any of the following relationships by blood, marriage or adoption between the caregiver and the child in care, parent, grandparent, great-grandparent, brother, sister, aunt, uncle, stepparent, stepbrother, and stepsister. Cousin is not included.

**Residence** - a building containing only dwelling units. The term "residence" or any combination thereof shall not be deemed to include hotel, boarding house, rooming house, motel, hospital, or other accommodations used for transient occupancy or mobile residences.

**Restaurant** - An establishment where food and drink are prepared, served, and consumed, mostly within the principal building. However, a snack bar, or refreshment stand at a public or non-profit community swimming pool, playground, or park, operated solely for the convenience of patrons of the facility, shall not be deemed to be a restaurant.

**Riding Stable** - Any place at which horses or ponies are kept for hire, either with or without instruction in riding.

**Right-of-Way** - land reserved for use as a street, alley or interior walk or for other public purpose.

**Retirement Community** – Any age-restricted development, where at least 80% of the units are occupied by at least one person age 55 or above, which may be in any housing form, including detached and attached dwelling units, apartments, and residences.

**Re-subdivision** – The division of two or more existing lots into one or more lots or parcels of land.

**Roadside Stand** - a structure designed or used for the display or sale of neighborhood agricultural products or goods produced on the premises upon which a stand is located.

**Rooming House** - a residence with two (2) or more bedrooms rented to persons not related to the main occupants. This definition excludes homes for the handicapped, persons recovering from drugs or alcohol, or any other person whose fees are paid by persons other than the boarder. There may be long term residents at a rooming house.

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**Salvage Yard** – any area not within a building where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, stored, disassembled, handled, abandoned, including the salvaging, storing, wrecking of automobiles and other vehicles, machinery or parts thereof, house wrecking yards, used lumber yards and places for storage of salvaged building or structural steel materials and equipment. Any property occupied by two or more abandoned vehicles shall constitute a salvage yard.

**School, Nursery** - any place, however designated, operated for the purpose of providing training, guidance, education, or care for four (4) or more children under 6 years of age, separated from their parents or guardians, during any part of the day, including kindergarten, day nurseries, and day care centers.

**School of General Instruction** - a public, parochial, or private school or college giving regular instruction at least five days each week (except for holidays) for a normal school year of not less than seven months; but including: **(a)** a school of special instruction as defined herein, or **(b)** a nursery school unless conducted as part of a school of general instruction, or **(c)** a riding school, however designated, or **(d)** a school for mental defectives.

**School of Special Instruction** - a school with three or more employees primarily devoted to giving instruction in vocational, professional, commercial, musical, dramatic, artistic, linguistic, scientific, religious, or special subjects, but not including; **(a)** a nursery school, or **(b)** a riding school, however designated, or **(c)** a school for mental defectives.

**Setback** – The minimum distance between a building and a lot line.

**Setback Line, Building** – the minimum setbacks defining the building envelope—the area on a lot where a building can be built. The term "required setback" means a line beyond which a building is not permitted to extend under the provisions of this ordinance; and thus establishing the minimum depths and widths of yards—Front, Rear, and Side(s). An interior lot or an assembly of lots to form an interior lot, with frontage on two streets, shall have a required setback equivalent to a front yard on each street.

**Sewage Disposal Plant** - a plant or lagoon for the treatment of sewage, which serves the municipality or any group of properties, as distinguished from a private septic tank or package treatment plant, which is accessory to and located on the same premises with a principal use.

**Shopping Center** - a group of commercial establishments planned, developed, and owned and managed as a unit with on-site parking and of similar architectural characteristics.

**Shopping Center – Neighborhood** - a group of commercial establishments providing for the sale of convenience goods or personal services. Its building size in square footage must be between 7,000 and 30,000 square feet.

**Shopping Center – Community** - a Commercial establishment designed to provide the basic facilities found in a neighborhood center with a wider range of

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commercial establishments. A community shopping center ranges from 30,000 to 300,000 square feet.

**Shopping Center – Regional** – a commercial establishment designed to provide a full scope of retail sales and services. It is designed to attract customers from an area of greater population than the County. Its size must be from 300,000 square feet up.

**Side Yard** – See Yard, Side.

**Single and Separate Ownership** - the ownership of a property by one or more persons whose ownership is separate and distinct from that of any abutting or adjoining properties.

**Single-Family Dwelling** – a residential unit designed for just one family.

**Single-Family Semi-Detached Dwelling** - a building designed for and occupied exclusively as a residence for only one (1) family and having one (1) party wall in common with an adjacent building or living unit. This type of dwelling is also called a duplex.

**Single-Family Attached Dwelling** - a building used by a number of single-family residences (units), and each unit is separated from every other unit by one or more vertical common fire-resistant walls.

**Single-Family Detached Dwelling** - a residential dwelling consisting of a single detached building containing one dwelling unit and located on a lot containing no other dwelling unit.

**Site Plan** - a drawing illustrating a proposed development and prepared in accordance with the specifications of this ordinance.

**Slaughter House** - Any building, place or establishment in which is conducted the slaughtering of livestock or poultry for commercial purposes.

**Special Exception** - the granting of a modification of the provisions of this chapter as authorized in specific instances listed and under the terms, procedures and conditions prescribed herein. Special exceptions are administered by the Board – Delaware Board of Adjustments or Maryland Board of Zoning Appeals.

**Stable, Private** - a stable with a capacity of not more than two (2) animals.

**Stormwater Management Pond**- an artificial pond that is designed to collect and retain storm water. Is generally not considered open space, unless an ancillary use is approved by special exemption. A working aeration device is required.

**Story** - that portion of a building, other than a cellar as defined herein, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the ceiling next above it.

**Story, Half** - a partial story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story; provided, however, that any partial story used as a

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separate dwelling, other than for a janitor or caretaker and his family, shall be deemed a full story.

**Story, Ground** - the lowest story, or ground story, or first story of any building, the floor of which is not more than three and one-half (3 1/2) feet below the average contact ground level at the exterior walls of the building, except that any basement used as a separate dwelling by other than a janitor or caretaker or his family shall be deemed a ground or first story.

**Street** - a public right-of-way which provides a means of public access to the abutting property. Other names used for street include road, roadway, lane, alley, drive, boulevard, interstate highway and freeway.

**Street, Collector** - a street that collects traffic from residential roads and channels it to a major street.

**Street, Major** - a street or highway designated as a major street or expressway on the official major street plan of Delmar.

**Street Line** - the edge of an existing or future street right-of-way forming the dividing line between the street and the lot.

**Structure** - anything constructed or erected including any part thereof, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including but not limited to private roads and driveways, parking lots, patios, sheds, signs, swimming pools, porches, backstops for tennis courts, fences and light standards.

**Structural Alteration** - any change in the structural members of a building, such as bearing walls columns, beams or girders or as may be defined by the building code in effect in the Town of Delmar.

**Subdivision** – “Subdivision” means any of the following.

- Division or partition of any tract or parcel of land into 2 or more plots, parcels, units, lots, condominiums, tracts, sites, or interests for the purpose of offer, sale, lease, development, whether immediate or future; either on an installment plan or upon any other plans, terms, or conditions; or for any other purpose
- Assemblage or consolidation of plots, parcels, units, lots, condominiums, tracts, sites, or interests for the purpose of offer, sale, lease, development, whether immediate or future; either on an installment plan or upon any other plans, terms, or conditions; or for any other purpose
- Division or assemblage of land involving any of the following
  - Opening, widening, or extension of any streets or access easements
  - Extension of any electrical, sewer, water or any other utility line
- Condominium creation or conversion

**Surveyor** – A registered land surveyor or registered engineer employed by the owner or agent to prepare the necessary maps for a lot or subdivision.

**Tavern** – see Bar.

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**Temporary Structure** – a structure which is not attached to the ground or any other permanent structure and is easily movable.

**Tenant** - one who has the temporary use and occupation of real property owned by another person or legal entity.

**Theater, Indoor** - a building designed and/or used primarily for the commercial exhibition of motion pictures or live shows to the general public.

**Townhouse** – see Dwelling, Townhouse.

**Trailer** - any vehicle or structure constructed in such a manner as to provide sleeping and cooking facilities or the conduct of any business, trade or occupation, or use as a selling or advertising device, and so designed that it is or may be mounted on wheels and transported over highways and streets, propelled or drawn by its own or other power.

**Trailer Park** - any park, tourist park, camp court, site, lot, parcel or tract of land which is designed, maintained or intended for the purpose of supplying a location or accommodation for two (2) or more trailers for living purposes or upon which two (2) or more trailers are parked or mounted for living purposes.

**Travel Trailer** - a vehicle used for temporary living or sleeping purposes and standing on wheels.

**Use** - the purpose for which a building, structure, or parcel, is designed, used, or intended to be used.

**Use, Accessory** - a use which is customarily incidental and subordinate to the principal use of a lot or a building and which is located on the same lot therewith.

**Use First Permitted** - a use, which in the sequence of successively listed zoning districts, occurs as a permitted use for the first time in a special zoning district.

**Use, Permitted** - those uses specifically listed in this ordinance as "uses permitted inherently" not to include uses herein defined a "non conforming use".

**Use, Principal** - the principal purpose for which a lot or a building is designed, arranged, intended, occupied or maintained.

**Variance** - a grant of permission by the Board that authorizes the recipient to do that which, according to the strict letter of this ordinance, he or she could not otherwise do legally; permission to depart from the literal requirements of this Ordinance.

**Vehicle** - any conveyance that transports people or objects.

**Yard** - 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 structure erected thereon setting back from and nearest such street line. In the event that a yard fronts on a denied access road, such yard shall not be considered a front yard.

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**Yard, Rear** - a yard extending across the full width of the lot extending from the rear line of the principal structure to the rear line of the lot.

**Yard, Rear, Least Depth** - the shortest distance, measured horizontally, between any part of a building and the rear lot line.

**Yard, Side** - an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

**Yard, Side, Least Width** - the shortest distance, measured horizontally, between any part of a building or structure to the nearest side lot line.

**Yard Sale** – the temporary display and sale of personal property along any public or approved private road.

**Zoning Map** - the zoning map of the Town of Delmar, together with all amendments, thereto subsequently adopted.

**Zoning Certificate** - a written statement issued by the zoning inspector authorizing the use and occupancy of buildings, structures, or premises consistent with the terms of this chapter and for the purpose of carrying out and enforcing its provisions.

**Zoning Inspector** - the Code Enforcement Officer or an authorized Town representative.

**Zoning** - the reservation of certain specified areas within a community, county, or Town for building and structure, or use of land, for certain purposes with other limitations such as height, lot coverage and other stipulated requirements.

### **Section 3 – General Provisions**

- A. Commission review and approval: In all districts defined within this ordinance, the lot size and shape, and all architectural components of the structures to be constructed or altered shall be subject to the review and approval of the Commission, which reports to the Joint Council for executive-level review, approval, and guidance. This review and approval process shall apply to all new construction and all remodeling projects that significantly change the external appearance of any primary structure. Property owners and developers shall take care to ensure that all provisions of this ordinance are met and that the aesthetics, size, style, color, roof pitches, etc, are appropriate for the district and surrounding area (as viewed from the street directly in front of the lot, with primary emphasis on the adjacent properties). It is especially important to protect, preserve, and enhance the Town's quality of life, including its natural resources. For small single-lot residential projects, the Commission shall review a to-scale-model drawing of the lot, showing the size and location of the primary structure, all accessory structures (e.g., detached garage, sheds, decks, patios, pools, driveways and parking spaces), essential utilities, easements and all major landscaping features (e.g., mature trees and shrubs, standing and flowing bodies of water, tax ditches, and any significant elevations changes). The Commission shall also review a sketch of what it can expect to see from the street when the project is completed; and if the primary features of the lot cannot be seen from the street, the Commission may also request additional sketches and written information needed to complete their understanding of the proposed project. Much more is required of larger projects; refer to Sections 25 and 26 for details. The Commission may rely upon the Town's Code Enforcement Officer's judgment, in the field, as to which proposed projects require further review and approval. \*The Commission and/or the Town Council by majority vote retains the discretion and right, when exercised in accordance with applicable law, to reject any petition seeking approval under, or change to, these Planning & Zoning Regulations.
- B. Principal building or structure: Within residential districts, no more than one principal (primary) building may occupy or be constructed upon any lot.
- C. Reduction in lot area: No lot may be reduced in area below the minimum lot area as specified herein for the district within which it is located.
- D. Accessory buildings must meet the specifications set forth in each zoning district and are subject to the setbacks summarized there.
- E. Street access: No building shall be constructed on a lot, which does not have the required minimum frontage on a public street.
- F. Interference with pedestrians or vehicular traffic: Outdoor advertising signs, structures of any type, recreational equipment, shrubs or trees shall not be installed or stored on any public sidewalk or street nor shall they be permitted to protrude from any property over any public sidewalk or street, in a manner

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which obscures, creates confusion or thus otherwise interferes with pedestrian or vehicular movement, traffic signals or signs.

- G. Vision clearance at corners: Fences, buildings, signs, plantings or other obstructions above a height of three feet shall not be permitted within 10 feet of the intersection of the right-of-way lines of two streets.
- H. Utility location: Public utilities may be located in any district subject to approval of the Commission and Public Works Department. In such cases, the following requirements shall be complied with:
  - 1. Such facility shall be essential for the immediate area.
  - 2. Open space surrounding the facility shall be suitably landscaped and maintained.
  - 3. When such facilities area is located within any R “Residential” or C “Commercial” District, the storage of vehicles and equipment surrounding the facility shall be prohibited.
  - 4. The facility shall not constitute a nuisance.
- I. Residential fences and walls.
  - 1. Subject to limitations imposed by Section 21 - Fences.
  - 2. All applicants for a fence or wall shall apply for and upon approval be granted a building permit. An application shall be made on a form prescribed by the Town. A copy of the drawing of the plans, with accompanying specifications, must be submitted with the application.
- J. Commercial fences: All commercial property shall provide a privacy fence, unless otherwise stipulated by the Commission, of a material consistent with the building architecture at least six feet but not more than eight feet in height. A fence shall be erected to conceal various storage equipment/materials, dumpsters and any other materials normally found in commercial establishments. This fence shall be anchored in such a manner that it cannot become airborne during high winds and/or stormy conditions.
- K. Beautification mounds: Beautification mounds may be acceptable in place of fences subject to approval of the Commission. Beautification mounds may be elevated soil or sand material placed on properties in lieu of fences for beautification purposes. Beautification mounds and any vegetation planted thereon shall not exceed four feet in height nor be located within two feet of street lot lines; however, trees will be allowed to grow to their normal height, provided they are kept trimmed. Trees on corner lots with street intersections or curves along road rights-of-way must be trimmed to provide adequate vehicular visibility. Beautification mounds constructed less than ten (10) feet from the intersection of rights-of-way of two streets, including any vegetation or ornamentation, shall not exceed three feet in height. Beautification mounds shall be constructed so as not to divert normal drainage waters onto other private or public property.

## Town of Delmar Planning & Zoning Regulations

- L. Permanent and temporary structures: A permanent structure (see full definitions in Section 2) is attached to the lot and not easily moved. Temporary structures are not attached and are easily movable. Principal (primary) structures are presumed to be permanent and accessory structures may be either permanent or temporary. The Town's Code Enforcement Officer shall review and approve all plans for new structures and shall determine if a building permit is required. No temporary structure may be used for residential purposes.
- a. Temporary structures may be erected or installed as needed at construction sites. Pre-fabricated (or of similarly constructed quality) accessory structures (e.g. tool shed, doghouse, trailer) may be placed on the ground, within setbacks, behind the principal residential structure (i.e. in the rear yard).
    - i. Construction Trailers require a permit, are deemed to be temporary by nature and can only be placed for the period of one year. The Planning and Zoning Commission can extend the period by one year increments at its discretion. The trailer must not be an eye sore and must remain in good condition for the duration of its placement. Trailers must be removed from the construction site when work is completed or stopped and prior to the issuance of a certificate of occupancy for the applicable property.
    - ii. Housing Development sales trailers require a permit and are deemed to be temporary by nature. They are considered an ancillary use to a development during the building phase. Since each housing development building phase is different, the Planning and Zoning Commission will determine how long a sales trailer can remain in place, with a maximum length of time being not more than 3 years. At its discretion, the Planning and Zoning Commission can issue an extension of not more than 3 years, when the previous period has lapsed. The trailer must not be an eye sore and must remain in good condition for the duration of its placement. Trailers must be removed from the site prior to the issuance of a certificate of occupancy for the last property or the lapse of the duration determined by the Planning and Zoning Commission.
  - b. A temporary moving structure (e.g. a POD) may be placed on a residential driveway or off-street parking space for a period of no more than 30-days in any calendar year; however the code enforcement officer may grant one (1) thirty (30) day extension during said calendar year upon written request and a showing of good cause.
- M. No house trailers, utility trailers, animal transport trailers, campers, recreational vehicles, tents, tarpaulins, motor homes or boats may be used as a residence or for permanent storage purposes.

## Town of Delmar Planning & Zoning Regulations

- N. House trailers, utility trailers, animal transport trailers, campers, recreational vehicles, motor homes or boats may be parked on any owner's property as long as all other provisions of this chapter are satisfied. However, these items may not be parked on any public street, except as noted in any governing traffic ordinance.
- O. Dumpsters may be parked at construction sites during construction, provided that such dumpsters must be removed from the construction site when work is completed or stopped and prior to the issuance of a certificate of occupancy for the applicable property.
- P. Nonconforming uses and structures permitted:
1. Except as herein specified, the use of any structure or land otherwise lawfully existing prior to the enactment of this ordinance, may be continued although such use does not conform to the current provisions of this ordinance. Such usage shall be deemed to be grandfathered.
  2. Abandonment. Whenever a nonconforming use or structure has been discontinued or is inactive for a period of one year or more, such use or structure may not, thereafter, be reestablished and any future use or structure shall be in conformity with the provisions of this ordinance.
  3. Nonconforming use. Alterations of and additions to structures containing nonconforming uses shall not be permitted
  4. Nonconforming structures. Alterations of and additions to nonconforming structures are not permitted to that portion of the structure, which does not conform to setback requirements. Repairs and internal alterations of a nonconforming structure shall be permitted; provided, however, that no repair shall be permitted to that portion of a paved driveway or paved sidewalk located within any street right-of-way where 50% or more of such portion requires repair.
  5. Destruction. A building or structure of nonconforming dimension or use which is 50% or more destroyed by fire, explosion or act of God, as determined by the Code Enforcement Officer or Town Manager, or, if with a lesser percentage of destruction, condemned by the Town engineer or Fire Marshal, may be rebuilt only if the rebuilt structure conforms to all the dimensional requirements of this ordinance. Intentional destruction of a nonconforming structure is permitted, and if the structure is rebuilt, it must conform to all terms and conditions of this ordinance.
  6. A nonconforming use may not be changed to another nonconforming use without prior review of the Commission and approval of the Board; and any proposed new nonconforming use should attempt to reuse the existing structures, if in good general repair and appearance, and shall not introduce additional noise, traffic, or other activity that detracts from the intended character of that zone.

## Town of Delmar Planning & Zoning Regulations

7. When any persons feel aggrieved by a decision of any governmental authority or representative respecting any nonconforming use, the matter shall be determined by the Board according to state laws as now in effect or hereafter amended or changed.

### Q. Conflict with other laws.

#### 1. Zoning Ordinance Governs

Whenever the regulations made under authority of this ordinance require a greater degree of compliance (e.g., width or size of yard, court, or other open spaces, or require a lower height of building or less number of stories, or require a greater area of lot to be left unoccupied) or impose other higher standards than are required in any other adopted international code, federal or state requirement or statute or local ordinance or regulation, the provisions of these regulations made under authority of this ordinance shall govern.

#### 2. Other Statutes Govern

Whenever the provisions of any adopted international code, federal or state statute or requirement or local ordinance or regulation require a greater degree of compliance than the requirements made under authority of this ordinance, the provisions of those aforementioned codes, federal or state statutes or requirements, or local ordinances or regulations shall govern.

### R. Interpretation of District Boundaries

1. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
2. Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.
3. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines
4. Boundaries indicated as approximately following Town limits shall be construed as following Town boundary lines
5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks
6. Boundaries indicated as approximately following the centerlines of streams or rivers shall be construed to follow such centerlines, and in the event of change in the centerline shall be construed as moving with the actual centerline.
7. Boundaries indicated as parallel to or extensions of features indicated in the above shall be so construed.
8. The scale of the Official Zoning Map shall determine distances not specifically indicated on the Official Zoning Map.

## Town of Delmar Planning & Zoning Regulations

9. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered above, the Commission shall interpret the zone boundaries.
10. If the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of changes and additions, the Commission and the Mayor may, by resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.
11. Any map adopted by the Commission and Mayor by resolution may correct clerical, drafting, or other errors or omissions in the prior Official Zoning Map without the necessity of a formal amendment.
12. However, no other correction may be made unless the same reflects an amendment to the Ordinance lawfully adopted by the Commission and Mayor.
13. To the greatest extent practical, outdated or superseded Official Zoning Maps, together with all records pertaining thereto, shall be preserved for a period of not less than ten (10) years.

### S. Fire Fighter Emergency Access

To facilitate emergency worker access, high-occupancy building owners, assisted living housing, and similar businesses shall install a Knox Box or equivalent.

### T. Restoration or Removal of Damaged or Destroyed Structures

Any building or structure which is destroyed or damaged to an extent that, in the judgment of the Code Enforcement Officer, Town Manager or Mayor, that building or structure is uninhabitable or a hazard to public health or life or safety, shall be removed from the premises or restoration begun within 30 days of formal written notification.

### U. Landscape Maintenance

Any development that has a landscaping plan approved by the Commission is required to maintain the landscaping per the approved plan. Property owners subject to a Commission approved landscaping plan are free to request a plan revision from the Commission; but the Commission is not required to hear or approve any revision request.

- V. Business and multi-family buildings shall install and maintain appropriate waste containment facilities. Dumpsters and other waste confinement structures shall be screened on three sides in building materials consistent with the architecture of the primary structure. All waste containers must be of a design and maintained to prevent the wind, animals, and other natural sources from scattering the container's contents.

W. Storm Water Management Pond Maintenance- Storm water management ponds must be maintained in order to serve their purpose as storm water management tools. In addition to regular maintenance (cutting grass,

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maintaining integrity of walls, pipes, etc...) each storm water management pond must have a working aeration device.

**Section 4 – Residential R-1 District**

**A. Uses Permitted Inherently**

1. Single-Family Detached Dwelling
2. Public Park and Public Recreation grounds
3. Publicly owned and operated building or structure, with use of a recreational, cultural, educational or utility nature (e.g. library)
4. School of general instruction

**B. Uses Permitted by Special Exception**

1. Church or other place of worship excluding bus storage or cemetery as accessory uses.
2. Building and uses of recreational, cultural, fraternal, social and utility nature except as otherwise permitted inherently
3. Cemetery

**C. Accessory Uses and Structures**

1. Private garages and other accessory uses normally associated with a residential use such as, but not limited to, detached home workshop, swimming pool and greenhouse, all of which shall be incidental to the use of the property as a residence.
2. Home office or home occupation.
3. Child Care home or nursery school.
4. Festival or fair as long as conducted on lands owned by a Church or place of worship, public park, recreation grounds or a social or fraternal Group.
5. Carnival or Circus, if it is held on publicly owned lands such as public parks, or recreational areas, and if they are operated by or for the benefit of a non-profit organization.
6. Other accessory uses and structures clearly incidental to, customary to and associated with the permitted use.
7. Personal use gardens, limited to the growing of fruits, grains & vegetables.

**D. Area Requirements**

1. Minimum lot area: 7,000 square feet.
2. Minimum lot width: 50 feet.
3. Minimum setbacks of Principal Structure:
  - a. Front: 20 feet.
  - b. Rear: 30 feet.
  - c. Side: 10 feet on each side.
4. Minimum setbacks of Accessory Structures:
  - a. Rear: 5 feet
  - b. Side: 3 feet
5. Maximum building height:
  - a. Principal Structure: 35 feet
  - b. Accessory Structures: 20 feet.
6. Other requirements:

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Where the majority of front setbacks have been established by existing development within a block, the average depth of said front setbacks shall apply. Where there is considerable irregularity in said setbacks, the Board may determine the appropriate setback which will be the most compatible to the established setback of existing development to either side of the parcel under consideration.

### **E. Building Coverage of Residential Lots**

Accessory building, not over one story, may be built in a rear yard provided that not more than 59% of the area of a required rear yard is occupied by such garages and other accessory buildings. Swimming pools may be built in the rear yards but may not occupy more than 75% of the required rear yard.

### **F. Parking Requirements**

1. Off-street parking shall meet that set forth in Section 22 - Parking.
2. The parking of vehicles, of any type, shall not be permitted within the front yard other than on driveways providing access from public streets.

### **G. Street Standards**

Street standards shall meet those set forth in Section 23 - Streets.

### **H. Open Space**

A minimum of 20% of the entire subdivision must be retained in open areas and deeded for the common use of residents of the development. The common and developed open space area shall be planned as an integral part of the development providing access to and benefits for all residents of the development. Of the 20% at least half must be deemed to be "active" open spaces such as playgrounds, jogging paths, picnic areas, soccer field etc... as determined by the Planning and Zoning Commission.

Example: If a wooded area with a trail is included in the open space plan, only the trail itself would be considered "active" open space.

### **I. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 5 – Residential R-2 District**

### **A. Uses Permitted Inherently**

1. Single-Family Detached Dwelling
2. Public Park and Public Recreation grounds
3. Publicly owned and operated building or structure, with use of a recreational, cultural, educational or utility nature (e.g. library)
4. School of general instruction

### **B. Uses Permitted by Special Exception**

1. Church or other place of worship excluding bus storage or cemetery as accessory uses.
2. Apartment building
3. Duplexes and Townhouses
4. Building and uses of recreational, cultural, fraternal, social and utility nature except as otherwise permitted inherently
5. Cemetery

### **C. Accessory Uses and Structures**

1. Private garages and other accessory uses normally associated with a residential use such as, but not limited to, detached home workshop, swimming pool and greenhouse, all of which shall be incidental to the use of the property as a residence.
2. Home Office or Home Occupation
3. Child Care home or nursery school
4. Temporary Festival or Fair as long as conducted on lands owned by a Church or place of worship, Public Park, recreation grounds or a social or fraternal Group.
5. Temporary Carnival or Circus, if it is held on publicly owned lands such as public parks, or recreational areas and if they are operated by or for the benefit of a non-profit organization
6. Other accessory uses and structures clearly incidental to, customary to and associated with the permitted use.
7. Personal use gardens, limited to the growing of fruits, grains & vegetables.

### **D. Area Requirements**

1. Minimum lot area: 9,000 square feet.
2. Minimum lot width: 60 feet.
3. Minimum setbacks of Principal Structure:
  - a. Front: 25 feet.
  - b. Rear: 30 feet.
  - c. Side (Interior lot side): 10 feet on each side.
  - d. Side (Corner lot side): 15 feet on each side.

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### 4. Minimum setbacks of Accessory Structures:

- a. Rear: 5 feet
- b. Side: 3 feet

### 5. Maximum building height:

- a. Principal Structure: 35 feet
- b. Accessory Structures: 20 feet.

### 6. Other requirements:

Where the majority of front setbacks have been established by existing development within a block, the average depth of said front setbacks shall apply. Where there is considerable irregularity in said setbacks, the Board may determine the appropriate setback which will be the most compatible to the established setback of existing development to either side of the parcel under consideration.

## **E. Building Coverage of Residential Lots**

Accessory building, not over one story, may be built in a rear yard provided that not more than 59% of the area of a required rear yard is occupied by such garages and other accessory buildings. Swimming pools may be built in the rear yards but may not occupy more than 75% of the required rear yard.

## **F. Parking Requirements**

- 1. Off-street parking shall meet that set forth in Section 22 - Parking.
- 2. The parking of vehicles, of any type, shall not be permitted within the front yard other than on driveways providing access from public streets.

## **G. Street Standards**

Street standards shall meet those set forth in Section 23 - Streets.

## **H. Open Space**

A minimum of 20% of the entire subdivision must be retained in open areas and deeded for the common use of residents of the development. The common and developed open space area shall be planned as an integral part of the development providing access to and benefits for all residents of the development. Of the 20% at least half must be deemed to be “active” open spaces such as playgrounds, jogging paths, picnic areas, soccer field etc... as determined by the Planning and Zoning Commission.

Example: If a wooded area with a trail is included in the open space plan, only the trail itself would be considered “active” open space.

## **I. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 6 – Mobile Home Residential R-3 District**

The purpose of this district is to establish and maintain a mobile home residential district for the community; to provide for the development of mobile home parks and to provide requirements and minimum standards pertinent thereto.

### **A. Uses Permitted Inherently**

1. Mobile Home Park
2. Mobile Home Park Office
3. Mobile Home Park Recreational Facility
4. Mobile Homes

### **B. Uses Permitted by Special Exception**

1. None

### **C. Accessory Uses and Structures**

1. Park Maintenance Structures - Accessory buildings and structures incidental to the operation and maintenance of a mobile home park, facilities, and the residential lots therein.
2. Car Ports
3. Storage sheds
4. Personal use gardens, limited to the growing of fruits, grains & vegetables.

### **D. Area Requirements**

1. Mobile Home Park
  - a. Minimum area: 10 acres.
  - b. Open space: a minimum of 20% of the entire park must be retained in open areas and deeded for the common use of residents of the development. The common and developed open space area shall be planned as an integral part of the development providing access to and benefits for all residents of the development. Of the 20% at least half must be deemed to be “active” open spaces such as playgrounds, jogging paths, picnic areas, soccer field etc... as determined by the Planning and Zoning Commission.

Example: If a wooded area with a trail is included in the open space plan, only the trail itself would be considered “active” open space.

- c. Maximum building height:
  - i. Principal Structure: 35 feet.
  - ii. Accessory Structures: 20 feet.
- d. Minimum setbacks of Principal Structure:
  - i. Front: 25 feet.
  - ii. Rear: 20 feet.
  - iii. Side: 20 feet.

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- e. Minimum setbacks of Accessory Structures: 5 feet
  - f. Mobile home parks shall be located in areas for same shown on the zoning map of the Town of Delmar. The park shall be located on a well-drained site properly graded to insure rapid drainage. The site shall not be exposed to objectionable smoke, noise, odors, or any other adverse influences, and no portion subject to unpredictable sudden flooding, subsidence or erosion shall be used for any purpose, which would expose persons of property to hazards.
  - g. The area of a mobile home park shall be a contiguous parcel of property and have a minimum size of 10 acres and is platted for the development of a minimum of 50 mobile home lots.
2. Mobile Home Lot:
- a. Minimum lot area: 6,000 square feet; if mobile home contains over 1200 square feet, 8,000 square feet is required.
  - b. Minimum lot width: 60 feet. Note that additional width may be required to meet minimum setback requirements below.
  - c. Minimum lot depth: 80 feet. Note that additional depth may be required to meet minimum setback requirements below.
  - d. Minimum setbacks of Principal Structure (the mobile home):
    - i. Front: 25 feet.
    - ii. Rear: 10 feet.
    - iii. Side (Interior lot side): 5 feet.
    - iv. Side (Corner lot side): 25 feet.
  - e. Minimum setbacks of Accessory Structures:
    - i. Rear: 5 feet
    - ii. Side: 3 feet
  - f. Lots occupied by mobile homes exceeding 20 feet in width shall have a minimum area of 7,000 square feet and shall be at least 70 feet wide.
  - g. A mobile home shall be so harbored on its stand that there shall be a minimum clearance of 20 feet between adjacent mobile homes; and for purposes of clearance and setback requirements, any accessory structure that is attached to a mobile home shall be considered to be part of that mobile home. No mobile home shall be located closer than 25 feet to any paved street, building or recreational structure within the mobile home park.
  - h. A mobile home lot shall be complete before occupancy is permitted.

### **E. Mobile Home Maintenance:**

It shall be unlawful for any person, persons, firm or corporation to maintain a mobile home within the Town of Delmar except in conformity with these

regulations. Any lawful mobile home located on a lot within the Town of Delmar at the time of the adoption of this ordinance may be continued although it does not conform to the provisions contained herein, provided that a mobile home existing at the time of the adoption of these regulations is not removed or that the ownership of the aforesaid lot remains unchanged. All such mobile homes shall be removed within ten years after the effective date of this ordinance or be relocated to comply with all the provisions of this ordinance. If a non-conforming mobile home is destroyed or damaged more than 75% of its replacement value, the replacement of the non-conforming mobile home shall be only in conformity of this ordinance. A lawful non-conforming use may not be extended by enlarging the size or area of the mobile home or land or structure thereon. A non-conforming use which shall remain idle and unused for a continuous period of six months shall be considered abandoned as a non-conforming use and all such mobile homes shall be removed or be relocated to comply with all the provisions of this ordinance.

**F. Mobile Home Park License:**

Any lawful mobile home park existing at the time of the adoption of this section may be continued although it does not conform to the standards and provisions contained herein. All such mobile home parks however, must obtain a license according to procedures outlined in this section and comply with and maintain standards set forth in the Sanitary Laws and Regulations of the Maryland (Delaware) State Department of Health for Mobile Home and Trailer Parks. Any non-conforming mobile home park that is discontinued, as a business enterprise, shall not be issued a license for re-establishment except in conformity with these regulations. Expansion of existing mobile home parks will be permitted only in strict conformity with this section.

1. It shall be unlawful for any person, persons, firm or corporation to maintain or operate a mobile home park within the Town of Delmar unless a valid license is held, which is issued annually by the Code Enforcement Officer and approved by the Fire Chief, both of the Town of Delmar.
2. Application for a mobile home park license shall be filed with and issued by the Code Enforcement Officer with the approval of the Fire Chief for a calendar year. The Application shall be in writing and signed by the applicant, who shall file with the application, proof of ownership of the premises or of a lease or written permission from the owner. The application shall be accompanied by two complete sets of plans drawn to scale showing the location of the proposed mobile home park, which shall show the name and address of the applicant; the location and legal description of the park; its area and dimensions: location of any existing buildings and proposed structures: location, name and width of the streets and walkways: and location of water, sewer, gas and other facilities.
3. Application for a license to operate a new mobile home park or to expand an existing one shall require approval of park design by the Commission. The Commission shall determine the adequacy of the design with respect

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to arrangements of lots, streets, and other facilities to assure conditions favorable to health, safety, and convenience.

4. Application for renewal of license shall be made in duplicate by the holder of the license to the Code Enforcement Officer and shall contain any change in the information submitted since the original license was issued or the latest renewal granted.
5. License fee: Set by Council and Commission Resolution.

### **G. Open Space Requirements.**

A minimum of 20% of the entire subdivision must be retained in open areas and deeded for the common use of residents of the development. The common and developed open space area shall be planned as an integral part of the development providing access to and benefits for all residents of the development.

### **H. Streets, Walks, Parking, Lighting and Stands.**

1. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. All park streets shall be well drained, paved and maintained in good condition, and may not exceed a grade of eight percent. All mobile home lots where off-street parking areas are provided shall abut upon a paved street at least 30 feet in width. If on-street parking is permitted, the minimum width of street pavement shall be 36 feet.
2. No street names shall be used which will duplicate or be confused with names of existing streets within the park and Town. Street names shall be subject to the approval of the Commission.
3. Walkways not less than three feet wide shall be provided from each mobile home stand to the street. All service buildings shall have similar walkways.
4. Off-street parking shall be provided in all mobile home parks. Refer to Section 22 - Parking.
5. All streets and walks within the park shall be adequately lighted at night, subject to approval by Code Enforcement Officer.
6. The mobile home stand shall provide adequate foundation for the placement of a mobile home, subject to approval by the Code Enforcement Officer.

### **I. Water Supply.**

1. An accessible, adequate, safe, and potable supply of water shall be provided each mobile home. Where a public supply of water is available, connection shall be made thereto and its supply used exclusively.
2. The water supply shall be capable of delivering a minimum of 175 gallons per day per mobile home.
3. The water supply system of the mobile home park shall be connected by pipes to all mobile homes, buildings, and other facilities requiring water.

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4. All water piping, fixtures and other equipment shall be constructed and maintained in accordance with State and Town regulations and requirements and shall be of a type and in locations approved by the Code Enforcement Officer.

### **J. Fire Protection**

1. All mobile home parks shall be subject to the rules and regulations of the Fire Prevention Code.
2. Fire hydrants shall be installed when the park is within 500 feet of the Town water system in accordance with the following requirements:
  - a. The water supply system shall permit the operation of a minimum of two 2-½ inch hose streams.
  - b. Each of two nozzles, held four feet above the ground, shall deliver at least 75 gallons of water per minute at a flowing pressure of at least 30 pounds per square inch at the highest elevation of the park.
  - c. Fire hydrants shall be located within 600 feet of any mobile home, service building, or other structure in the park.
3. Each mobile home park shall provide ingress and egress facilities at separate and strategic locations that will permit the passage of occupant vehicles and the fire fighting equipment of the Town.

### **K. Miscellaneous Park Management Responsibilities**

1. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this section, and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair, and in a clean and sanitary condition.
2. The park management shall notify park occupants of all applicable provisions of this section and inform them of their duties and responsibilities there under.
3. The park management shall be responsible for the proper placement of each home on its mobile home stand, which includes securing its stability and installing all utility connections. The management shall also be responsible for the disconnection of all utilities prior to the departure of a mobile home.
4. The park management shall maintain a register containing the names of all the park occupants. Such register shall be available to any civil authority inspecting the park.
5. The license certificate shall be conspicuously posted in the office of or on the premises of the mobile home park at all times.

**L. Responsibilities of Park Occupants.**

1. The park occupant shall comply with all applicable requirements of this section, and shall maintain the mobile home lot, its facilities and equipment in good repair and in clean and sanitary conditions.
2. No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large or to commit any nuisance in the park.

**M. Enforcement**

1. Whenever a violation of this section occurs, or is alleged to have occurred, any person may file a written complaint stating in full the causes and basis thereof with the Town of Delmar Code Enforcement Officer who shall immediately record such complaint, investigate, and if the investigation discloses a basis for the complaint, the officer shall take such action as may be necessary to correct the violation.
2. If the Code Enforcement Officer or the Fire Chief shall find that any of the provisions of this section are being violated, the Officer or Chief shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it, and shall take any other action authorized or required by this section to insure compliance with, or to prevent violation of, its provisions.
3. Any person who shall violate any provision of this ordinance shall upon conviction be punished by a fine set by the Town Council or Commission; and each day's failure to comply with any such provision shall constitute a separate violation.

**N. Revocation of License.**

The Code Enforcement Officer or the Fire Chief may revoke any license to maintain and operate a mobile home park when the licensee has been found guilty by a court of competent jurisdiction of violating any provision of this section. After such conviction, the license may be reissued if the circumstances leading to the conviction have been remedied and the park is being maintained and operated in full compliance with the law.

**O. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 7 – Residential R-4 District**

The purpose of this district is to encourage development that provides a diverse mix and efficient arrangement of land uses and housing types. Although lots in this district can be smaller, there is added focus on open space for residents and landscaping.

### **A. Uses Permitted Inherently**

1. Single Family Detached Dwelling
2. Duplexes
3. Townhouses
4. Apartments
5. Multifamily Homes
6. Cluster Development

### **B. Uses Permitted by Special Exception**

1. Home occupations, if secondary to the use of the dwelling for living purposes and conducted entirely within the dwelling
2. Public Park and Public recreation grounds
3. School of general instruction
4. Retirement community
5. In multi-family, multi-story residential buildings, the following small business operations are permitted by exception on the first floor only:
  - a. General merchandise stores, including such uses as apparel and accessories, cosmetics, drugs, and small variety stores
  - b. Specialty retail stores, including such uses as gifts, crafts, newspapers, flowers, books, jewelry, and stationary stores
  - c. Personal service establishments, including such uses as barbers, beauticians, shoe repair, and tailors
  - d. Restaurants and other retail food and drink stores, including bakeries, confectionery, candy or gourmet shops, small convenience grocery shops (without gas pumps) and meat, fish, or produce stores
  - e. Financial Institutions, loan companies, and banks.
  - f. Professional services and administrative activities, including such uses as offices of agents, brokers, financial planners, physicians, dentists, attorneys, architects, engineers, musicians, and artists; and governmental offices serving the public
  - g. Library, museums, art galleries, and public information centers

### **C. Accessory Uses and Structures**

1. Private garages and other accessory uses normally associated with a residential use such as, but not limited to, detached home workshop, swimming pool and greenhouse, all of which shall be incidental to the use of the property as a residence
2. Personal use gardens, limited to the growing of fruits, grains & vegetables.

**D. Area Requirements**

1. Minimum lot area: 4,000 square feet.
2. Minimum interior lot width: 45 feet.
3. Minimum setbacks of Principal Structure:
  - a. Front: 20 feet.
  - b. Rear: 30 feet.
  - c. Side (Interior lot side): 5 feet.
  - d. Side (Corner lot side): 10 feet.
4. Minimum setbacks of Accessory Structures:
  - a. Rear: 5 feet
  - b. Side: 3 feet
5. Maximum building height:
  - a. Principal Structure: 50 feet
  - b. Accessory Structures: 20 feet.
6. The residential density and mixture shall be determined by the Commission and will be based on input from the developer, nature of the surrounding areas, availability of services, and impact on the community.
7. All streets and walks shall be adequately lighted at night.

**E. Parking Requirements**

1. Off-street parking and loading and unloading space shall be provided for all uses, whether an inherent use of a special exception, in accordance with the requirements of Section 22 - Parking.
2. On single-family lots, the parking of vehicles, of any type, shall not be permitted within the front yard other than driveways providing access from public streets.

**F. Open Space Requirement**

1. Public open space to meet residents' recreation needs, storm water management requirements, and environmental protection goals, shall be provided through a variety of parks, greens, squares, playgrounds, plazas, greenbelts, preserves, and water infiltration areas. The development shall make the maximum feasible use of the existing natural systems and features.
2. At least 20% of the total development area is required for community open space in this district. Of the 20% at least half must be deemed to be "active" open spaces such as playgrounds, jogging paths, picnic areas, soccer field etc... as determined by the Planning and Zoning Commission.  
  
Example: If a wooded area with a trail is included in the open space plan, only the trail itself would be considered "active" open space.
3. Such improvements shall be provided and maintained at the sole expense of the developer, subdivision owner or bona-fide community association.

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4. Open space areas shall be maintained so that their use and enjoyment as open space is not diminished or destroyed. Open space areas may be owned, preserved, and maintained by any of the following mechanisms or combinations thereof:
  - a. Dedication of open space to the Town or an appropriate public agency willing to accept the dedication.
  - b. Common ownership of the open space by a homeowner's association which assumes full responsibility for its maintenance.
  - c. Dedication of development rights of open space may be made to an appropriate public agency with ownership remaining with the developer or homeowner's association. Maintenance responsibility shall remain with the property owner.
  - d. Deed-restricted private ownership which shall prevent development and/or subsequent subdivision of the open space land and provide maintenance responsibility.
  - e. Maintenance of natural areas is limited to the removal of litter, dead tree and plant materials, and brush. Natural watercourses shall be maintained as free flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain level.
  - f. Maintenance of recreational areas is limited to insuring that no hazards, nuisances, or unhealthy conditions exist.
  - g. Pedestrian amenities shall be maintained in a clean and safe condition.

### **G. Access and Circulation**

1. Connectivity of pedestrian and vehicular networks, natural systems, and open space networks with adjacent communities, existing and future.
2. The internal street network shall not employ the use of closed street systems, except when there are environmental or topographical constraints, or barriers such as railroads or greenways, prohibit street extensions, or where the use of closed street systems enhances the design of the community.
3. The internal street network shall include sidewalks on both sides of street, on street parking on one side of the street, and bike lanes on all major streets.

### **H. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 8 – Central Business District**

The purpose of this district is to create an atmosphere that encourages the preservation and revitalization of the historic central business district. Although land will be provided for economic activity, residential use is also encouraged.

### **A. Uses Permitted Inherently**

1. Residential units on floors above the following business usages
2. General merchandise stores, including such uses as department stores, apparel and accessories, hardware, shoes, drugs, and variety stores
3. Specialty retail stores, including such uses as gifts, antiques, crafts, newspapers, tobacco, flowers, sporting goods, books, jewelry, leather goods and stationary stores
4. Personal service establishments, including such uses as barbers, beauticians, shoe repair, and tailors
5. Financial Institutions, loan companies, and banks.
6. Restaurants
7. Retail food stores, including bakeries, confectionery, candy or gourmet shops, small convenience grocery shops (without gas pumps) and meat, fish, or produce stores
8. Professional services and administrative activities, including such uses as offices of agents, brokers, financial planners, physicians, dentists, attorneys, architects, engineers, musicians, and artists; and governmental offices serving the public
9. Library, museums, art galleries, and public information centers
10. Churches and other places of worship
11. Fraternal, social service, union, or civic organization
12. Publishing, printing, and reproduction establishments
13. Repair and servicing as an accessory activity of any article for sale in the same establishment

### **B. Uses Permitted by Special Exception**

1. Bus Terminal
2. Dry-cleaning establishments
3. Funeral Homes
4. Motels and Hotels
5. Tavern
6. Family day care
7. Commercial indoor recreation activities, including amusement arcades, indoor theaters, billiards parlor, bowling alley, skating rink, etc.
8. Public Parking Lot

### **C. Area Requirements**

1. Minimum lot area: 5,000 square feet.
2. Each main building hereafter, together with its accessory buildings, shall be located on a lot having an area of at least 5,000 square feet, except for

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existing lot(s) recorded by deed or plat on record at the time of the enacting of this ordinance.

3. Minimum lot width: 50 feet
4. Minimum setbacks:
  - a. Front: 20 feet.
  - b. Rear: 10 feet.
  - c. Side: 15 feet.
5. Maximum building height: 35 feet, except by special exception

### **D. Parking Requirements**

1. Off street parking and loading and unloading space shall be provided for all uses, whether an inherent use or special exception. If parking is provided from other sources such as public spaces in the downtown area or in a large parking facility, the number of parking spaces can be flexible, but not less than one space per apartment unit, and is subject to approval of the Commission at the time a site plan is submitted.
2. The buildings facing the Railroad Tracks on Pennsylvania Avenue from East Street in Delmar Maryland to Grove Street in Delmar Delaware are exempt from all parking use requirements.

### **E. Sign Requirements**

Refer to Section 24 - Signs.

## **Section 9 – Office and Service District**

The purpose of this district is to create a place for small businesses to exist on the edge of a residential neighborhood, without adversely impacting the residential atmosphere of the neighborhood.

### **A. Uses Permitted Inherently**

1. Beauty Parlor
2. Custom sewing and dressmaking
3. Financial institutions such as banks, credit unions, saving and loan associations, finance or credit offices
4. Office building
5. Parking lot
6. Photograph studio
7. Professional office of physician, dentist, chiropractor, chiropodist, builder, contractor, architect, engineer, surveyor, or attorney at law, and such
8. Studio of artist, sculptor, vocalist, or instrumentalist
9. Teacher’s studio for music, dance or other artistic instruction
10. Residential use

### **B. Uses Permitted by Special Exception**

1. Funeral home
2. Medical clinic or dispensary, hospital, convalescent home, nursing home or day care nursery

### **C. Area Requirements**

1. Minimum lot area: 7,000 square feet.
2. Minimum lot width: 60 feet
3. Minimum setbacks:
  - a. Front: 20 feet.
  - b. Rear: 30 feet.
  - c. Side: 10 feet.
4. Maximum building height: 35 feet
5. Buffer Zone: 5 feet

### **D. Parking Requirements**

Off-street parking shall meet that set forth in Section 22 - Parking.

### **E. Sign Requirements**

Refer to Section 24 - Signs.

### **F. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 10 – Community Business District**

This district will provide for limited commercial and professional services that can be compatible in a neighborhood setting to provide goods and services to local residents. These districts therefore are located in areas with ready access, and because of the intensity of land use, are in areas where utilities are or may be available.

### **A. Uses Permitted Inherently**

1. Offices for professional services and administrative activities such as professional office of physician, dentist, chiropractor, chiropodist, builder, contractor, architect, engineer, surveyor, or attorney at law.
2. Branch offices only of financial intuitions and banks
3. Barber and Beauty shops
4. Studio - workshop, including sales
5. Retail food stores, such as bakeries, candy, and convenience stores (without gas pumps) and grocery meat markets
6. Restaurants
7. Retail sales and specialty stores
8. Repair and services, indoor and off site, of any article for sale which is permitted in this district
9. Antique shop or bookstore
10. Automobile sales lot and related garage facilities
11. Community recreation center, as a nonprofit community service
12. Laundromats
13. Neighborhood and community shopping centers
14. Hotel, Motel, or Inns
15. Bed and Breakfast

### **B. Uses Permitted by Special Exception**

1. Single Family Dwelling
2. Public parking lot
3. Convenience stores with gas pumps
4. Funeral home
5. Medical clinic or dispensary, hospital, convalescent home, extended or long-term care facility, or day care nursery
6. Multi-family dwellings
7. Self-service storage facilities

Provided, however, that there shall be no machinery or equipment, other than machinery or equipment customarily found in professional offices and ordinary business offices, used or stored in the building or on the lot.

### **C. Area Requirements**

1. Minimum lot area: 7,000 square feet. Each main building hereafter, together with its accessory buildings, shall be located on a lot having an

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- area of at least 7,000 square feet, except for existing lot(s) recorded by deed or plat on record at the time of the enacting of this ordinance.
2. Minimum lot width: 50 feet
  3. Minimum setbacks:
    - a. Front: 40 feet.
    - b. Rear: 30 feet.
    - c. Side: 15 feet.
  4. Maximum building height: 35 feet
  5. Buffer zone: 15 feet.
  6. Maximum building height: 35 feet

### **D. Parking Requirements**

Off-street parking and loading and unloading space shall be provided for all uses, whether an inherent use or a special exception, in accordance with the requirements of Section 22 - Parking.

### **E. Sign Requirements**

All signs shall be in accordance with Section 24 - Signs.

### **F. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 11 – Highway / Regional Commercial District**

The purpose of this district is to provide for the location of primary economic activities which are to a large extent regional in scope such as regional retailing and service commercial activities requiring locations with emphasis on visibility from and access to regional high volume highways and large sites. These larger-scale commercial uses may require large amounts of parking or have high traffic impact. The purpose of this district is to promote orderly and harmonious development within the district and within surrounding districts. The regulations are designed to protect uses within the district and within abutting or surrounding districts, establishing such standards for intensity of use and character of development as are compatible with the function of this district.

### **A. Uses Permitted Inherently**

1. All business (non-residential) uses permitted inherently in the Central Business, Office and Service, and Community Business Districts, and Regional Shopping Centers in accordance with minimum standards set in Section 17 where superseded by the requirements of this district.
2. Convention Center
3. Cultivation of Land
4. Hospital
5. Hotel, Motel, or Inns
6. Automobile sales lot and related garage facilities
7. Office Building or complex
8. Sport arena or stadium
9. Theater with a structure
10. Restaurants
11. Warehouses
12. Supermarkets
13. Memorial stone shop
14. Outdoor commercial recreational facilities, such as miniature golf or sports fields, not motorized vehicles
15. Swimming club
16. Bus Station
17. Service Station with or without gasoline

### **B. Uses Permitted by Special Exception**

1. Truck and trailer rentals
2. Roadside produce market
3. Casino – a casino may be allowed by special exception subject to certain conditions imposed by the Town of Delmar, Delaware, which shall include, but not be limited to, the following:
  - a. The Developer /Owner/Principal Entity seeking a special exception for a casino shall be required to complete an impact study on all public and private services affected. These services shall include, but not be

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limited to, the fire department, police department, library, school system, transportation, and other service providers deemed essential to the Town.

b. The Town will impose a Community Assessment Fee on behalf of the service providers, and any additional service providers determined to be affected, listed in the preceding paragraph. The Town will act as the primary liaison with the service providers in determining an appropriate assessment fee.

c. The developer/Owner/Principal Entity seeking a special exception for a casino shall be in good standing with the State of Delaware and all other regulatory authorities at the time a special exception is requested, and shall not have had a casino, gambling or gaming operations license suspended, revoked and/or terminated within or outside the State of Delaware.

### **C. Area Requirements**

1. Minimum lot area: 2 acres
2. Minimum lot width: 200 feet
3. Minimum setbacks:
  - a. Front: 100 feet.
  - b. Rear: 30 feet, 50 feet to adjacent residential district.
  - c. Side (Interior lot side): 10 feet, 20 feet between buildings
  - d. Side (corner lot side): 30 feet, 50 feet to adjacent residential district.
4. Maximum building height: 40 feet.
5. Buffer Zone: 50 feet.

### **D. Parking Requirements**

1. Off-street parking and loading and unloading space shall be provided for all uses, whether an inherent use or a special exception, in accordance with the requirements of Section 22 - Parking.
2. See Section 17 – Shopping Centers.

### **E. Sign Requirements**

1. Where more than one business is proposed to be located in a development, a plan showing the overall design and treatment of signs within the entire development shall be provided.
2. Wall, roof, and projecting signs shall be shown on elevation drawings or proposed buildings and shall be limited as to size, number and location on the exterior of the buildings by the Commission.
3. One freestanding, on-site, commercial sign shall be permitted before each development proposed on property abating the right-of-way of a major highway, such as Route 13. Said sign shall not be higher than 30 feet or lower than 14 feet above ground and shall be limited in surface area to

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100 sq. ft. No part of the freestanding, on-site commercial sign shall be closer than 20 feet from any property line. Additional on-site freestanding signs may be permitted by the Commission and may be limited in size, height, and location at its discretion, but may not exceed the requirements stated herein.

4. All signs should be lighted internally. By Commission except, a sign may be lighted by spotlight, provided the light is shielded from view, does not impact traffic safety, and does not disturb the neighboring properties. Flashing and moving signs are prohibited.
5. See Section 24 - Signs for additional sign requirements.

### **F. Exterior Lighting**

1. An exterior lighting plan shall be provided showing the location of exterior lighting fixtures or standards, and shall be designed so that levels of illuminations will be functional, yet show no visible light source and so that such lighting will not produce glare in the surrounding property.
2. See also the Section 24 - Signs for additional lighting requirements.

### **G. Landscaping and Screening**

Landscaping and Screening required as follows, and shall be shown in a landscaping plan:

1. A 50 foot wide strip of land generally following the right of way of major highways and a 25 foot wide strip along access roads to the highway shall be landscaped to the end that it will provide a continuity of landscaping along the major highway, and shall be designed with consideration given to existing landscaping on adjoining properties.
2. Parking lots shall be landscaped to break up large expanses of paved parking areas through the use of landscaped rest islands, tree clumping and walkways.
3. Screening in the form of fencing such as evergreen hedgerow or existing natural growth is to be provided along property lines adjacent to existing residentially used or zoned property.
4. Screening shall be provided around loading and unloading areas
5. All areas not devoted to buildings, parking, or other facilities shall be suitably landscaped and maintained; dead plant material shall be replaced according to the season.
6. The landscaping plan shall contain as a minimum the following:
  - a. The approximate location of a residential or other building or uses in the vicinity of the proposed development site.
  - b. An outline of existing wooded area
  - c. The approximate location of branches or natural intermittent drainage channels.
  - d. The approximate location of any outstanding individual trees or special features on the development site.

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- e. The location, name, size and height or diameter of shrubbery and trees to be planted within landscaped or screened area.
- f. The height, length, type and location of fencing to be used for screening purposes.

### **H. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 12 – Light Industrial District**

In order to provide land that is suitable for light industrial development, and to minimize any adverse effects on surrounding areas, the following regulations and restrictions are established.

### **A. Uses Permitted Inherently**

1. Bakery and bakery products.
2. Clothing manufacturing.
3. Cultivation of land.
4. Electronic Plant.
5. Farm equipment sales and service.
6. Small scale manufacturing, assembly, and light industrial, with no unobserved outside storage on the premises and with no smoke, odor, or noise emanating from the property.
7. Laboratories, research, experimental, product testing facilities, but no explosive materials or products allowed without special exception and with no smoke, odor, or noise emanating from the property.
8. Mail order houses.
9. Office building.
10. Publicly owned utility building and use.
11. The compounding, processing and packaging of drugs and cosmetics.
12. Warehouse, excluding truck terminals.
13. Wholesale distributors, except those that are unsafe or hazardous in nature.
14. Veterinarian, kennel, animal hospital or clinic.
15. Agriculture (farming).
16. Mini-storage facilities.

### **B. Uses Permitted by Special Exception**

1. Car wash.
2. Circus or carnival.
3. Printing and publishing plant.
4. Service station and repair garage.
5. Temporary mobile office (construction use).
6. Self-service storage facilities

### **C. Area Requirements**

1. Minimum lot area: 25,000 square feet
2. Minimum lot width: 100 feet
3. Minimum setbacks:
  - a. Front: 50 feet from property line or 70 feet from the center line of a public street whichever is greater.
  - b. Rear: 30 feet
  - c. Side (Interior lot side): 15 feet

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- d. Side (corner lot side): 50 feet from property line or 70 feet from the center line of a public street whichever is greater.
- 4. Maximum building height: 40 feet.
- 5. Buffer Zone:
  - a. Rear: 10 feet.
  - b. Side: 15 feet.

### **D. Parking Requirements**

Off-street parking and loading and unloading space shall be provided for all uses, whether an inherent use or a special exception, in accordance with the requirements of Section 22 - Parking.

### **E. Sign Requirements**

All signs shall be in accordance with Section 24 - Signs.

### **F. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 13 – Industrial District**

To provide lands that are so situated as to be suitable for industrial activities and permit the operation of said uses without encroachment on residential and commercial activities. To encourage industrial growth of the community, standards and restrictions are established giving protection to the industry that proposes to locate or that has already located in the districts as well as to minimize adverse effects on surrounding areas.

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered or enlarged except for one of the following uses:

### **A. Uses Permitted Inherently**

1. Building supply yard.
2. Clothing Manufacturing.
3. Contractor's construction equipment, supplies, or storage yard.
4. Cultivation of land.
5. Customer repair and service shop including but not limited to electrical appliances, musical, and scientific instruments.
6. Frozen food lockers.
7. Grain and feed supply.
8. Lumber yard.
9. Machine shop.
10. Marine Supplies.
11. Mail order house.
12. Publicly owned utility buildings and uses.
13. Stone monuments, cutting, and polishing.
14. Agriculture (farming).

### **B. Uses Permitted By Special Exception**

1. All uses of an industrial nature not specified herein.
2. All uses permitted in the Light Industrial District.
3. Dry cleaning plant.
4. Industrial uses that may emit smoke, odor, noise or dust.
5. Salvage yard.
6. Self-service storage facilities.
7. Adult Usages (Refer to Section 28).

### **C. Area Requirements**

1. Minimum lot area: 25,000 square feet
2. Minimum lot width: 100 feet
3. Minimum setbacks:
  - a. Front: 50 feet from property line or 70 feet from the center line of a public street whichever is greater.
  - b. Rear: 30 feet
  - c. Side (Interior lot side): 15 feet

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- d. Side (corner lot side): 50 feet from property line or 70 feet from the center line of a public street whichever is greater.
4. Maximum building height: 40 feet.
5. Buffer Zone:
  - a. Rear: 10 feet.
  - b. Side: 15 feet.

### **D. Parking Requirements**

Off-street parking and loading and unloading space shall be provided for all uses, whether an inherent use or a special exception, in accordance with the requirements of Section 22 - Parking.

### **E. Sign Requirements**

All signs shall be in accordance with Section 24 - Signs.

### **F. Matters for Commission Review**

1. The Commission shall examine all proposed development whether permitted inherently or by special exception, with respect to traffic and circulation patterns, internal and external, relation to major thoroughfares, utilities, drainage, and community facilities, existing or proposed, surrounding development existing and future, the preservation of trees or of insuring a durable, harmonious, and appropriate use of the land in accord with the objectives of the Comprehensive Plan. Since salvage yards are intensive uses, and since they are usually operated outdoors, appropriate setbacks, screening, and buffering are required.
2. Following a review by the Commission of a proposed use permitted by special exception, recommendations of the Commission shall be forwarded to the Board for consideration by the Board.

### **G. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 14 – Apartment Standards**

To prevent the construction of apartments in locations not suited for apartments; to prevent the over-crowding of land; to avoid the undue concentration of populations within certain districts and to insure the adequate protection of the surrounding area, the following minimum standards for apartment development shall apply.

### **A. Procedures and Restrictions**

1. All apartment developments shall require a Comprehensive Site Plan. See Section 26 – Development Plan.
2. In the site plan, there shall be adequate provisions for access and for adequate protection of the surrounding properties.

### **B. Design Standards and restrictions**

1. Density:

Density for apartment development shall not exceed 25% of the total lot area and the remaining non-building area may include that portion of the site which is devoted to parking, landscaping, private access to roads, and any related open space.

2. Minimum Lot Area per Dwelling Unit:

3,200 square feet of lot area shall be provided per dwelling unit excluding the area of internal streets.

### **C. Setbacks**

1. Front or corner setback required for the district in which it is located or not less than 30 feet
2. No apartment building shall be located less than 30 feet from any side or rear property line,
3. No accessory building shall be located less than 25 feet from any apartment building nor less than 25 feet from any side or rear property line

### **D. Lot Coverage and Area Consumption**

1. Apartment buildings, including accessory buildings within the project area shall not cover more that 25% of the land area
2. Land area used to compute density shall not include public streets needed to serve the project

### **E. Open Space**

1. Not less than 25% of the net project area shall be provided in open space suitable for leisure time activities; this shall include areas designated for swimming pools, tennis courts, etc.

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2. Developed open space shall include tot lots and may include tennis courts, basketball courts, and picnic areas or other facilities approved by the Commission.

### **F. Parking**

1. A minimum of one and a half off-street parking spaces per dwelling unit, plus 25% of the total for guest parking shall be provided.
2. Parking in common areas shall not exceed 50 vehicles per parking area; provided that all connected parking areas shall be separated by a landscaped area of at least 15 feet in width.
3. Parking should be arranged so as not to create a nuisance for adjoining property.
4. Where applicable, there shall be off-street loading and unloading areas provided. These areas shall be screened through landscaping or permanent construction from adjoining areas.

### **G. Lighting**

Lighting of external walkways and parking lots shall be provided. Such lighting shall be designed so as not to throw glare on to surrounding property.

### **H. Density or Height Increases Permitted by Special Exception**

1. In all districts where apartment development is permitted, the Board may approve an increase in height or density up to a maximum of 30 units per acre after consideration of the following criteria in addition to satisfying the requirements of the special exceptions chapter of this ordinance.
  - a. Additional 10 foot setback requirement for each story above three to provide distance and separation from lower profile residential development,
  - b. Open space is increased to 40% of the net project area,
  - c. Arrangement of buildings on the site can be designed to minimize the effect of shadows,
  - d. Interference with light and air intrusion on privacy of adjoining residential yards,
  - e. Additional landscaping and screening is provided around parking areas, where the Board deems necessary and adjoining resident development,
  - f. In determining whether an increase in height or density should be approved, the Board shall consider such factors as:
    - i. Existing and proposed streets and traffic patterns relative to the amount of traffic that the increased density will generate.
    - ii. Whether the site is further separated from residential areas by streets or nonresidential uses.

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- iii. Added recreational facilities to meet a higher density of people.

## **Section 15 – Townhouse Development**

This section establishes standards and provisions for the appropriate location and development of sites for townhouses that will more fully and efficiently utilize available public utilities and services. This section is intended to provide the maximum amount of freedom in the design of townhouses and their grouping and layout within certain districts; to provide the amenities normally associated with less dense zoning categories; to permit the greatest possible amount of freedom in types of ownership; and to promote the health, safety, and welfare of present and future inhabitants of the districts in which they are located.

### **A. Area Requirements**

1. Net lot area - Every townhouse dwelling shall have a minimum lot area of two thousand (2,000) square feet. A townhouse development shall have an average of not less than three thousand five hundred (3,500) square feet per dwelling, but no Townhouse development shall be located on a contiguous tract of land containing less than twenty thousand (20,000) square feet.
2. Building coverage - Not more than 35 percent of the lot area shall be occupied by Townhouses.
3. Green area - Not less than 50 percent of the lot area shall be devoted to open space provided. Interior patio courts of not less than 125 square feet in area and with a minimum dimension of no less than ten feet may be computed as green area.

### **B. Yards**

1. Yard, front - Each lot shall have a front building line at least thirty (30) feet from, and parallel to the front lot line or a proposed front street line, if such has been established within the lot, to provide a front yard.
2. Yard, side
  - a. A side yard at least twenty (20) feet in width shall be provided at each end of every row of Townhouses.
  - b. Each corner lot shall have a side building line such as will provide a side yard equal to the front yard requirements of the lots on the side street which abuts its rear lot line.
3. Yard, rear - Each lot shall have a rear yard of at least thirty (30) feet in depth. Accessory buildings shall be located only in the rear yard and shall occupy not over twenty-five percent thereof, and shall be located not less than three (3) feet from a rear or side lot line, nor less than five feet from an alley line; except that in the case of a corner lot an accessory building shall be located in accordance with the setback requirements for a corner lot in the district in which it is located.

**C. Lot Frontage, Minimum at Front Building Line**

Each interior lot used for Townhouses shall be not less than twenty (20) feet wide, and there shall be not more than eight Townhouses in any one row.

**D. Building Height Limit**

The height limit for a Townhouse shall be two and one-half stories, measured on any external wall and not over thirty-five feet.

**E. Roads**

Each lot used for Townhouses must have at least 100 feet of frontage on a public road. Interior access drives which are not dedicated for public use shall be improved to the standards set forth by the Town of Delmar unless they are under 500 feet in length, in which case they shall be at least 22 feet wide if two-way and 12 feet if one-way and with no on-street parking. Internal access drives not dedicated for public use shall be improved to the construction standards set forth by the Town of Delmar.

Points of access to public roads shall be approved by the Town of Delmar, Sussex County, Wicomico County, Delaware and/or Maryland State Department of Highways, or appropriate highway authority as applicable.

**F. Off-Street Parking Requirements**

Off-street parking shall be provided in accordance with Section 22 - Parking.

**G. Application, Review and Site Plan Approval**

1. Application - An applicant for a building permit for Townhouses shall submit for review a Comprehensive Development Plan to the Commission as set forth in paragraph 2 below and in Section 26 – Development Plan. The Code Enforcement Officer shall review all material and forward same to the Commission for review and recommendations.
2. Site plan approval - No building permit or certificate of occupancy shall be issued for the construction or use of any Townhouse except in accordance with a plan of development approved for the lot or tract on which such Townhouses are to be located. It is the intent and purpose of these regulations that Townhouse development be of varying design to avoid the monotony of development of rows of similarly designed attached dwellings commonly called "row houses".

Such plan of development shall show the locations and site of all buildings and structures; the area devoted to parking facilities and accessory buildings; all access roads, drives and walkways; the topography and major vegetation features now existing on the land; the proposed grading, landscaping and screening plans; recreation, outdoor living and other green areas; and other

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such features necessary for the evaluation of the development plan including the following:

- a. Preliminary drawings showing floor plans front and rear elevations and side elevations, where applicable.
- b. Evidence of proposed covenants, restrictions and details of maintenance responsibilities of common area and green space, to show that liability for maintenance of such development and that the same may be enforced by liens against the property owners in favor of the Town of Delmar or its assignee.

In reviewing the application and plan the Town shall consider the standards and purpose of this section with a view to achieving a maximum of safety, convenience amenity for surrounding area residents. To these ends the Town shall consider the location of buildings, parking areas and other features with respect to the topography of the lot and its existing natural features such as large trees: the efficiency, adequacy and safety of the proposed layout of internal streets and driveways; the adequacy and location of green area provided, bearing in mind the possible effects of irregularly shaped lots; and such other matters as the Town may find to have a material bearing upon the stated standards and objectives of these regulations with respect to Townhouses. However, the Town may consider deviations from strict compliance with the standards provided outlined in this section provided they conform to the above-cited purposes of these regulations.

The site plan may show no more than two continuous attached houses with the same setback, and the variation in setback must be at least two feet. A profile plan shall show a variation in design of houses or groups of houses sufficient to satisfy the intent of these regulations.

The Town shall also review the locations of the Townhouse development in relation to surrounding uses and public streets serving the development with the consideration that while such developments represent a higher density residential use, they should not be restricted to higher density residential zoning districts, but may be comparable with the proper development of low density single-family residential districts if located on a major through street or adjacent to a higher density residential district or non-residential district.

### **H. Open Space**

1. Not less than 25% of the net project area shall be provided in open space suitable for leisure time activities; this shall include areas designated for swimming pools, tennis courts, etc.
2. Developed open space shall include tot lots and may include tennis courts, basketball courts, and picnic areas or other facilities approved by the Commission.

### **I. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 16 – Cluster Developments**

To provide for the clustering of residential units; to encourage the wise and efficient utilization of land; to provide a greater variety in our living environment; to provide for the permanent preservation of open space areas in residential developments; and to provide for a lower public investment in utility installations; the following minimum standards are established for Cluster development:

### **A. Procedures**

1. Cluster developments are permitted inherently in R-4 districts provided the development adheres to the total land area required for the sum of the individual lots required for the district without meeting individual lot area and width requirements.
2. A Comprehensive Site Plan must be provided for the entire development project. This plan should be submitted and reviewed in accordance with the Section 26 – Development Plan of this ordinance.
3. In addition to the elements required in a comprehensive site plan, the site plan and elements of a cluster development, as a minimum, shall contain the following information:
  - a. The plan must show the location, purpose, and type of construction of all buildings, all public and private parking arrangements, lighting, utilities, community open spaces, all natural features, and the overall population and traffic density of the development proposed on the site.
  - b. A copy of all proposed deed restrictions, covenants, bylaws, or other legal instruments designed to provide for continuing maintenance and control of community open space area, parking, storm water management and utility easement areas, including any homeowners' association agreement or bylaws.

### **B. Design Standards and Restrictions**

1. A minimum of 20% of the entire project must be retained in open areas and deeded for the common use of residents of the development. The common and developed open space area shall be planned as an integral part of the development providing access to and benefits for all residents of the development.
2. The development must contain a minimum of 5 acres.
3. The developer shall provide unified access to the commonly used open areas designated in the Comprehensive Plan, and shall suitably provide for maintenance for such open areas.
4. Essential services must be available for the development from a common source and be individually metered.

## **Section 17 – Shopping Centers Standards**

These Shopping Center Standards are established to provide for a unified development of neighborhood, community and regional shopping centers which will offer public convenient shopping facilities while at the same time protect from any unnecessary safety hazards or nuisances.

### **A. General Standards**

1. Shopping Centers shall be developed according to a Comprehensive Development plan as defined herein.
2. Buildings shall be designed so that facades, signs and other appurtenances will have an integrated and harmonious appearance, so that parking and landscaped areas are harmonious and attractively arranged, and in a manner which will not adversely affect surrounding development.
3. Shopping Centers shall be located where traffic congestion does not exist on roads used for immediate access to the Center, and where such congestion is not likely to be created by the proposed Center; or where such congestion will be obviated by current scheduled improvements to access roads, by demonstrable provisions for proper exits and entrances, and by internal provisions for parking and traffic circulation.
4. Shopping Centers, when feasible, shall be served by single common sewers, gas, water, lighting, power, and heating systems of services.
5. Passenger parking areas and freight loading areas shall be separately located and safety provisions must be made for the protection of pedestrians, including appropriate location of roadways, parking areas, sidewalks, islands, entrances, exits, crossovers, and underpasses which are provided with drainage, lighting, directional signs and supervision as may be required.
6. Construction must be initiated within two years of permit issuance.

### **B. Permitted Uses**

1. Department stores.
2. Retail Sales Establishments, including but not limited to the sale of appliances, wearing apparel, general merchandise and food.
3. Commercial service establishments, including but not limited to barbershops, beauty shops, apparel repair and maintenance, repair of consumer products, professional services and automotive services.
4. Recreation facilities such as movie houses, theatres, and bowling lanes.
5. Offices and financial institutes.
6. Eating and drinking establishments.
7. Motels and hotels.

**C. Prohibited Uses**

1. Machine shops.
2. Auto repair garages except those operated by an on-site department store.
3. Tire recapping.

**D. Building Area Coverage**

The ground area occupied by all buildings shall not exceed thirty (30) percent of the gross lot or tract area.

**E. Customer Parking**

Notwithstanding any other requirements of this Code, there shall be provided 51/2 off-street parking spaces for each one thousand square feet of gross lease able floor area, not including basement storage.

**F. Loading Space**

Notwithstanding any other provisions of this Code, there shall be provided one (1) off-street loading and unloading space for each twenty-thousand (20,000) square feet of aggregate floor space.

**G. Paving and Illumination**

All roadways, parking areas and pedestrian walks shall be paved with a hard surface material which shall be maintained in good condition at all times and shall be properly illuminated when used after dark in such a manner as to prevent the direct transmission of light into adjacent residential properties.

**H. Screening**

Whenever a shopping center is located adjacent to a residential developed or zoned area, a permanent solid fence or planted area with trees or shrubs shall be provided on the side or sides adjacent to such residential areas sufficient to act as a buffer to the transmission of light and sound from the center.

**I. Signs**

1. Notwithstanding any other requirements of this Code, each shopping center shall be permitted no more than two (2) free standing signs not over twenty-five (25) feet in height, with a maximum surface area of one hundred (100) square feet. Such signs shall not be located closer than twenty (20)' feet to any property line. Flashing signs shall be prohibited and no lighted sign shall shine directly into adjacent residential properties.
2. All signs within the center shall be controlled by written agreement between the owners and tenant of the Center, so as to avoid excessive advertising and ensure an attractive and harmonious appearance throughout the Center.

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3. Only one flat wall identity sign shall be permitted for each operating business establishment, whether lighted or unlighted. Such signs shall not have a surface area more than 30 percent of the front building surface of the establishment and shall be mounted flush with the building. All individual signs shall be located within the same horizontal plane on the building facade.
4. See Section 24 - Signs for additional restrictions.

### **J. Site Plan Review**

Refer to Section 26 – Development Plan.

## **Section 18 – Essential Utility Services**

It is the intent of this section to provide for the establishment of essential services (utilities) without restrictions in all use districts while, at the same time, protecting residents by the use of fencing, safety and other requirements for utility buildings and structures. Therefore, essential service providers are strongly encouraged to install and maintain their lines and pipes within the Utility Easement located on each side of the street abutting each lot. This easement extends ten (10) feet into each lot from the street right-of-way (See in Section 23 – Street & Sidewalk Standards).

### **A. Uses Permitted**

An essential service, as defined in Section 2 - Definitions, shall be an inherent use in any district. However, relay stations, storage stations, electric sub-stations and buildings used or maintained for purposes defined under "Essential Services" shall be permitted only by Special Exception in any district.

### **B. Area Requirements**

There shall be no area restrictions applicable to the location of essential services. However, street lights, water service meters and cut-off valves, as well as sewer cleanout pipes should be located in the utility easement reserved for that purpose. Note that municipal water and sewer lines are installed under the street or easement areas and are owned and maintained by the Town of Delmar.

### **C. Setback Requirements**

No setback requirements in any use district shall be applicable to essential services.

### **D. Landscaping**

Shrubbery or hedge shall be planted around each use approved by Special Exception for the purpose of screening in order to minimize adverse effects on surrounding development.

## **Section 19 – Animals in Residential Districts**

It is the intent of this section to permit only certain uses in residential zones which involve the keeping of a limited number of domestic animals (pets). This section is further intended to minimize problems, like offensive noise and odors, and to provide suitable standards for the protection of health, safety, welfare and preservation of residential districts from indiscriminate raising of animals. (Also, refer to the Town of Delmar's Animal Control Ordinances.)

### **A. Uses Permitted**

1. Domestic Pets: Cats, dogs, or other generally recognized domestic pets may be kept and bred by persons residing on the lot for their use and enjoyment.

### **B. Uses Prohibited**

1. The keeping, raising or breeding of any animals or fowl for the sale thereof as a business or commercial activity is expressly prohibited under all circumstances.
2. Livestock: Horses, cows, pigs, ponies, donkeys, burrows, and other large domestic animals may not be kept, raised nor bred.
3. Fowl: Chickens, ducks, quail, turkeys, squabs, and pigeons may not be kept, raised nor bred.
4. Any animal or animal related activity that repeatedly creates offensive odor or noise to the majority of the neighboring properties.

### **C. Animal Quarters**

1. Animals enclosures shall be located not less than five (5) feet from an adjacent rear property line or ten (10) feet from an adjacent side property line.
2. All enclosures shall be contained entirely within the rear yard of a lot, and shall be so constructed as to provide maximum protection against noise and odor to adjoining property.

## **Section 20 – Storage of Recreational Equipment**

### **A. Storage or Parking Restrictions to the Rear Yard**

For the purpose of these regulations, no major recreation equipment (see Section 2 - Definitions) shall be parked or stored on any lot in a residential district except in an enclosed car port, garage or in the rear yard.

### **B. Distance from Lot Lines**

Major recreational equipment shall not be parked or stored closer to rear or side lot lines than the setback distances required for accessory buildings in residential districts.

### **C. Restrictions on Use**

No major recreational equipment shall be used for living, sleeping, or housekeeping purposes when stored on a residential lot, or in any location not approved for such use.

## **Section 21 – Fences & View Obstructions**

### **A. Fence Heights**

1. Fences in rear and side yards in all zoning districts, except industrial, shall be limited to six (6) feet in height. Fences located within the front yard setback shall be limited to four (4) feet in height.
2. Fences in rear and side yards in industrial districts shall be limited to eight (8) feet in height. Fences within the front yard setback shall be limited to four (4) feet in height.
3. Fences on corner lots in all districts shall comply with Section 22 - Off-Street Parking, Loading and Unloading of this Ordinance.

### **B. Swimming Pool Restrictions**

1. Swimming Pool Safety Devices: Every person owning land on which there is situated a swimming pool, which constitutes an obvious hazard or contains twenty four (24) inches or more of water at any point, shall erect and maintain an adequate enclosure either surrounding the property or pool area, sufficient to make such body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground; all gates must be self latching with latches placed four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children.

### **C. Excavation**

1. For any unattended excavation, a fence, minimum height of four (4) feet, or other comparable barrier, shall be erected and remain in place until construction is complete. All temporary fences shall be of adequate strength.

### **D. Obstruction of View at Intersection**

As an aid to freer safe movement of vehicles at and near street intersections and in order to promote adequate protection of the safety of children, pedestrians, operators of vehicles and for property, for proposed construction hereafter:

1. There shall be limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, construction and planting, in all districts where front yards are required on corner lots.
2. Such barriers to clear unobstructed vision at corners of intersecting streets shall be limited to a height of not over three feet above the established elevation of the nearest curb, for a distance of twenty (20) feet along both the front and side lot lines, measured from the point of intersection, of the said intersection lot lines.
3. Within the isosceles triangle formed as required in item 2., by connecting the ends of the respective twenty (20) foot distances, all the fixtures, construction, hedges, shrubbery and other planting shall be limited to a

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height of not over three feet above the elevation of the curb level at the said intersecting streets.

4. Within the said triangle, the ground elevations of such front yards shall not exceed three feet above established curb elevation at said intersecting streets. This limitation shall be effective from and after the effective date of this ordinance.
5. Any barrier to clear unobstructed vision within the said triangle, validly existing before the effective date(s) of this Section, may be removed by use of the condemnation procedure provided in the Town Charter or by any lawful means selected by the Town.

## **Section 22 – Off-Street Parking, Loading and Unloading**

In order to facilitate the movement of police, fire, and hospital vehicles, to lessen congestion in the streets, to prevent obstructing traffic and blocking streets, alleys and entrances to buildings, the following regulations are established:

### **A. Off-Street Parking**

1. After the effective date of this Ordinance no land shall be used or occupied, no structure shall be designed, erected, or expanded used or occupied and no use shall be operated unless the off-street parking space herein required is provided. No off-street parking space greater than exists at the effective date of this Ordinance need be provided, nor maintained for land, structure, or uses actually used, occupied and operated on the effective date of this ordinance, or for which a valid permit has been issued.
2. Each residential lot shall contain a minimum of two (2) standard full-sized automobile parking spaces—each parking space shall not be less than one hundred, eighty (180) square feet with minimum dimensions of ten (10) feet by eighteen (18) feet, which may not include any abutting sidewalk width. If adjacent on-street parking is prohibited for any traffic control reason, that lot is also required to have access to one (1) additional off-street parking space located within 150 feet of that lot. Local clustering of these additional parking spaces shall be based on a formula of no less than one space per every two lots deprived of an adjacent on-street parking space (e.g., five neighboring lots may share a minimum of three additional off-street spaces).
3. In the case of any building, structure or premises, the use of which is not specifically mentioned herein, the provisions, for a use that is so mentioned and to which said use is similar shall apply.
4. Whenever a building permit has been granted and the plans so approved contain off-street parking provisions, the subsequent use of such property shall be deemed to be conditional upon the unqualified continuance and availability of the parking space provisions contained in such plans. Any other use of such property shall be a violation of this ordinance.
5. The off-street parking facilities required for the uses mentioned in this ordinance, and other similar uses, shall be on the same lot or parcel of land as the structure they are intended to serve. However, if this is not possible off-street parking facilities may be provided, with the specific approval of the Board, on a lot or parcel of land other than that property on which the structure is located, said property and its use to be recorded in the land records of the county at the expense of the owner, therefore not permitting said property to be used for building purposes. Cooperatively or individually established and operated facilities may satisfy the requirements of this ordinance, provided that the number of spaces

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designated is not less than the sum of individual requirements and provided further, that the other requirements in regard to off-street parking are met with approval from the Board.

6. A Maximum of fifty percent (50%) of the required off-street parking for places of non-commercial assembly may be met by utilizing parking facilities which normally serve business, operating only during the daytime hours, if said parking facilities are within three hundred (300) feet of place of public assembly.
7. All off-street parking areas that make it necessary for vehicles to back out directly into a public road, street, or highway are prohibited except for single family residences, which are only prohibited from backing out on to the highway. Individual dwell units which are contiguous within a residential structure and which have their own individual driveway shall be considered as a single-family residence for the purpose of these parking requirements.
8. No parking area shall be used for the sale, repair, dismantling or serving of any vehicle, equipment, materials, or supplies.
9. All off-street parking facilities shall be constructed of dust free materials which will have a surface resistant to erosion, drained as to prevent damage to abutting properties or public street, lighted if parking facilities are to be used at night, and periodically maintained by the owner in accordance with specifications herein required, and such facilities shall be arranged for convenient access and safety of pedestrians and vehicles. No open area in an off-street parking area shall be encroached upon by building, storage, loading, or unloading or any other use where such encroachment will reduce the area below that required by this ordinance, nor shall the number of parking spaces be reduced except upon approval of the Board and then only after proof that, by reason of reduction in floor area, seating area, number of employees, change in use of the property, or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the regulations of this ordinance. These provisions shall apply only to those residential structures, which are defined as apartment buildings in this ordinance.
10. Each automobile parking space shall be clearly marked and not less than 180 sq. ft. of appropriate dimensions for the parking of an automobile, exclusive of the access drives. There shall be provided entrances, exits, and driveways adequate to connect each parking space with a public right of way. Minimum dimensions for off-street parking and maneuvering space or driveways thereto:
  - a. 90 Degree Angle Parking - Each parking space shall be not less than nine (9) feet wide nor less than nineteen (19) feet in length, maneuvering space or driveways thereto shall be not less than

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twenty-four (24) ft. wide when measured perpendicular to the parking or building line.

- b. 60 Degree Angle Parking - Each parking space shall be no less than nine (9) feet wide perpendicular to the parking angle no less than twenty-one (21) feet in length when measured at right angles to the building or parking line. Maneuvering space or driveways thereto shall be not less than sixteen (16) feet wide when measured perpendicular to the parking or building line.
- c. 45 Degree Angle Parking - Each parking space shall be not less than nine (9) feet wide perpendicular to the parking angle no less than twenty (20) feet in length when measured at right angles to the building or parking line. Maneuvering space or driveways thereto shall be not less than fifteen (15) feet wide when measured perpendicular to the parking or building line.

### 11. Use Requirements

- a. Automobile Filling Station - One parking space for each gasoline pump plus two additional spaces, plus one space for each employees.
- b. Automobile Repair Garage - One parking space for each two hundred (200) sq. ft. of gross floor area, excluding retail sales area which shall meet the requirements for that use as specified below, plus one space for each employee.
- c. Barber shop or Beauty Parlor - Two (2) parking spaces for each beauty or barber shop chair, plus one space for each employee.
- d. Bowling Alleys - Three parking spaces for each bowling lane and one space for each employee.
- e. Bus Terminal - One space for each two hundred (200) sq. ft. of gross floor area plus one space for each employee and one parking space for each regularly scheduled bus.
- f. Civic Club, Private club, Lodge, Library, Museum - One parking space for each two hundred (200) sq. ft. of gross floor area plus one space for each employee.
- g. Commercial Establishment Devoted to Retail Sales, Trade, Merchandising or Similar Use - One parking space for each two hundred (200) sq. ft. of gross floor area used for retail sales, trade, or merchandising plus one space for each two employees.
- h. Convalescent, extended, or long-term care facility - One parking space for each two (2) beds, plus one space for each employee.
- i. Firehouse - One parking space for the Fire Chief, space for each piece of equipment stationed there, two spaces for guests and one parking space for each fire fighter on the largest shift.

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- j. Home for Aged and Orphanage - One space for each three (3) living units with a minimum of ten spaces plus one space for each employee.
- k. Laundromat - One parking space for each two machines used in the operation of the business, including laundry or dry cleaning.
- l. Hospital - One parking space for each two (2) beds, plus one space for each employee.
- m. Hotel and Motel - one and one half (1.5) parking spaces for each guest room, cabin, or suite and one space for each employee.
- n. Industrial Buildings - One space for each employee on the main shift.
- o. Kindergarten or Nursery School - Six parking spaces plus one space for each two employees and one off-street unloading and loading area.
- p. Home Occupation and Home Office – Two (2) spaces, not in the front yard and not closer than five feet to an adjoining property line.
- q. Medical Clinic or Dispensary, Doctor's Office - Four parking spaces per doctor, plus one additional space for every employee.
- r. Mortuary or Funeral Home - Thirty-five spaces for each viewing room plus one space for each business vehicle plus one space for each employee.
- s. Office Building, Professional Building or Similar Use - One parking space for each two hundred (200) sq. ft. of gross floor area.
- t. Public Schools - One parking space per teacher, plus one additional for each regular employee, plus one space for each five students in Grade 10 - 12, and one off-street loading and unloading area. In no case shall the required parking spaces be part of the loading and unloading area used to satisfy this requirement.
- u. Recreational Establishment, Commercial Other Than a Theater, Bowling Alley, Auditorium, Stadium or Arena – one (1) space for every two (2) patrons.
- v. Restaurant or Similar Place Dispensing Food, Drink, or Refreshments - One parking space for each one hundred (100) sq. ft. of gross floor area plus one space for each employee.
- w. School of Special Instruction - One parking space for each one hundred and fifty (150) sq. ft. of gross floor area plus one space for each three employees.
- x. Theater, Auditorium, Stadium, Arena, Church - One parking space for each three seats of the maximum seating capacity.

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- y. Wholesale Establishment - Two (2) parking spaces for each employee regularly employed there, up to fifteen (15) employees, and then add one parking space for each additional employee in excess of the fifteen (15) regularly employed.

### **B. Off-Street Loading and Unloading Requirements**

1. After the effective date of this ordinance, no land shall be used or occupied, nor shall any structure be designed, erected, expanded, used or occupied, and no use shall be operated unless off-street loading requirements herein required are provided. No off-street loading space greater than that which exists at the effective date of this ordinance need to be provided, nor maintained for land, structure or uses actually used, occupied and operated on the effective date of this ordinance.
  - a. Building intended or designed for use as manufacturing, storage or goods display, retail or wholesale stores, or hospitals that contain a gross floor area of 15,000 sq. ft., but less than 40,000 sq. ft. shall provide one truck loading and unloading berth. One additional berth shall be provided for each additional 60,000-sq. ft. of gross floor space or portion thereof.
  - b. Each loading and unloading berth shall be a minimum size of 25 ft. by 15 ft. with a 14 ft. overhead clearance.
2. The off-street loading facilities shall, in all cases, be provided on the same lot or parcel of land as the structure they are intended to serve and in no case shall said off-street parking space be part of the area to satisfy the off-street parking requirements of this ordinance.

## Section 23 – Street and Sidewalk Standards

The following standards apply to all new developments. Developers should refer to the “Town of Delmar Construction Standards and Specifications” for technical details.

### A. Street Standards

#### 1. Local Streets

Local streets provide residential and rural access to the collector network. These streets require a minimum of thirty-two feet (32') of **right-of-way** (the property owned and maintained by the Town of Delmar) and shall provide a minimum of thirty feet (30') of drivable surface, which may include the horizontal surface of the attached curb sharing the same grade. This drivable surface is wide enough to support two (2) adjacent traffic lanes nine feet (9') wide and two on-street parking lanes six feet (6') wide adjacent to the curbs or street right-of-ways.

#### 2. Minor Collectors

Minor collector streets provide connections between local streets and carry a relatively larger volume of local traffic and therefore require a minimum of thirty-six feet (36') of right-of-way and shall provide a minimum of thirty-four feet (34') of drivable surface, wide enough to support two (2) adjacent traffic lanes ten feet (10') wide and two on-street parking lanes seven feet (7') wide adjacent to the street curbs.

#### 3. Major Collectors

Major collector streets carry a relatively large volume of local traffic and therefore require a minimum of forty-two feet (42') of right-of-way and shall provide a minimum of forty feet (40') of drivable surface. This drivable surface is wide enough to support:

- Two (2) slightly-separated, by about one foot (1'), primary traffic lanes ten feet (10') wide and two adjacent parking lanes eight feet (8') wide next to the curb, or
- Two (2) slightly-separated primary traffic lanes ten feet (10') wide and two adjacent acceleration/deceleration lanes eight feet (8') wide, or
- Two (2) primary traffic lanes ten feet (10') wide separated by one center turn lane at least twelve feet (12') wide, or
- Four (4) primary traffic lanes nine feet (9') wide – two per direction with a slight-separation between opposing directions.

Vehicles are not permitted to back on to major collector streets; and there attaching driveways and parking lots must provide enough surface area to allow cars and trucks to turn around before returning to any abutting major collector.

#### 4. Traffic Only Streets

Traffic only streets provide only traffic lanes and no on-street parking lanes. They are generally restricted to local streets within a residential

community. Traffic only streets requires a minimum of twenty-four feet (24') of right-of-way and must provide a minimum of twenty-two feet (22') of drivable surface, wide enough to support two eleven feet (11') traffic lanes. See additional off-street parking requirements for residential lots abutting traffic only streets in Section 22 – Parking. The Town reserves the right to require private ownership and maintenance where Traffic Only Streets are used primarily to access parking.

**5. Alleys**

An alley is a public street, owned by the development occupants, or is a private way, with a public easement. Its primary purpose is to afford a secondary means of access to the abutting property. Alleys must be maintained to the Town standard by the property owners. An alley is required to have a minimum width of nine feet (9') per traffic lane and six feet (6') per parking lane. All lanes must be clearly marked to avoid traffic accidents.

**6. Cul-de-sacs**

Cul-de-sacs may only terminate local streets and require a forty-seven feet (47') right-of-way radius and a minimum drivable surface radius of forty-five feet (45').

**B. Sidewalk Standards**

1. Local residential streets (abutting only residential lots) require sidewalks on each side of the street and must be at least four feet (4') wide. All collector streets also require sidewalks on each side of the street which must be at least five feet (5') wide.
2. Sidewalks shall run parallel to the street right-of-way and should be located within the ten feet (10') Utility Easement that runs adjacent to the street (see Section 18 – Essential Utility Services). Sidewalks may either abut the street curb or run parallel to the curb, thus creating a green space for trees, mailboxes, etc.
3. Residential lots that have unobstructed access to a community walking trail are not required to have sidewalks. To meet the sidewalk standard above, this walking trail shall have a minimum width of five feet (5') and shall transverse or abut each lot without a sidewalk. If the community has a mixture of sidewalks and walking trails, the two must be connected to provide reasonably efficient, unobstructed paved access to every lot in the community.
4. Sidewalks and walking trails shall be constructed of concrete, asphalt, brick pavers or some similarly lasting materials.

**C. Additional Requirements**

1. The width of all streets, as set forth above, shall include the paved portion of said street, gutter, and curb areas, and sidewalk areas. However, this section shall not prevent the developer from placing the sidewalk area

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outside of the street bed, provided said street bed is of the minimum width, hereinbefore set forth, and provided further that the sidewalk area outside the street bed is properly shown on said plat and is uniform in location the entire length of said street or streets.

2. In the cases where topography or other physical conditions make a street of the required minimum width impracticable, the planning commission may modify the above requirements. Through proposed business areas the street widths may be increased ten (10) feet on each side if needed to provide parking without interference of normal passing traffic.

## **Section 24 – Signs**

### **A. Definition of Sign**

Any board, placard, poster, figure, device, or other object which has the effect of or is used, or intended to be used, to advertise, convey information, to stand for a work phase, operation or service, or to attract or divert attention, when the sign is in view of the general public (persons who are not on the property or premises where the sign is located), including but not limited to every flag(s), banner, pennant, spinner, streamer, moored blimp, balloon or other windblown or inflatable thing(s); any moving or animated sign, device or thing(s); any beacon or other light or series of lights (other than for illumination only), whether single or multicolored and whether stationary, moving or flashing; or any frame, letter, image, character, mark, plane, point, design, picture, stroke, stripe, symbol, trademark or reading matter.

#### **1. Attractor Sign:**

Pinwheel(s), flag(s), banner(s), pennant(s), spinner(s), streamer(s), balloon(s), or moored blimp or other windblown or inflatable object(s) whether displaying any words or graphics.

#### **2. Commercial Sign:**

Any sign belonging to or controlled by the owner or occupant of a building or premises which is used to identify the building or premises or the products or services sold therein or thereon.

#### **3. Flashing Sign:**

Any sign, the illumination of which is not kept stationary or constant in intensity at all times when in use except an illuminated sign which indicates the temperature, date, or similar public service information shall not be considered flashing sign.

#### **4. Free Standing Sign:**

Any sign self-supported by a pole or post and not attached to any building, wall, or fence, but in a fixed location.

#### **5. Ground Sign:**

Any outside sign identifying a development business, service, or home (such as a shopping area or housing. development) the bottom of which is attached directly and permanently to the ground and physically separated from any other structure.

#### **6. Indirectly – Illuminated Sign:**

Any illuminated, non-flashing sign whose illumination is derived from an external artificial source so arranged that no direct rays of light are projected from such source into any residential district or public street.

#### **7. Instruction Sign:**

any sign conveying instructions in respect to the premises on which it is maintained, such as "entrance", "exit", "no trespassing", "danger" or similar signs.

**8. Internal Illumination:**

Where the light source is concealed or contained within a graphic itself, and which becomes visible in darkness by shining through a surface.

**9. Official Directional Sign:**

Any sign erected or maintained within the public right of way such as a traffic or stop sign.

**10. Outdoor Advertising Structures:**

Any poster, panel, billboard, painted bulletin or other structure, device, surface, or display used for advertising purposes which is not located on the premises of the business advertised.

**11. Political Sign:**

Any sign that advertises a candidate or an issue that is to be voted on in a local, state or federal election process.

**12. Private Directional Sign:**

Any sign not used for advertising but giving directions only, for accommodations, services, traffic routing, industries, churches, schools, parks, historic buildings or features located in or adjacent to the Town of Delmar, and temporary directions to real estate projects.

**13. Projecting Blade Sign:**

an outdoor sign which is attached to a wall at other than parallel.

**14. Safety Control Sign:**

Warning, control, OSHA or other required public safety sign.

**15. Sign Area:**

The facing of a sign, including copy, insignia, background, structural supports, and borders. The structural supports shall be excluded if they do not constitute a major part of the sign or if the structure is not used to identify or attract attention to the business or product.

**16. Temporary Sign:**

Includes any sign that exceeds the number of permanent signs approved for a place or business, regardless how that is mounted, affixed or displayed. This may include, but is not limited to, "A-frame" or any sign that is considered portable or movable, and those with surfaces intended for a short life span, such as plastic or wood, cloth or banners, card board or poster board, etc.

**17. Traffic Control Sign:**

A sign regulating traffic which has been erected by governmental officers, having jurisdiction over the public right-of-way.

**18. Wall Sign:**

A sign attached parallel to the exterior surface of a building.

## **B. Sign Standards and Restrictions**

For the purpose of this ordinance, signs shall:

1. Encourage the effective use of signs as a means of communication in the Town.
2. Avoid visual clutter and competition among sign displays in their demand for public attention.
3. Promote the safety and convenience of pedestrians and motorists.
4. Minimize the adverse effects of signs on nearby public and private property.
5. Interference with traffic signals: Outdoor advertising signs, structures, shrubs or trees shall not protrude from any property over any street or create confusion around or otherwise interfere with traffic signals or other traffic signs.
6. Wherever a provision of the building code or provision of the zoning ordinance, relating to signs, is more restrictive, the more restrictive standard shall govern.

### **1. General Provisions and Restrictions.**

Except as otherwise specifically provided herein, the following shall apply throughout the Town as a whole:

- A. All signs erected in the Town of Delmar shall be constructed of durable materials and determined to be safe by the Code Enforcement Officer, consistent with generally accepted design and construction standards. Such signage shall be maintained in good condition, repaired as needed, and shall not be allowed to become dilapidated.
- B. Portable, movable, temporary, or "attractor" signs that are in violation of subsection B.2, 3 & 5 (below) shall be removed not later than thirty (30) days after the effective date of this ordinance.
- C. Temporary signs in the public right of way, or in any location which may cause a safety hazard owing to reduced visibility, may be removed by the Code Enforcement Officer or in his or her absence the local police officers acting in the public good. The Town will hold any such sign for the owner for five (5) business days, and then it may be disposed of. Signs in the public right-of-ways are prohibited in subsection B.2 (below) except for signs required by governments or utilities in performance of official duties.
- D. In the case of signs placed in the interior of a building and observable from the outside through a frontage window;
  1. Unlighted signs, meaning signs without electrification, are permitted.
  2. Lighted "open" or "closed" signs shall not exceed twenty percent (20%) of the total area of the window or door in which they are placed. Other lighted signs are prohibited.
  3. No more than fifty percent (50%) of the total glass surface of any business or building shall be covered by signs.

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- E. Any sign on which any light source intended to illuminate the sign shall be shaded, shielded or directed such that the light intensity or brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas.

### **2. Signs Prohibited in all districts of the Town of Delmar without prior approval from the Code and Compliance Officer shall be as follows:**

- A. Pinwheels, advertising flags, banners, pennants, streamers, balloons, moored blimps or other inflatable or any other signs meeting the definition of attractor signs
- B. All temporary signs, unless such sign is specifically permitted by a provision set forth in the ordinance.
- C. All such signs, which by reason of their shape, color or construction, as may be confused with an official directional sign or traffic sign or which could mislead or confuse pedestrians or vehicle operators or obscure from view any official directional sign or obscure the view in any direction at the intersection of a street with another street or driveway.
- D. A sign placed or installed on any vehicle, trailer or other movable device solely for advertising purposes, except such signs as may be used by automobile sales dealerships at their place of business.
- E. A sign in the shape or form of any person, animal, vegetable, product or portion thereof. For special exceptions approval can be given by the Planning & Zoning Commission.
- F. Construction signs. One sign shall be permitted for all building contractors, one for all professional firms and one for all lending institutions involved in the construction, enlargement, reconstruction or repair of a structure. Each such sign shall not exceed the maximum of thirty-two square feet in area – four feet (4') by eight feet (8'), with not more than a total of three (3) such signs permitted on one site. If freestanding, the height of each such sign shall not exceed eight (8) feet. Signs shall be set back a minimum of five (5) feet from road rights-of-way lines and a minimum of five (5) feet from the property line on all other streets or roads. Each such sign shall be removed within seven (7) days of the issuance of the certificate of occupancy.
- G. Street banners. Street banners advertising public entertainment or event, unless approved by the Mayor and Council or Commission, may be displayed fourteen (14) days prior to, and during, and three days after the public entertainment or event.
- H. Permanent identification signs. Signs of a permanent nature, setting forth the name of a church, residential subdivision, community center or other like projects, shall be permitted if erected in accordance with the minimum set back requirements of the, zoning district in which the sign is located.

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Any such signs shall not exceed thirty (30) square feet in area, including, community bulletin boards.

- I. Civic, religious and quasi-public signs. Name, directional and information signs and emblems of service clubs, places of worship, civic organization and quasi-public uses shall be permitted on private property if set back in accordance with the minimum setback requirement of the zoning district in which the sign is located. Each such sign shall not exceed three (3) square feet in area. If freestanding, the height of such sign shall not exceed eight (8) feet. In the event that there is a need for more than one sign at one location, all such signs must be consolidated and confined within a single frame.
- J. Public signs. Signs of noncommercial nature and in the public interest, such as official directional signs, regulatory signs, warning signs and information signs, may be erected by or on the order of a duly appointed federal, state, county or Town public officer in the performance of his duty.
- K. Temporary signs. Shall be subject to the authority of the code enforcement officer and only require an appearance before the Planning Zoning Commission if recommended by the code enforcement officer. Temporary signs and attractors announcing that any public, charitable, civic, educational or religious event or function is to take place and so long as it is set back no less than ten (10) feet from the property line and does not exceed thirty (30) square feet in area. Such a sign shall be erected no more than thirty (30) days prior to the event or function, and removed no later than three days after the event. If freestanding, the height of such sign shall not exceed eight (8) feet. If there is not a ten (10) foot setback available, then such sign should be off the public right-of-way.

### **3. Signs Prohibited in all districts without prior approval from the Mayor and Council or Commission after a recommendation from the Planning and Zoning Commission**

- A. A sign which advertises a building, product, business, service or institution which is not located on the same lot as the sign. These are also called billboards, outdoor advertising signs, or off-premises signs.
- B. A flashing or blinking sign, whether intermittent or varying in intensity of illumination, whether deliberate or as a consequence of a defect in the sign or the illumination source, except for a sign which indicates the time or date or temperature changes, or a combination thereof.
- C. Any sign on which any light source intended to illuminate the sign shall be shaded, shielded or directed such that the light intensity or brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas.

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D. A sign that obstructs any sidewalk, door, fire escape, stairway or any opening intended to provide ingress or egress to or from any building or structure.

E. More than one flat wall identity sign for each operating business established, whether lighted or unlighted. Such sign shall not have a surface area more than thirty (30) percent of the front building surface of the establishment, whether lighted or unlighted, and shall be mounted flush with the building. Businesses located on a corner lot shall be allowed to place a wall identity sign on two different sides of the building. Wall identity signs to be placed on a third and/or fourth wall shall be determined on a case by case basis by recommendation from the Planning and Zoning Commission and approval by the Mayor and Town Council/Town Commission. All individual signs shall be located within the same horizontal plane of the building facade.

F. Projecting signs that extend from the face of the building more than ten (10) feet or less than ten (10) feet above the ground level. No projecting sign shall extend beyond the line extending vertically from a point two (2) feet inside the established curb line or property line. Projecting signs shall be limited in surface area to a maximum of forty (40) square feet.

G. All signs not specifically permitted in this Ordinance. This prohibition shall apply to both the owners of the land or buildings and any lessee (tenant) or other occupant.

### **4. Signs Permitted In All Districts.**

Subject to the other conditions of this Section, the following signs shall be permitted in all districts of the Town:

- A. Real estate signs. One temporary real estate sign not exceeding six (6) square feet in area and located on the property to which it relates shall be allowed for each lot or parcel of land. Signs shall be set back a minimum of five (5) feet from the property line on all streets or roads. Any such sign shall be removed within fourteen (14) days of the issuance of the certificate of occupancy and shall be removed within fourteen (14) days following the transfer of ownership (sale closing).
- B. Election campaign signs. Sign(s) relating to primary or general elections, including referenda question, shall be permitted if they do not exceed a total of nine (9) square feet for each lot or parcel of land in a Residential Zone or thirty-two (32) square feet in a Commercial Zone. These signs shall be confined to private property and shall not be less than twenty-five (25) feet from the nearest curb intersection of any street or road. Sign setback requirements shall be a minimum of five (5) feet from the property line. If freestanding, the height of such signs shall not exceed eight (8) feet. Such signs may only be displayed thirty (30) days prior to a primary election, sixty (60) days prior to a general election and shall be removed no more than five (5) days after the election to which it relates.

## 5. Outdoor Advertising Structures

A. When the sign or structure is not erected on the same lot as the business, product service, etc... such sign or structure are prohibited.

B. When the sign or structure occurs on the same lot as the business, product, service, it is governed Section 24 and is afforded no special consideration as to size, placements, etc...

C. Outdoor advertising structures as defined in this section shall be permitted in those districts where designated. No outdoor advertising structure shall be permitted to be erected without a permit from the Code Enforcement Officer. All such structures shall conform to the following minimum requirements:

1. Setback. All structures shall be set back not less than one-hundred (100) feet from the property line facing a public road or one-hundred fifty (150) feet from the center line of said road, whichever distance or the greater.
2. Spacing. Such structures shall not be less than one-thousand (1,000) feet from the next nearest outdoor advertising structure within Town limits.
3. Structure Type. Such structures shall be limited to back-to-back and double-faced which shall include double structures jointed by a mutual or attached frame, provided the same shall be considered one structure as defined herein with no deviation and with a constant structure.
4. Sign Area. The maximum sign area permitted for each face of the structure shall not exceed four hundred eighty (480) square feet and the trim surrounding such sign area shall not exceed twelve (12) inches on any side with the maximum size of five-hundred eighty-four (584) square feet.
5. Distance from Residential District. No outdoor advertising structure may be erected within one-hundred (100) feet of any dwelling located in an adjoining residential district if such sign is visible there from.
6. Lighting. No flashing advertising sign shall be permitted and all outdoor advertising structures, where lighted, shall be indirectly illuminated.
7. Height. No structure shall exceed a maximum height of ten (10) feet above the ground.
8. No additional outdoor advertising structures shall be allowed to be situated into Delmar's cooperate limits effective the passage of this ordinance.

## 6. Non-Residential Zoning Districts.

The following shall apply in all non-residential zoning districts:

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- A. For each lot, which contains only one business, the following shall apply (all signs described herein shall be subject to the restrictions provided in subsection B.1 and 2 above):
1. A lot with less than one-hundred (100) feet of lineal street frontage is permitted a maximum of two (2) signs. One (1) wall sign or projecting blade sign, not exceeding one (1) square foot for each lineal front foot of the building. A freestanding sign is also permitted, but shall not exceed thirty (30) square feet, not exceed ten (10) feet in height, shall be setback fifteen (15) feet from the curb and shall not reduce the number of required parking spaces.
  2. A lot with one-hundred (100) feet or more of lineal street frontage shall be allowed the same signage as set forth in subsection B.5.A.1 above, however the freestanding sign may be no larger than one hundred twenty (120) square feet, not exceed ten (10) feet in height, shall be setback twenty (20) feet from the curb the one wall sign or projecting blade sign shall not exceed one foot for each lineal front foot of the building.
  3. One United States flag, one (1) State flag and one (1) Municipal flag with each flag having dimensions not in excess of four (4) feet by six (6) feet are permitted on a pole(s) attached to the front of the building or on a flag pole set back at least twenty-five (25) feet from the front property line and ten (10) feet from any side property line; notwithstanding any flag to the contrary herein a flag(s) may protrude no more than six (6) feet from a wall to which it is attached, and if attached to a building, may be no higher than ten (10) feet above the roof of the building.
- B. For each lot containing two or more businesses the following shall apply:
1. The number of signs shall not exceed one (1) sign for each single commercial occupant, and each such sign shall not exceed one (1) square foot in area for each lineal front foot of the building used for that single commercial purpose. Each allowed sign must be on or attached to the building.
  2. One multiple-use identification sign, stating the name of the building and some or all of its tenants is permitted. The area of such sign shall not exceed thirty (30) square feet per tenant or exceed two hundred and fifty (250) square feet per building.
  3. One additional sign per business shall be permitted below a canopy or overhang, not to exceed three (3) square feet in size.
  4. If gasoline service provided is by a retail store, one additional conventional freestanding gasoline sign per lot is permitted which must comply with subsection E.5 herein below.

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5. One 4' x 6' United States flag, one 4' x 6' State flag and one (1) Municipal flag per lot are permitted so long as they comply with subsection B.5.A.3 above.
- C. No sign on or attached to a building shall extend beyond that portion of the building which it identifies, nor shall it extend above the height of the wall or beyond the width of the wall of the building on which it is placed, nor shall it protrude more than six (6) inches from the wall of the building on which it is placed, neither shall it impede pedestrian traffic.
- D. In case of a miniature golf course, tennis courts, parking lot or similar facility where the size of the building is proportionately small compared to the size of the facility as a whole, a sign not to exceed twenty-five (25) square feet shall be permitted on the building, to be placed in accordance with the provisions of this section, and one freestanding sign shall be permitted no greater than thirty (30) square feet, shall not exceed ten (10) feet in height and shall be set back a minimum of ten (10) feet from the curb line, except as otherwise specifically provided in this chapter.
- E. In the case of a full-service auto repair garage or gasoline station the following signs shall be permitted:
  1. One freestanding sign for the purpose of advertising current gasoline prices and logo, not to exceed one-hundred twenty (120) feet in area, not to exceed ten (10) feet in height and setback twenty (20) feet from the curb. If located on a state road then owner must comply with state regulations.
  2. A canopy with lettering and logo showing the brand of gasoline, not exceeding letter heights of two (2) feet, a total length of sixteen (16) feet and any logo height shall not exceed thirty-three (33) inches. Such lettering and logo shall be on no more than two sides of the canopy.
  3. A sign not exceeding sixteen (16) square feet may be placed on the building indicating a service center. Advertisement on the pumps, shall not to exceed three (3) square feet on each side of pump, is permitted.
- F. Temporary signs not exceeding three (3) in number with an aggregate sign area of sixty (60) square feet may be displayed for thirty days (30) days prior to business openings, anniversaries, and closing. Use for any additional special event and/or the use of balloons, blimps, or "attractors" in addition to the temporary signs will require the review of the Code Enforcement Officer.

### **7. Nonconforming Signs.**

- A. A legally non-conforming sign is any permanent sign, which on the effective date of this ordinance lawfully existed and has been maintained since that time but does not conform to the regulations for signs established in this Section. Any off-premise sign lawfully erected and in existence on the effective date of this ordinance, which does not meet the

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requirements of this ordinance may be maintained as a matter of right as a legal nonconforming sign.

- B. A non-conforming sign damaged or destroyed fifty percent (50%) or more or in disrepair fifty percent (50%) or more shall be removed within thirty (30) day notice of removal from the Code Enforcement Officer.
- C. The advertising on the surface area of any sign advertising a business or service no longer located on the premises or a sign directing attention to a business or service no longer in operation shall be removed within thirty (30) days of the termination of such business or services.
- D. Any sign advertising a business or service no longer located on the premises or a sign directing attention to a business or service no longer in operation, which is nonconforming in height, setback or surface area, shall conform to these regulations when used to advertise another business or service.

### **8. Permit.**

- A. No sign shall be erected, moved or altered as to size, shape, design or context without first filing an application with the Code Enforcement Officer and obtaining a permit signed by this official, except as provided in subsection B.8 below. Where space on the sign is provided to indicate sales or specials, the written and/or graphic content in this area may be changed without prior approval.
- B. The exact location, size, type of illumination, structural content, support system, color and design must be clearly and fully set forth in the application sufficient to fully acquaint the Code Enforcement Officer with the proposed Sign.
- C. A fee, as set by resolution of the Mayor and Council or Commission from time to time, must accompany each sign permit application, except as provided in subsection B.8 below.
- D. All requests for a permit hereunder must be signed by the owner of the property on which the sign is to be located.
- E. An application for a sign permit may be obtained from Delmar Town office.

### **9. Exceptions, Sign Application: Permit and Fee.**

- A. Signs which are permitted in accordance with subsection B.3.A, B or F above shall not require a permit or a fee, provided that they shall be in accordance with all other requirements of this Ordinance.
- B. Signs, which are permitted in accordance with subsection B.3.C above nevertheless, shall require the submission of an application, which must be approved by the Code Enforcement Officer. No fee will be required.
- C. Signs, which are permitted in accordance with subsection B.3.D or E above, shall require the submission of an application and must be approved by the Code Enforcement Officer. No fee will be required.

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- D. Signs, which are permitted in accordance with subsection B.3.G or H above, shall not require the submission of an application or a permit, and no fee shall be required, provided they shall be in accordance with all other requirements of this Section.
- E. Appeals to the interpretation of this Section will be made to the Board.

## **Section 25 – Subdivisions**

This section along with other related sections of this Ordinance replaces the Subdivision Ordinance (Number 54 in Delaware and Number 585 in Maryland).

### **A. Policy**

Land subdivision is the first step in the process of community development. Once land has been cut up into streets, lots and blocks and publicly recorded, the correction of defects is costly and difficult. Subdivision of land sooner or later becomes a public responsibility, in that roads and streets must be maintained and various public services customary to urban areas must be provided. The welfare of the entire community is thereby affected in many important respects. It is, therefore, in the interest of the public, the developer and the future owners, that subdivisions be conceived, designed and developed in accordance with sound rules and property standards.

It is the policy of the Town of Delmar that the subdivision or re-subdivision of land within the Town of Delmar shall be accomplished in such manner that it will improve the standards of living or working within the Town; that no undue financial burden will be created for the taxpayers of the Town; nor will the public works facilities of the Town be overloaded beyond their rated capacity. Such subdivision or re-subdivision shall comply with the precepts of good planning, the preservation of open space and prevent the pollution of air, earth or water. It shall also be the policy of the Town of Delmar that all areas approved for development shall be served by all utilities available in the area developed whether furnished by the Town of Delmar or private utility companies.

### **B. Scope – Generally**

This subdivision section shall apply to all subdivisions of land within Delmar, and each subdivision thereof lying within Delmar shall be made and each such plat shall be prepared and presented for approval as required in Section 26 – Development Plan of this ordinance.

All municipal facilities and essential services (e.g., streets, water, sewer and storm-water management) shall be installed and maintained in accordance with all related requirements specified in this ordinance, the current Town of Delmar Construction Standards and Specifications, and any (and all) Public Works Agreement(s) by the Town of Delmar.

### **C. Scope – Exceptions**

The following lands are not covered by this Ordinance:

1. The transfer of a lot or parcel of land established by deed or plat recorded among the land records of Wicomico County, Maryland or Sussex County, Delaware prior to the effective date of this ordinance.
2. A bona fide division or partition of agricultural land of five acres or more not for development purposes.

## **D. Existing Subdivisions**

### **1. Policy**

Undeveloped sections of platted subdivisions constitute a special problem for both the land owner and the Town. Such areas when ready for development should not be a major financial burden to the Town and should, as nearly as possible, conform to current planning and zoning standards without imposing undue hardship upon the land owner. Necessary easements or rights of way for storm water drainage and widening of substandard streets must be obtained as part of the development process.

### **2. Owner responsibilities**

The owner of a lot or lots upon which a single structure is to be erected, the owner of a group of lots upon which structures are to be erected, the owners of a group of lots when applying for re-subdivision or for building permits shall agree to the following:

- A. If owner's lot(s) abuts a substandard street, convey by deed to the Town, the substandard part of each street upon which the owner's lot(s) abut, to include all the street frontage of such lots, and street widening as shall be required by the Town.
- B. Convey by deed to the Town easements for utilities across owner's property as shall be required by the Town.
- C. In the event of a re-subdivision the developer shall provide preliminary and final plats as set forth under the procedural provisions in this ordinance. Re-subdivided lots shall meet the minimum standards of this ordinance for the district in which they are situated.
- D. Convey by deed to the Town land for cross streets between parallel streets, and land for a turning circle at the end of dead-end streets as shall be required by the Town. (The turning circle may be temporary if the platted street extends beyond the owner's last lot.)

## **E. General Requirements and Minimum Design Standards**

### **1. Streets and Sidewalks**

As well as the following requirements, all new subdivisions shall meet the minimum standards specified in Section 23 - Street and Sidewalk Standards.

#### **A. Uniform Planning for Roads and Streets**

The developer is encouraged to consider applicable sections of the Comprehensive Plan when determining the location and type of streets and roads within or abutting the proposed subdivision. If plans have been made by the Town for highway improvements, as shown on the Highway Improvements Map in the Comprehensive Plan, due consideration should be given to such plans in the design of the subdivision.

#### **B. Relation to Adjoining Street System**

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The proposed street system shall extend existing streets or roads at the same or greater width, but in no case less than the required minimum width.

### C. Additional Widths on Existing Streets

Subdivisions that adjoin existing streets shall dedicate additional right-of-way to meet the minimum street width requirements.

1. The entire right-of-way shall be provided where any part of the subdivision is on both sides of the existing street.
2. When the subdivision is located only on one side of the existing street one half (1/2) of the required right-of-way, measured from the center line of the existing roadway, shall be provided.

### D. Electric and Telephone Utilities

Refer to Section 18 - Essential Utility Services.

### E. Street Grades

Grades on major streets shall not exceed four per cent. Grade on other streets may exceed four per cent, but not six per cent.

### F. Horizontal Curves

Where a deflection angle of more than ten degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced. On streets fifty feet or more in width the center line radius of curvature shall be not less than one hundred fifty feet.

### G. Intersections

The angle of intersection of streets shall not vary by more than fifteen (15) degrees from a right angle. Property line radii at residential street intersections shall not be less than twenty feet. Where residential streets intersect collector streets property line radii at such intersections shall not be less than twenty five feet. Intersections with major highways minimum property line radii shall be 30 feet. Whenever necessary to permit the construction of a curve having a desirable radius without curtailing the sidewalk at a street corner to less than normal width, the property line at such street corner shall be rounded or otherwise set back sufficiently to permit such construction.

### H. Tangents

A tangent of a least one hundred feet long shall be introduced between reverse curves on arterial and collector streets.

### I. Street Jogs

Street jogs with centerline offsets of less than one hundred twenty five feet shall not be allowed.

### J. Dead End Streets.

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1. Minor terminal streets or courts designed to have one end permanently closed shall be no more than 400 feet long unless necessitated by topography. They shall be provided at the closed end with a turnaround having an outside roadway diameter of at least forty-five feet.
2. Where, in the opinion of the Town, it is desirable to provide for street access to adjoining property, proposed street shall be extended by dedication to the boundary of such property. Such dead-end street shall be provided with a temporary turn-around having a roadway diameter of at least forty-five feet.

### K. Private Streets and Reserve Strips

There shall be no private streets in any subdivision. However, developers may use private alleys to provide secondary access to subdivision lots (see Section 23- Street and Sidewalk Standards for details). Every subdivided property shall be served from a publicly dedicated street. There shall be no reserved strips controlling access to streets, except where the control of such strips is definitely placed with the community under conditions approved by the Town.

### L. Street Names

Proposed streets that appear to be extensions of already existing streets shall bear the name of the existing street that is being extended. In no case shall the name for proposed streets duplicate, actually or phonetically, existing streets, irrespective of the use of the suffix (street, avenue, boulevard, driveway, place or court). Through its index list of street names on file, the Town can assist the developer in avoiding duplications.

### M. Alleys

Alleys may be provided to the rear of lots used for business purposes and may be provided in residential blocks at the discretion of the Town (see Section 23- Street and Sidewalk Standards for details).

## 2. Blocks

### A. Length

Blocks should not be less than three hundred (300) feet nor more than twelve hundred (1200) feet in length, except as the developer and the Town both agree is necessary to secure efficient use of land or desired features. In blocks over seven hundred (700) feet in length the Town may require one or more public cross walks at the locations deemed necessary.

### B. Width

Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where fronting on major streets or prevented by topographical

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conditions or size of the property, which case the Town may approve a single tier of lots of minimum depth.

### **3. Lots**

#### **A. Arrangement**

Insofar as practical, side lot lines shall be at right angles to straight street lines or radial to curved street lines. Each lot must front upon a public street or road.

#### **B. Minimum Size**

Developers are encouraged to suggest the size, shape and orientation of lots as deemed appropriate for the type of development being proposed; but these details shall ultimately be subject to Town approval.

1. The minimum size, width of lots and setback lines shall in no case be less than the minimum requirements of any zoning ordinance in effect.
2. The Town shall require in the case of lots to be served by private sewage disposal system that soil percolation tests be made. If such percolation tests do not meet the standards provided in regulations, such lot shall be deemed an unbuildable lot and shall not be recorded as a lot, or the Town may require such greater area to be provided for private sewerage disposal as will eliminate potential health problems.
3. Lots to be served by private wells or private source of water supply shall be approved by the Town as to size and buildability in accordance with standards for such private water supply set forth in current governing regulations.

### **4. Public Use and Service Areas**

Due consideration shall be given to the allocation of the following areas, shall be suitably located, and of adequate size for local or neighborhood use, as well as public service areas.

#### **A. Public Open Spaces**

Where a school, neighborhood park or recreation area, or public access to water frontage shown on an official map or in a plan made and adopted by the Town, is located in whole or in part in the applicant's subdivision, the Town may require the dedication or reservation of such open space within the subdivision for water frontage of the plat, for parks, schools or other recreation purposes, provided, however, that within one year of the final approval of the plat, the Town of Delmar shall pay unto the developer the fair value thereof or, if unable to agree upon the fair value thereof, the Town of Delmar shall file action in the Circuit Court for Wicomico County, Maryland (Superior Court, Delaware) to condemn said property for the purposes aforesaid, and if the above action is not taken within the one (1) year period aforesaid, the developer may proceed to subdivide the areas reserved as building lots in conformity with the provisions of this Ordinance.

**B. Easements for Utilities**

Except where alleys are permitted for the purpose, the Town may permit easements, at a width to be determined by the Town Engineer, for poles, wires, conduits, storm and sanitary sewers, gas, water and other utility lines, along all front lot lines, along all rear lot lines, alongside lot lines, if necessary, or if, in the opinion of the Town, advisable, easements of the same or greater width may be required along the lines of or across lots for the extension of existing or planned utilities.

**C. Community Assets**

In all subdivisions due regard should be shown for all natural features such as large trees, water courses, historical spots and similar community assets, which, if preserved, will add attractiveness and value to the property.

**5. Suitability of the Land**

The Town shall not approve the subdivision, or any portion there-of, if the Town determines that the land is subject to flooding or is topographically unsuitable for residential occupancy or for such other use as may increase danger to health, life or property. Such land within the plat shall be set aside for such uses as shall not be endangered by flooding or shall not produce the above mentioned unsatisfactory living conditions.

**6. Large Tracts or Parcels**

When land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future streets and logical further re-subdivision.

**7. Zoning or Other Regulations**

No final plat of land within the force and effect of an existing ordinance will be approved unless it conforms to such ordinance. Whenever there is a discrepancy between minimum standards or dimensions noted herein and those contained in other ordinances, building code, or other official regulations, the highest standards shall apply.

**8. Waiver**

The Town may waive specifications or supplementary data required by these regulations for a preliminary plan or final plat whenever such specifications or data are necessary for the consideration of the plan or plat by the Commission and other public agencies.

**F. Required Improvements**

A perfectly prepared and recorded subdivision or plat means little to a prospective lot buyer until he or she can see actual physical transformation of raw acreage into lots suitable for building purposes and human habitation. Final

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approval of a subdivision final plat shall be conditional until certification that required improvements are complete. The following tangible improvements are required before lots may be transferred in a subdivision and/or any building permits issued for construction thereon.

### **1. Monuments**

- A. Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all street corners, at all points where the street lines intersect, at the exterior boundaries of the subdivision and at right angle points and points of curve in each street. The top of the monument shall have an indented cross to identify properly the location and shall set flush with the finished grade.
- B. At the time of sale or transfer of said lots, the lot corners shall be marked with iron pipe not less than three-fourths (3/4) inches in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade.

### **2. Grading**

All streets, roads and alleys shall be graded to their full width by the developer so that pavements and sidewalks can be constructed on the proper plane. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Town.

1. Preparation: Before grading is started the entire right-of-way area shall be first cleared of all stumps, roots, brush and other objectionable materials and all trees not intended for preservation.
2. Cuts: All tree stumps, and other obstructions shall be removed to a depth of two (2) feet below the sub grade.
3. Fill: All suitable materials from roadway cuts may be used in the construction of fills, approaches or at other places as needed. Excess materials, including organic materials, soft clay, etc. shall be removed from the development site. The fill shall be spread in layers not to exceed eight (8) inches loose and compacted by a pneumatic tired roller or by a sheep's foot roller. The filling of utility trenches and other places not accessible to a roller shall be pneumatically tamped, but where water is used to assist compaction, the water content shall not exceed optimum of moisture.

### 3. Storm Water and Drainage Facilities

#### A. General Requirements

The developer at the time of presenting the preliminary plat for approval shall provide an adequate plan for the disposal of all storm water in the proposed subdivision which shall be subject to the approval of the Town upon recommendation by the Town Engineer. Development in areas of extremely poor drainage should be discouraged.

#### B. Nature of Storm Water Facilities.

##### 1. Location

The applicant may be required, upon recommendations by the Town Engineer, to facilitate the removal by pipe or open ditch any spring or surface water that may exist either previously to, or as a result of the subdivision. Such drainage facilities shall be located in the road right-of-way where feasible, or in perpetual unobstructed easements of appropriate width, and shall be constructed in accordance with standards and specifications established by the Town of Delmar.

##### 2. Accessibility to Public Storm Sewers

- a. Where a public storm sewer is available within five hundred (500) feet of the boundary of the subdivision the applicant shall install storm sewer facilities, or if no outlets are within a reasonable distance, adequate provision shall be made for the disposal of storm waters, subject to the specifications of the Town of Delmar. However, in subdivisions containing lots less than 15,000 square feet in area and in business and industrial districts, underground storm sewer system shall be constructed throughout the subdivisions and be constructed to an approved outfall.
- b. If a connection to a public storm sewer will be provided eventually, as determined by the Town, the developer shall make arrangements for future storm water disposal by a public utility system at the time the plat receives final approval. Provisions for such connection shall be incorporated in the Public Works Agreement.

#### C. Dedication of Drainage Easements

##### 1. General Requirements

Where a subdivision is traversed by a watercourse, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of such

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watercourse, and of such a width and construction or both as will be adequate for the purpose.

### 2. Drainage Easements

- a. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements shall be provided across property outside the road lines and with satisfactory access to the road as recommended by the Town Engineer. Easements shall be indicated on the plat.
- b. When a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage rights must be secured by the developer and indicated on the plat.
- c. The applicant shall deed either in fee or by drainage or conservation easement, land on both sides of existing watercourses, to a distance to be determined by the Town.
- d. Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved and retained in their natural state as drainage ways. Such land or lands subject to periodic flooding shall not be computed in determining the number of lots to be utilized for average density procedure nor for computing the area requirements of any lot.

Footnote: Delmar, Maryland and Delmar, Delaware's storm water management requirements are governed by two separate government entities. Delmar, Maryland is governed by the municipality and Delmar, Delaware's is governed by Sussex County, Delaware. Please inquire with the appropriate governing body for the applicable laws, ordinances, rules, etc...

### 4. Stabilization

The subgrade may be stabilized by one of the following methods:

1. Gravel: Place no more than four (4) inches (compacted thickness) bank run gravel to which has been added no less than 150 pounds per square yard SRC Maryland No. 3 graded blast furnace slag and shaped to meet the approval of the Town Engineer.
2. Selected borrow stabilized with graded aggregate: Four inches (compacted thickness) of select borrow may be used to which has been added no less than 150 pounds per square yard of SRC Maryland No. 3 graded blast furnace slag or other suitable material as specified by

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the Town Engineer. This base material must be mixed, blended, and shaped with Seaman Mixer or equal, and compacted by pneumatic tired roller until a dense, true and firm subgrade has been obtained that will not rut under normal traffic use.

3. Bank run borrow stabilization with graded aggregate: borrow meeting these specifications may be used to which has been added no less than 150 square yards of SRC Maryland #3 graded blast furnace slag or other material as specified by the Town Engineer. This base material must be mixed, blended, and shaped with seaman mixer or equal, and compacted by pneumatic tired roller until a dense, true and firm subgrade has been obtained that will not rut under normal traffic use.

### **5. Roadway Surfacing**

The developer shall have the streets in the subdivision hard surfaced in accordance with approved Town standards with the costs to be established in the Public Works Agreement.

### **6. Curb and Gutter**

Curb and Gutter in accordance with Town Standards shall be placed by the developer on both sides of all new streets in all subdivisions prior to road surfacing.

### **7. Water Supply Facilities**

#### **A. Public Water Available**

1. Where a public water main is located within 500 feet beyond the boundary of the subdivision the developer shall, upon recommendation of feasibility of the Town Engineer extend the main and install adequate water facilities (including fire hydrants) to serve all lots shown on the subdivision plat, subject to the specifications of the State and local authorities.
2. The sizes of water mains, the location and types of valves and hydrants, the amount of soil cover over the pipes and other features of the of the installation shall be approved by the Town Engineer and shall conform with accepted standards of good practice for municipal water systems.

#### **B. Public Water Not Available**

1. If a public water system is not available within five hundred feet of the boundary of the subdivision, or if connection is not feasible according to Town Engineer, individual wells may be used or a central water system provided in such a manner that an adequate supply of potable water will

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be available to every lot in the subdivision, in accordance with Health Department requirements.

2. If the Town requires that an individual well or central water system be eventually connected to a public water main, the applicant shall make arrangements for the future public water service at the time the plat receives final approval. Performance or cash bonds may be required to insure compliance.

### C. Fire Hydrants.

Fire hydrants shall be located no more than 1,000 feet apart and within 500 feet of any structure and shall be approved by the Town Engineer. To eliminate future street openings, all underground utilities for fire hydrants, together with the fire hydrants themselves and all other supply improvements shall be installed before any final paving of a street shown on the subdivision plat.

## 8. Sanitary Sewer Facilities

### A. Public System Availability

Sanitary sewerage system shall be constructed as follow:

1. Where a public sanitary sewerage is located within five hundred feet of the boundary of the subdivision, then the developer shall, upon recommendation of feasibility by the Town Engineer, extend the main to the subdivision and provide sewers accessible to each lot in the subdivision.
2. Where public sanitary sewerage systems are not located within 500 feet or if connection is not feasible according to the Town Engineer but will become available within a reasonable time (not to exceed 10 years), the applicant may choose one of the following alternatives:
  - a. Central Sewerage System, the maintenance cost to be assessed against each property benefited. Where plans for future public sanitary sewerage systems exists, the applicant shall install the sewer lines, laterals, and mains to be in permanent conformance with such plans and ready for connection to such public mains; or
  - b. Individual disposal systems, provided the applicant shall install sanitary sewer lines, laterals, and mains from the street curb to a point in the subdivision boundary where a future connection with the public sewer main shall be made. Sewer lines shall be laid from the house to the street line, and a connection shall be available in the home to connect from the individual disposal system to the sewer system when the public sewers become available. Such

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sewer systems shall be capped until ready for use and shall conform to all plans for installation of public sewer system, where such exist, and shall be ready for connection to such public sewer main.

3. Where sanitary sewer systems are not located within 500 feet and will not become available for a period in excess of 10 years, individual disposal systems or central sewerage systems may be permitted at the discretion of the Town with the approval of the State and County Health Authorities.

### B. Mandatory Connection to Public Sewer Systems

If a public sanitary sewer is placed in a street or alley abutting upon property, the owner thereof shall be required to connect to said sewer for the purpose of disposing of waste, and it shall be unlawful for any such owner or occupant to maintain upon any such property and individual sewerage disposal system.

### C. Individual Disposal System Requirements

If public sewer facilities are not available an individual disposal system shall be determined by percolation tests and requirements of the State and County Health Authorities.

## 9. Conformance to Comprehensive Water and Sewerage Plan

Whenever the Town shall have officially adopted a Comprehensive Water and Sewerage Plan, or any part thereof, then the developer shall conform to that plan.

## 10. Street Name Signs

Appropriate street signs also add sales value to land subdivisions and enable strangers, delivery concerns and even potential lot buyers to find their way around. Street names shall appear at all intersections. Upon request, the Town will aid the developer with specifications for the construction, placing and setting of such signs.

## 11. Street Trees

Street trees are a protection against excessive heat and glare and enhance the attractiveness and value of abutting property. The Town will assist the developer in location of trees and species to use under varying conditions. It is recommended that trees be planted inside the property lines where they are less subject to injury, decreasing the chance of motor accidents and enjoying more favorable conditions for growth. If trees are to be planted within a planting strip in the right-of-way, their proposed locations and spaces

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to be used must be submitted for the Town's approval since the public inherits the care and maintenance of such trees.

### **12. Sidewalks**

For the protection of pedestrians and of children at play, installation of sidewalks by the developer shall be required. They shall abut on the property line and shall not be less than four (4) feet in width and four (4) inches in thickness. At depressions for vehicular entrance, all sidewalks shall be of six-inch minimum thickness. If the sidewalk is not on the bed or the street as provided in Section 23-A Sidewalk Standards, then the front face of the sidewalk shall abut on the property line.

## Section 26 – Development Plan

The purpose of this section is to:

- Guide the growth and development of the Town in accordance with the comprehensive plan
- Encourage an orderly layout of land uses
- Insure that public facilities are available, and/or sufficient capacity to service proposed developments
- Minimize and manage the impact of development on air, water, and other natural resources
- Provide for open space especially in new developments
- Aid developers in the preparation of a comprehensive development plan
- Layout procedures and requirements for a review of this plan.

A Development Plan is a comprehensive record of a development project, initially submitted as a proposed estimate of how a project could be developed and that will in time evolve to become a record of what was actually developed. A plan shall be submitted for any development of 3 or more lots, parcels, tracts, properties on which is shown the existing and proposed conditions, including, but not limited to, topography, vegetation, drainage, floodplains, wetlands, waterways, landscaping and open spaces, walkways, entrances and exits, circulation, utility services, lot lines, easements, structures and buildings, signs, lighting, parking, screening, surrounding development, and any other information that may be reasonably required by the Town to make an informed decision on the proposed project. Before too much time and money is invested in the creation of a development plan, the Town encourages developers to submit a concept plan to the Town Manager, the Commission, and the respective Elected Officials to establish the general viability of the proposed project.

When Required:

1. Prior to the development of any property
2. Prior to the recording of subdivision plats
3. As a pre-requisite to the issuance of a Zoning Certificate

### A. Procedure

1. Concept Plan

The developer should consult early and informally with the Town Manager and technical staff, the Commission, and the elected officials before the preparation of the formal preliminary site plan. This will enable the developer to become familiar with the Town's Comprehensive Plan, all relevant Ordinances and Regulations, plus any required Public Works improvements. The purpose of this concept plan review is to minimize costly formal revisions.

The developer needs to submit the number of copies required, as determined by the Town Manager, of the Concept Plan that includes a

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statement describing the proposed use, the map, parcel, and track number, the date, north point and scale, a location map, and the location of streets and abutting highways.

### 2. General Procedure - Site Plan

- a. The procedure for review and approval of any development requires two separate steps. First, a preliminary site plan needs to be submitted to the Commission. The second step is to work with the Town, in good faith, to receive a timely final plan approval. Once the preliminary plans are approved by the Town, the developer may proceed under the Town requirements in place on the date of that approval and has one year (365-days) to present a final set of plans. If one year passes, the developer may either request an extension from the Board or simply submit a new set of preliminary plans, which shall restart the clock and shall be subject to any and all new requirements.

### 3. Preliminary Site Plan

- a. The applicant shall submit the number of copies required, as determined by the Town Manager, of the complete site plans to the Town Manager at least 30 calendar days before the meeting of the Commission. The Town Manager will distribute a copy of this plan to the Commission, technical staff, and additional departments (Police, Fire and Public Works) and agencies as may be deemed necessary. The Town Manager shall, within ten days from the date of receipts thereof, notify the developer of the site and time of the meeting on which the Commission will consider the preliminary site plan.
- b. The Commission may not consider the proposed development or subdivision for conditional approval or rejection until after such meeting.

### 4. Action of the Commission

- a. On the date set for consideration of the site plan, the Commission shall hear the reports and recommendations from Town officials, staff, and agents, and then shall hear the comments and opinion of the developer, and finally from any others that may be present. After giving due consideration to all such reports, recommendations, comments, and opinions, the Commission within 45 days from the date of consideration of the site plan by the Commission shall approve, conditionally approve, or disapprove the site plan and the Town manager shall report its action in written statement signed by the Chairman, directly to the developer. One copy of the plan submitted by applicant shall be attached to the written statement and one shall be kept in the Commission's file.
- b. In the event of a disapproval of the plan by the Commission, the developer shall be furnished with a written statement of the reason and

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authority for such disapproval. In the event of conditional approval, the developer shall be furnished with a written statement showing what changes are necessary to make the plan conform to the requirements of the Commission and this Ordinance. Any such approval, disapproval, or conditional approval shall be a final ruling of the Commission for purpose of appeal to the Town Council or Mayor and Commissioners.

5. Grounds for Disapproval:
  - a. The Commission shall disapprove a preliminary site plan if the use to be of the property is prohibited by any ordinance, statute, or other valid regulation, or if the land is subject to severe flood hazard or severe inundation and the developer has not provided adequate protections and safeguards. The Commission may, on request or of its own motion, hire consultants to advise whether the land is subject to severe flood hazards (See Floodplain Ordinance), or severe inundation and to express opinions on the protections and safeguards suggested.
  - b. The time limit of 45 days for acting on the preliminary site plan may be extended by mutual consent of the developer and the Commission
  - c. If no action is taken by the Commission within the time limits as specified, the preliminary site plan as filed shall be deemed to be approved, and it shall be the duty of the Commission to certify the approval.
  - d. In the event reclassification of a zone or a variance from the zoning code is requested, the applicant shall be directed by the Town Manager to meet with the Commission, for review and comment, prior to meeting with the Board for the necessary public hearing and approval.
  - e. Failure of the applicant to submit a final plat for approval showing compliance with all conditions set forth in the preliminary approval within twelve months after the date of the preliminary approval shall constitute an abandonment of the application and revocation of the preliminary approval. An extension of not more than six months may be granted by the Commission upon request.

### **B. Preliminary Site Plan Requirements:**

1. A statement describing the proposed use.
2. A site layout drawn to scale of not less than one inch equals 50 feet, showing the location, dimensions, and area of each lot, the location, dimensions, and height of proposed buildings, structures, streets, and any existing buildings in relation to the property and street lines. If the developer plans to develop the property in stages, such plans shall show the relationship of the portion scheduled for initial development to the proposed layout of the entire property.

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3. The location, dimensions, and arrangements of all open spaces and yards, dumpsters, fences, and buffer yards including methods and materials to be employed for screening. This includes an informal landscape plan showing general location of plantings and all forest conservation zones.
4. The location, size, arrangement, and capacity of all areas to be used for motor vehicle access, off-street parking, off-street loading, and unloading and provisions to be made for lighting such areas.
5. Zoning districts and requirements
6. The approximate location and direction of flow of all rivers, streams, creeks, or lakes, and natural drainage channels and approximate locations of all areas covered by water or subject to flooding or tides.
7. Proposed storm water drainage facilities must be shown
8. The location of all existing public utilities, including storm drains water lines, sewers, sanitary facilities, and electric and gas lines, etc.
9. Name of owner and person who prepared the site plan.

### **C. Final Site Plan Consideration**

2. The applicant shall submit twelve copies of the final site plan at least ten days prior to the meeting of the Commission. The Town Manager shall give applicant ten day notice of the date and time of the meeting for final consideration, and shall give applicant at least seven day notice of any inadequacies noted, or of any ways in which the final plan, in the opinion of the Town Manager, fails to comply with the terms and conditions of the preliminary approval. The Commission shall not consider the proposed development for approval, conditional approval, or rejections until after each meeting. A meeting shall be scheduled within a reasonable time of submission.
3. Information required in Final Site Plan
  - a. All Items required in the Preliminary Site Plan
  - b. The location and dimensions of sidewalks
  - c. The location and technical specifics of all exterior lighting
  - d. Complete landscape plan detailing locations, numbers, and types (species) of vegetation plantings (refer to definition).
  - e. If any electric or telephone utilities, or other utilities are to be installed, then the developer shall show upon the final plan and dedicate the necessary easements thereof.
  - f. The owner's certificate
  - g. The Surveyor's certificate
  - h. Health department's certificate

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- i. Town Manager's certificate
- j. Commission Chairman's certificate signifying Commission approval
- k. Mayor's certificate signifying approval of Town Council or Town Commissioners. This approval is based on the preliminary plan submitted by the developer. This approval is given within 45 days of submission of the preliminary site plan.
- l. A draft copy of any proposed documents or covenant controlling property usage.
- m. A recorded, non-transferable Public Works Agreement (PWA).

### **D. General Requirements and Minimum Design Standards.**

1. The developer must take into consideration the relation of existing buildings and natural terrain to the proposed development. To achieve a harmonious relationship between existing and proposed structures, the developer should create focal points with respect to avenues of approach, terrain features, or other buildings, and relate open space between all existing and proposed buildings.
2. Take into consideration vehicular and pedestrian circulation, including walkways, interior drives, and parking. These areas should enhance the appearance and access to the proposed buildings and structures, and to the neighboring properties.
3. Place electric and telephone lines underground, where possible. Locate above ground lines in places where they will have little impact on neighboring properties.
4. Preserve the landscape in its natural state by minimizing tree and soil removal. Ensure that grade changes are compatible with general appearance of neighboring developed areas.
5. Along the highway corridor (Route 13), the following guidelines should be followed:
  - a. Maintain pleasing aesthetic values along the highway by maintaining the natural beauty and scenery of the highway corridor through distinctive views, and visual continuity.
  - b. Provide of the continued safe and efficient use of roadways
  - c. Protect existing greenbelts, natural vegetation, and wildlife habitats along the corridor.
  - d. Minimize cut and fill operations by maintaining the natural topography of the corridor.
  - e. Minimize intersections and site access points.
  - f. An effort should be made to limit corporate architecture.
6. The layout of the development site shall be such that an overall street system may be designed within the development and which will connect

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- with streets or highways to the development in such a way as to provide for the safe and efficient movement of pedestrians and traffic to and within the development. Ingress and egress shall be provided only in such a manner as will not cause traffic congestion, restrict emergency vehicle access, nor aggravate existing congestion. For these reasons, cul-de-sacs and dead-ends streets are discouraged and may result in disapproval from the Commission.
7. The design of the development shall be such that necessary utilities may be adequately provided to serve the development and protect the public interest.
  8. The layout of the development shall be such that it will lend itself to the orderly series or stages of construction, to insure that access and utilities can provide a minimum of public expense and effort.
  9. The use of piping shall be required for all storm water, drainage, and tax ditches within Town limits. This requirement may be void if it is superceded by any county, state, or federal requirement and/or regulations pertaining to said property and/or development.
  10. Large storm water ponds (greater than 15,000 gallons) shall provide Fire Department access or shall provide dry hydrant connections between the pond the development as may be deemed necessary.
  11. The design of the development shall pedestrian friendly to include sidewalks for all residential streets, and shall meet current applicable ADA standards required by Delaware Department of Transportation or Maryland Department of Transportation.
  12. A landscape plan shall be required.

### **E. Prior Approval Requirements**

1. Prior to the preliminary development plan review on a tract, lot, parcel of land in any of the Zoning Districts a Comprehensive Development Plan, a Community Impact Statement and a Traffic Study shall be performed and submitted to the Commission for review and approval in accordance with the requirements and standards set forth in this Ordinance. No development shall occur or a Building Permit issued without providing the above documents unless written consent is obtained by the Commission after the preliminary Development Plan review.
2. Comprehensive Development Plan - The developer shall submit a plan which includes (a) a site plan showing the location of all streets, pedestrian ways, rail lines, utility systems, landscaped areas, parcel lines, building area, entrances and exits, to be provided; (b) any restrictions to be included in the sale or lease of land for parking, building, location, property maintenance, sign control and other protective measures; (c) a schedule for the development of streets,

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grading, utility installation, rail facilities, docking facilities or other improvements to be provided for the project area and occupants thereof; and (d) a statement of intent to proceed and financial capability of the developer or sponsor, and (e) a community impact statement or any portion thereof at the discretion of the Commission.

3. Community Impact Statement - The developer shall provide a report addressing all expected changes to the general quality of life and will include the following:
  - a. A market study related to the type of development proposed; e.g. retail marketing, housing market, transient housing, etc. This study shall include an estimate of existing need and reasonable forecasts of future demand for the kind of development proposed. It will be used to determine the extent of existing facilities of a type similar to that proposed and used to estimate when development may be needed in the community.
  - b. An impact study related to the quantity and kind of improvement and services to be provided by the community for the proposed development. This study should include an estimate of revenue to the community from proposed development and an estimate of the cost of improvements and services required to serve the development immediately to serve the development and those that may be needed in the future. The impact study related to services and improvements should include, where applicable but not be limited, to services and improvements such as schools, utilities, including sewerage, water mains, and storm drainage, streets, traffic, police and fire protection, refuse collections and disposal, recreation facilities, etc.
  - c. An environmental impact statement related to the effect of the proposed development on natural draining channels and streams, natural growth, soils, air and water quality, etc., and a statement related to the effect of the proposed development on the use and development of adjoining property and the general neighborhood.
  - d. All development activities must address protection of State and Federally designated endangered species. The developer must determine through contact with the Town and the Maryland Fish, Heritage and Wildlife Administration (MFHWA) or the Delaware Natural Heritage Program whether proposed activities will occur within or adjacent to identify endangered species habitats and whether the activities will affect the area. Refer to Subdivision Ordinance.

This statement should include such considerations as: The effect of noise, dust, odor, traffic, lighting, smoke, erosion, sediment control, flooding, changes in natural ground cover, as well as any other impact to the general quality of life in the community.

**F. Post Approval Requirements:**

1. A plan of development approved in accordance with the regulations contained in this section shall remain valid for a period of eighteen (18) months following the date of approval. If at the end of that time construction of the proposed project shall not have begun, then said plan of development shall be considered as having lapsed and shall be no effect (void) unless resubmitted and re-approved.
2. A written request for an extension may be submitted to the Town; and such request shall contain both the reason for failure to meet the current time requirement and a request for a specific amount of additional time needed to meet this requirement.
3. All construction and development shall be in accordance with the approved development plan. Any departure from such plan shall be a cause for revocation of a building permit by the Code Enforcement Officer. Any changes in an approved plan shall be resubmitted for approval in accordance with this ordinance.
4. Construction will be deemed to have begun when all necessary excavation, entrance(s) from municipal road(s), roads to service the initial phase of the development, utilities as well as piers or footings of one or more structures specified in the approved development plan shall have been completed.
5. In the event work on a development is stopped or delayed for more than one (1) month, the Developer shall be responsible to take all actions necessary to secure the site and maintain the site in such a manner as to not become a detriment to the surrounding properties in the neighborhood.

## **Section 27 – Inclusionary Housing Zoning**

Every attempt should be made to integrate in all higher-density residential developments, some housing (at least 10%) for people with low to moderate incomes. This ordinance empowers the Commission to work with developers to create and facilitate strategies that allow new residential communities to offer some “affordable” housing units in an over-all profitable development project.

## **Section 28 – Minimum Standards for Adult Uses**

Adult usages are subject to the following minimum standards:

1. Owners and operators shall meet with the Commission prior to meeting with the Board to ensure that the proposed special exception adult usage is in compliance with all requirements specified in this ordinance.
2. Owners and operators shall meet with the Joint Council prior to meeting with the Board to present the proposed business module, to facilitate and respond to community questions and concerns, and to confirm their familiarity with and their intent and willingness to comply with all applicable laws, ordinances and requirements, which are specified elsewhere.
3. All adult usages shall obtain an operating permit (a business license) from the Town's Code Enforcement Officer and shall be subject to periodic inspections to ensure compliance with all applicable laws, ordinances and requirements.
4. No adult usage shall be operated within 500 feet of a church, school, library, park, recreation facility, and/or an existing business that caters to families with children.
5. Signage shall not be excessively explicit or expressive (see Section 24 for additional requirements).

## **Section 29 – Administration**

The method for enforcing this ordinance and the procedure to be followed in making application for a permit shall be as follows:

### **A. Building Permit Application Process**

- 1.** Before any building may be constructed, extended, altered, repaired, changed or converted, application for a building permit shall be made to the Code Enforcement Officer.
- 2.** Before any land may be put to a use that is provided for by Special Exception, application shall be made to the Board, except in those instances where a Comprehensive Development Plan is necessary, in which case said application shall be made to the Commission for review and recommendation to the Board. The application shall show:
  - a.** The actual dimensions of the lot built upon or to be built upon
  - b.** The size and location of the building or buildings to be constructed
  - c.** The size and location of any proposed extension
  - d.** The house number and names of all streets upon which the lots abuts, and
  - e.** Such other information as may be necessary to provide for enforcement of this ordinance, or upon which to base an inspection prior to passing on the application, as required by the Code Enforcement Officer.
  - f.** The Commission shall file a written report with the Board after each hearing discussing the merits of the Special Exception and its relationship to the surrounding area. Said report shall be part of the official record of the Board.
- 3.** When granting Special Exceptions, the Board shall instruct the Code Enforcement Officer to issue a permit.
- 4.** If the application and the accompanying papers do not comply, in all respects, with the regulations of this ordinance, it shall be disapproved by the Code Enforcement Officer, and the applicant notified in writing. The Code Enforcement Officer may, at his discretion, before disapproving any application, return such application to the applicant, who may amend the said application,

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plans or specifications, in order to make the proposal comply with the regulations of this ordinance. In such event, the Code Enforcement Officer shall proceed to pass upon the application as if it were an original application.

5. If the application, filed together with the plans and specifications, conforms in all respects with the requirements of this ordinance, the Code Enforcement Officer shall within reasonable time, issue the permit applied for.
6. If an application is disapproved, the applicant shall be notified in writing, by the Code Enforcement Officer, with reasons for the disapproval.
7. Whenever a permit is issued under the provisions of this ordinance it shall be exercised by the grantee therein named within six (6) months from the date of its issuance, and if not exercised by the grantee therein named within the time, their privilege and all rights granted shall become null and void and of no effect.
8. The Board may grant extensions to Item 7, if the grantee explains just cause for the delay to the satisfaction of the Board.

### **Section 30 – Right of Appeal from Administrative Decisions**

Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or commission of the Town. Such appeals shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken, certifies to the Board after the Notice of Appeal has been filed with him, that, by reason of the facts stated in the Certificate, a stay would, in his opinion, cause intimate peril of life and property. In such case, proceedings shall not be stayed otherwise than by a Restraining Order which may be granted by the Board or by a court having jurisdiction on application of notice to the officer from whom the appeal is taken and due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal, given notice the, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by an attorney.

## **Section 31 – Board of Adjustments and Zoning Appeals**

### **A. Requirement to Notify Commission**

When a person or developer wishes to make an application to the Board regarding changes to land use or any other regulation controlled by this ordinance, it is the duty of that person to notify and meet with the Commission before meeting with the appropriate Board, thus giving the Commission an opportunity to help resolve the issue directly, allows the Commission to make an informed recommendation to the Board, and helps to keep the Commission informed about the nature and direction of change.

### **B. Maryland Board of Zoning Appeals**

#### 1. Nature of the Board of Zoning Appeals in Maryland

##### a. Organization

There shall be a Delmar Board of Zoning Appeals consisting of five (5) who shall be appointed by the Commissioners of Delmar together with their alternates for three (3) year terms. One member shall be named by such a Board as Chairman. A vacancy shall be filled by the Commissioners of Delmar for the un-expired term of any member whose term becomes vacant. The members of the Board of Zoning Appeals and their alternates shall be removable for cause by appointing authorities upon written charges and public hearings.

The Board of Zoning Appeals shall make a request to the Town Manager and Mayor to appoint such employees as may be authorized from time to time by the appointing authorities. The employees of the Commission shall also be the employees of the Board of Zoning appeals and the employees shall receive such compensation as may be fixed by the appointing authorities.

##### b. Board of Zoning Appeals meetings

The Board of Zoning Appeals, hereinafter referred to as "the Board" shall adopt rules necessary for carrying out the provisions of this ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Three members shall constitute a quorum. The chairman, or in his absence, the Acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board 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 shall keep record of its examination and other official action, all of which shall be filed immediately in the office of the Board, and shall be a public record open to inspection during the hours of normal operation. Copies of the minutes shall be made available to interested parties at a cost.

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All action or decisions of the Board shall be taken by resolution, in which at least three members must concur. Each resolution shall contain a statement of the grounds and findings forming the basis of such action or decision, and the full text of said resolution and record of members' votes shall be incorporated in the minutes of the said Board. No appeal requesting the same relief in regard to the same property shall be received or heard by the Board for a period of one-year following the date of the said resolution, except that this limitation shall not affect the right of the Board to grant a rehearing as provided in the Board's rule of the procedure.

2. Duties, Power, and Responsibilities of the Board
  - a. Administration errors: The Board shall have the power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative office in the enforcement of Article 66B of the Annotated Code of Maryland or any ordinance adopted pursuant thereto.
  - b. Temporary uses: The Board may authorize the temporary use of a building or premises in any district for a purpose or use that does not conform to the regulations prescribed by this chapter for the district in which it is located, provided that such use is a temporary nature and does not involve the erection of substantial buildings. Such certificate shall be granted in the form of a temporary and revocable permit for a period of not more than twelve months, subject to such conditions as will safeguard the public health, safety, convenience and general welfare.
  - c. Special Exceptions
    - i. The Board shall have the power to hear and decide applications for conditional uses or for decisions upon other special questions on which the Board is authorized by this chapter to pass. All such applications shall be deemed to be for special exceptions authorized by section 4.07 of Article 66B of the Code of Maryland.
    - ii. A special exception may be granted when the Board finds from a preponderance of the evidence produced at a public hearing that;
      - 1) The proposed use does not adversely affect the General Plan for physical development of the district, or portion thereof, adopted by the Commission; and
      - 2) The proposed use will not adversely affect the health, safety, and general welfare of the residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
      - 3) The standards set forth for each particular use for which a special exception may be granted have been met.
      - 4) Where a use district boundary line crosses a lot, a use of either classification may be permitted on the whole lot.

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- 5) The proposed use has been so designed to minimize possible adverse effects on the surrounding area.
  - iii. In authorizing any use or exception the Board may impose such requirements and conditions as to location, construction, equipment, operation and maintenance, in addition to those expressly stipulated in this chapter for the particular use or exception, as the Board may deem necessary to prevent or reduce hazardous or congested traffic conditions, odor, dust, smoke, gas, noise, or other similar nuisances. The Board may also impose other requirements as may be necessary in its opinion to protect adjacent properties and neighborhoods and prevent conditions which may become obnoxious or offensive.
  - d. The Board may require from the owner, lessees, or tenants of the property for which the conditional use or exception is granted, such evidence, written agreement as it may deem necessary to ensure that the conditions stipulated by the Board are being and will be complied with. Any such written agreement may be required by the Board to be recorded among the land records of the county at the expense of the applicant.
3. Variances
- i. The Board shall have the power upon appeal in specific cases, filed as herein before provided, to authorize a variance from the terms of this ordinance as will relieve hardship, so that the spirit and purpose of this ordinance shall be observed and substantial justice done.
  - ii. Cases in which a variance may be granted to relieve a hardship:
    - 1) Where, by reason of the exceptional narrowness, shallowness, or unusual shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, a variance is necessary
    - 2) Where the literal enforcement of the requirements of this ordinance would involve practical difficulty or would cause unnecessary hardship.
    - 3) That such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity.
    - 4) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of this chapter or the public interest.
  - iii. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the

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interest of the furtherance of the purpose of this ordinance and public interest.

- iv. In authorizing a variance, with attached condition, the Board may require such evidence and guaranty, or bond, as it may deem necessary that the condition attached are being and will be complied with.

#### 4. Burden of Proof

The applicant for a special exception or variance shall have the burden of proof, which shall include the presentation of evidence and the burden of persuasion on all questions of facts which are to be determined by the Board.

### **C. Delaware Board of Adjustments**

The powers and functions of the Board of Adjustments are the same as those described for the Board of Zoning Appeals on the Maryland side.

#### 1. Nature of the Board of Adjustments

\*The Board of Adjustments shall be comprised of the Mayor, the Director of Public Works, (Chief Engineer of the Street and Sewer Department) and the Town Solicitor. This Board receives its power from Title 22, Chapter 3, Section 321 of the Delaware Code, and shall be established as described in the Code. Vacancies shall be filled in the manner provided in Section 322 of the aforementioned Title and Chapter.

The Board of Adjustments shall adopt rules for the conduct of matters before it. Meetings of the Board shall be held at the call of the Chairman and at such times as the Board may determine. Such Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board 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 shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

All actions or decisions of the Board shall be taken by resolution, in which at least two members must concur. Each resolution shall contain a statement of the grounds and findings forming the basis of such action or decision, and the full text of said resolution and record of members' votes shall be incorporated in the minutes of said Board. No appeal requesting the same relief in regard to the same property shall be received or heard by the Board for a period of one (1) year following the date of said resolution, except that this limitation shall not affect the right of the Board to grant a rehearing as provided in the Board's Rules of Procedure.

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2. Duties, Power and Responsibility of the Board
  - a. Hear and decide appeals where it is alleged there is error in any order, requirements, decisions, or determination made by an administrative official in the enforcement of this ordinance or any ordinance adopted pursuant thereto;
  - b. Hear and decide special exceptions to the terms of the ordinance upon which the Board if required to pass under such ordinance;
  - c. Authorize, in specific cases, such variance from the zoning ordinance, Town Code or regulations that will not be contrary to public interest, where, owing, to special conditions or exceptional situations, a literal interpretation of the zoning ordinance, Town Code or regulations will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, Town 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 the zoning ordinance, Town Code, regulations or zoning map.

In exercising the above powers the Board may, in conformity with the provisions of this ordinance reverse or affirm, wholly or partly, or may modify the order, requirement, or determination appealed from and may make such order, requirement, or decision or determination as ought to be made, and to that end shall have all the powers of the Officer from whom the appeal was taken.

### **Section 32 – Special Exceptions**

A Special Exception may be granted when the Board finds from a preponderance of the evidence produced at a public hearing that;

1. The proposed use does not adversely affect the Town's Comprehensive Plan for physical development of the district, or portion thereof; and
2. The proposed use will not adversely affect the health, safety, and general welfare of the residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
3. The standards set forth for each particular use for which a special exception may be granted have been met.
4. Where a use district boundary line crosses a lot, a use of either classification may be permitted on the whole lot.
5. The proposed use has been so designed to minimize possible adverse effects on the surrounding area.

#### **Burden of Proof**

The applicant for a Special Exception shall have the burden of proof, which shall include the presentation of evidence and the burden of persuasion on all questions of facts that are to be determined by the Board.

### **Section 33 – Right of Appeal from Board**

1. Any person, or persons, jointly or severally aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within thirty (30) days after filing of the decision in the office of the Board.
  
2. In the event of an appeal to a court of competent jurisdiction, the appellants shall bear the cost of preparing the necessary documents as required by the Court. These charges shall include, but not limited to, the cost of transcribing, preparing and submitting transcript from the minutes of the Board, employees' time involved, and required materials. The statement of these expenses shall be itemized and submitted to the attorney representing the appellant for payment, or the appellant. No permits shall be issued by the Code Enforcement Officer unless the Board has been reimbursed for their costs. However, the costs shall not be allowed against the Board unless it shall appear to the Court that the Board acted with gross negligence; in bad faith; or with malice in making its decision.

## **Section 34 – Amendments**

### **A. Amendment Procedure**

All proposed amendments, whether an amendment in text or a modification in districts, shall be first submitted to the office of the Commission in writing at least fifteen (15) days in advance of the next regular meeting of the Commission. The Chairman shall then schedule a review of the proposal at the next Commission meeting, at which time consideration shall be given to the relation of the proposed change to the general purpose and intent of the ordinance and to the Comprehensive Plan, and the facts existing in the vicinity of the proposed change which may warrant a change to the district boundaries or to the rules and regulations of the ordinance.

Subsequent to the Commission's review, the Chairman shall notify the Town Clerk of the applicant's desire to proceed with a formal hearing before the Town Council. The Council shall then arrange a suitable hearing date and shall twice cause a notice to be published in a paper of general circulation in the Town of Delmar setting forth the time and place of public hearing, not later than fifteen days prior to the established hearing date. A similar notice shall be posted on the property under consideration.

### **B. Review of Amendment**

The Commission's report and the Commission's recommendation shall accompany the amending ordinance when it is presented to the Town Council for official action. No amendment, supplement, change or modification or appeal by the Town Council shall become effective until after a Public Hearing has been held, at which time all interested parties and citizens shall have an opportunity to be heard.

### **C. Re-application for Amendment**

No application for amendment, supplement, change or modification or repeal requesting the same relief in regard to the same property shall be received by the Commission for a period of one year following the Town Council's decision in the matter.

## **Section 35 – Validity, Remedies & Penalties for Violation**

### **A. Validity**

In case it shall be judicially determined that any word, phrase, clause, item, sentence, paragraph or section or the application thereof to any person or circumstances, is invalid, the remaining provision and the application of such provision to other persons or circumstances shall not be affected thereby, and the Town Council of Delmar Delaware and the Commissioners of Delmar Maryland hereby declares that they would have ordained the remaining provisions of this ordinance without the word, phrase, clause, item, sentence, paragraph or section, or the application thereof, so held invalid.

### **B. Remedies**

In case any building or structure is constructed, extended, altered, repaired, changed, converted or maintained, or any building, structure or land is used in violation of this ordinance, the Town Council or Town Commissioners in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful construction, extensions, alteration, repair, change, conversion, maintenance or use to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any act, conduct, business or use in violation of this ordinance, in or about such premises.

### **C. Penalties for Violations**

Any violations of this Ordinance are hereby declared to be municipal violations (infractions) and the penalty for such violations shall be One Hundred Dollars (\$100.00) for each initial offense and One Hundred Dollars (\$100.00) for each subsequent offense and each day the violation continues shall constitute a separate offense. Refer to Delaware Ordinance #139 and Maryland Ordinance #693.

## Appendix A – Summary of Lot Area Requirements

The following charts summarize for convenience and comparison the area requirements set forth in the preceding sections. Refer to the preceding sections for the complete list of requirements.

**Chart 1 – Lot Minimums**

<b>DISTRICT</b>	<b>LOT AREA (Sq. Ft.)</b>	<b>LOT WIDTH Interior</b>	<b>LOT WIDTH Corner Lot</b>	<b>FRONT YARD (Required Bldg. Setback)</b>	<b>REAR YARD (Setback)</b>
Residential R-1	7,000	50'	50'	*20' from property line	30'
Residential R-2	9,000	60'	60'	*25' from property line	30'
Residential R-3 Mobile Homes	6,000	60'	60'	25' from property line	10'
Residential R-4	4,000	45'	45'	20' from paved street	30'
Central Business	5,000	50'	50'	20' from property line	30'
Office & Service	7,000	60'	60'	20' from property line	30'
Community Business	7,000'	50'	50'	40' from property line	10'
Highway / Regional Commercial	2 Acres	200'	200'	100 feet from property line	30' prop. Line, 50' residential
Light Industrial	25,000	100'	100'	50' from property line or 70' from the center line of street whichever is greater	30' prop. Line, 50' residential
Industrial	25,000	100'	100'	50' from property line or 70' from the center line of street whichever is greater	30' prop. Line, 50' residential

\*Where the majority of front setbacks have been established by existing development within a block, the average depth of said front setbacks shall apply. Where there is considerable irregularity in said setbacks, the Commission may determine the appropriate setback which will be the most compatible to the established setback of existing development to either side of the parcel under consideration.

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**Chart 2 – Lot Minimums (Cont.)**

<b>DISTRICT</b>	<b>Side Yard (Interior Lot side)</b>	<b>Side Yard (Corner Lot side)</b>	<b>Buffer Zone</b>	<b>Minimum Setback Accessory Buildings</b>	<b>Maximum Building Height</b>
Residential R-1	10'	10'		5' from rear lot line	**35'
				3' from side lot line	
Residential R-2	10'	15'		5' from rear lot line	**35'
				3' from side lot line	
Residential R-3 Mobile Homes	5'	25'		5' from rear lot line	**35'
				3' from side lot line	
Residential R-4	5'	10'		5' from rear lot line	**50'
				3' from side lot line	
Central Business	15'	15'			35'
Office & Service	10'	10'	5'		35'
Community Business	15'	15'	15'		35'
Highway / Regional Commercial	20'	30' prop. Line, 50' residential	50'		40'
Light Industrial	25'	Same as Front Setback	10' to rear lot line		40'
			15' to side lot line		
Industrial	25'	Same as Front Setback	10' to rear lot line		40'
			15' to side lot line		

\*\*Building Height Accessory Buildings on Residential Lots – Accessory buildings, not exceeding one story or 20' in height, may be built in a rear yard only.

**Appendix B – Zoning Maps**

**Appendix C – Site Plan Review Checklists**

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### **Appendix D – Amendments & Revisions**

Revision 1, 02/24/10 - \*Section 2, page 6, 11; Section 3A, page 24 & Section 11B, page 48-49.

(In accordance with Town of Delmar, Delaware Ordinance # 157 as adopted by the Mayor and Council of Delmar, DE on 2/22/2010).