

INTRODUCED BY: David R. Burris
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ORDINANCE 04 -17

An Ordinance to amend Kent County Code, Vol. II, Chapter 187 Subdivision and Land Development effective December 01, 2000, as amended, by adding a new Article XVII, Supplementary Regulations, Section 187-90.1 Transfer of Development Rights Program.

NOW, THEREFORE, THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:

Section 1. That the Kent County Code, Vol. II, Chapter 187 Subdivision and Land Development, is hereby amended by inserting the following language as Article XVII, Supplementary Regulations, Section 187-90.1 Transfer of Development Rights Program:

ARTICLE XVII Supplementary Regulations

§ 187-90.1 Transfer of Development Rights Program

A. Purpose and Intent

This section is intended to promote more efficient utilization of land resources in Kent County through the creation of a Transfer of Development Rights option available to land owners. The Transfer of Development Rights option enables owners of certain land located outside the designated Growth Zone Overlay to sell the rights to develop their land to buyers for utilization within designated growth areas. This option was conceived in response to increasing pressure to develop rural agricultural areas outside the designated Growth Zone Overlay where essential infrastructure and support services necessary to sustain suburban and urban land uses do not exist and are not planned. This Ordinance endeavors to achieve handsome, well designed, and efficient communities inside the Growth Zone Overlay while preserving, protecting, and enhancing precious agricultural lands and rural and natural landscapes from encroachment by sprawl development that threatens the unique character and quality of life that Kent County citizens enjoy, and expect. The purpose of this section is further described as follows:

1. Enable the reasonable transfer and use of development rights among willing sellers and willing buyers within a priority framework of lands most valuable for preservation and lands best suited for development;

2. Provide for farmland, open space, natural resource preservation, and public facility enhancement through the Transfer of Development Rights that permits an increased density on a receiving parcel in exchange for preservation of a sending parcel;
3. Provide close proximity between employment, housing, education, shopping, public facilities, and open space thereby reducing total Vehicle Miles Traveled (VMT's) and improving air quality by providing housing and employment opportunities within reach of each other;
4. Provide mixed use, integrated housing types for a variety of all lifestyles and income levels;
5. Provide transit oriented, pedestrian friendly communities with parks, greenways, mixed uses, and interconnectivity thereby reinforcing community character;
6. Provide adequate and efficient density to support infrastructure investment within certain areas of the Growth Zone Overlay;
7. To further discourage sprawling suburban development into rural areas; and
8. Ensure that development rights may be transferred to properties that are in areas or districts that have adequate support facilities, including but not limited to, transportation, water, sewer, education, employment, recreation, and commercial services to accommodate additional development.

B. Definitions

Development Rights mean the rights of the owner of a parcel of land to develop or use the parcel in accordance with Chapters 205 and 187 of the Kent County Code.

Neighborhood Shopping Center is a retail complex of three (3) or more retail establishments designed, developed, and operated with accessory off-street parking located on the premises to serve jointly all establishments in the complex, and offering goods and services to primarily meet the everyday needs of residents of the immediate vicinity.

Receiving Area means one or more designated districts within which the development rights from sending districts may be transferred into for use within development projects.

Receiving Parcel means a parcel of land in a Receiving Area that is the recipient of transferred development rights from a parcel located in a Sending Area for the purpose of development with an increase in the number of dwelling units equivalent to the number of transferred development rights in addition to the number of dwelling units that would otherwise be permitted on the parcel.

Sending Area means one or more districts in which the development rights of parcels in the district may be transferred from for use in one or more receiving districts.

Sending Parcel means a parcel of land in a Sending Area from which development rights are being transferred for use on a parcel within a designated Receiving Area, and upon which a legally binding and irrevocable preservation easement has been placed and recorded that would prohibit the future development of such parcel to the degree commensurate with and equivalent to the number of development credits that have been transferred from the parcel.

Transfer of Development Rights means the procedure prescribed by this section whereby the owner of a parcel in the sending area may convey development rights in perpetuity to the owner of a parcel in the receiving area, whereby the development rights so conveyed are extinguished in perpetuity on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding the parcel.

C. General Provisions

1. A system of transferable development rights credit for properties situated within designated Sending Areas is established in Section 187-90.1, Item D (Sending Areas) below.
2. A system of limitations on the quantity of development rights credits that may be imported into designated Receiving Areas is established in Section 187.90.1, Item E (Receiving Areas), below.
3. The designation, tabulation, tracking, record keeping, management and transfer of development rights shall be under the direction of the Kent County Department of Planning Services in accordance with the provisions of this Section, and procedures established by the Department of Planning Services.
4. All sending parcels shall be encumbered in perpetuity by an irrevocable preservation easement prepared by, and at the expense of the buyer, the seller, or both, of the development rights. Such preservation easement shall be recorded and become a codicil to the property deed of the sending parcel, and shall have the effect of limiting in perpetuity the future construction of dwellings on the sending parcel to a maximum number equivalent to the total number of dwelling units permitted by right in the Zoning District in which the sending property resides for the entire sending parcel, minus the total dwelling unit credits transferred from the parcel.
5. All properties to which development rights are planned to be transferred shall comply with the provisions of Section 187-90.1, Item E (Receiving Areas) of this Ordinance and shall be subject to the Plan Review and approval processes set forth in Section 187-90.1, Item K (Review Process) of this Ordinance.

D. Sending Areas

1. All areas outside of the Growth Zone Overlay as adopted by the Levy Court shall be considered Sending Areas.
2. Parcels located within the Growth Zone Overlay and not situated within a designated Receiving Area may be designated by the Levy Court as a Sending parcel. Such designation shall be initiated by the property owner. Petitions shall include the following:
 - a. An evaluation of the degree to which the subject parcel reflects the specific physical attributes of Sending Areas as articulated in Section 187-90.1, Item D.3;
 - b. The transfer credit value proposed in accordance with the Sending Area value system set for in Section 187-90.1, Item D.4;
 - c. Any additional information determined to be necessary by the Department of Planning Services; and
 - d. Such petitions shall be subject to public hearing before the Regional Planning Commission and the Levy Court. The Regional Planning Commission shall formulate a recommendation to the Levy Court who shall make the final determination.
3. *Sending Area Prioritization.* Lands outside the Growth Zone Overlay have been categorized into three (3) levels of priority for transfer of development rights based upon the degree to which certain physical attributes and criteria are concentrated. These areas shall be known as the Primary, Secondary, and Tertiary Sending Areas. The three (3) Sending Areas are identified and delineated on the TDR Sending Areas Map which is referenced as attachment "A". The physical attributes and criteria upon which the priority sending areas have been determined include:
 - a. Land Evaluation and Site Assessment (LESA) scores in the "Very High" range;
 - b. Proximity to existing preserved lands (preservation lands owned by State and Federal Governments; lands for which development rights have previously been purchased through the Delaware Agricultural Lands Preservation Program);
 - c. Existence of historic resources;
 - d. Designation as a State Resource Protection Area;
 - e. Designation as an Excellent Water Recharge Area; and
 - f. Lands adjoining east side of State Route 1.

4. *Sending Area Value.* Each of the three (3) priority sending areas is assigned a value of transferable development rights credit per acre that may be transferred for utilization within a designated Receiving Area. Transfer credits are as follows:
 - a. Primary Sending Areas - 1.5 Dwelling Units Credit per Acre Preserved
 - b. Secondary Sending Areas - 1.0 Dwelling Unit Credit per Acre Preserved
 - c. Tertiary Sending Areas - 0.5 Dwelling Unit Credit per Acre Preserved
5. *Net Developable Acreage.* Lands that shall not be subdivided according to Chapter 187 Subdivision and Land Development of the Kent County Code such as ponds, floodplain, and wetlands shall not be included in the calculation of transferable development rights. In order to determine the net developable acreage for the site, the National Wetland Inventory Maps and the FEMA Flood Insurance Rate Maps may be used to estimate the acreage dedicated to wetlands and flood plain. The Department of Planning Services shall provide such estimates. In lieu of utilizing map data from the National Wetland Inventory Map and the FEMA Flood Insurance Rate Map, the applicant may, at his or her expense, have field analyses performed and certified by the United States Army Corps of Engineers in the case of wetland delineations, and FEMA in the case of flood plain delineations and base flood elevation determination, for purposes of determination of Net Developable Acreage.
6. Sending parcels may convey some or all of their total available transfer credits as verified by the Department of Planning Services in accordance with Section 187-90.1.F below.
7. Lands for which the State of Delaware, or any other entity such as the federal government, a nature conservancy, or any other nongovernmental agency, has purchased or otherwise secured the development rights either through fee simple acquisition, condemnation, eminent domain, deed restriction, easement or any other legal means for the expressed purpose of preventing the development of such lands, shall be ineligible for participation in the Kent County Transfer of Development Rights Program. Examples of such lands include any state or federal owned property and lands on which agricultural preservation easements have been purchased.
8. Property owners who have transferred development rights from their land forfeit the ability to use the land for any purpose or use other than those permitted by right in the underlying zoning district; except that such property shall not be subdivided for residential development. Properties from which a specific quantity of development rights has been transferred shall have forfeited, in perpetuity, the right to subdivide or develop that specific quantity of development units on the sending parcel.

E. Receiving Areas

1. Specific areas inside the Growth Zone Overlay have been designated as Receiving Areas for transferred development rights.
2. *Receiving Area Prioritization.* Two categories of Receiving Areas have been identified within the designated Growth Zone Overlay for transfer of development rights based upon the degree to which certain physical attributes and criteria are concentrated. These areas shall be known as the Primary and Secondary Receiving Areas. The two (2) Receiving Areas are identified and delineated on the TDR Receiving Areas Map which is referenced as attachment "B". The physical attributes and criteria upon which the priority Receiving Areas have been determined include:
 - a. Location within the Growth Zone Overlay;
 - b. Sanitary sewer availability;
 - c. Central water availability;
 - d. Proximity to primary transportation and transit routes;
 - e. Proximity to goods and services; and
 - f. Adjacency to municipalities (inside the established Growth Zone Overlay).
3. *Municipal Receiving Areas.* Areas within municipal boundaries may also be considered for designation as Receiving Areas if a municipality chooses to participate in the Kent County Transfer of Development Rights Program. The participation of municipalities may be arranged through Memorandum of Understanding between the municipality and the Kent County Levy Court. Participating jurisdictions shall be responsible for designating specific Receiving Parcels within their jurisdiction and for establishing design criteria and approval processes in substantial conformance with the County's criteria for development projects utilizing transferred development credits as specified in Section 187-90.1, Items G, H, I, and J below.
4. *Receiving Area Value.* Within the Primary and Secondary Receiving Areas the maximum gross development densities shall be as follows:
 - a. Primary Receiving Areas = Seven (7) Dwelling Units per Acre
 - b. Secondary Receiving Area = Five (5) Dwelling Units per Acre

F. Transfer Credit Calculation

1. *County Approval of Development Transfer Credit Calculations.* Total development credits available for transfer from any given parcel shall be verified and approved by the Kent County Department of Planning Services in a form acceptable to Kent County. Requests for verification and approval of development credit

calculations shall be submitted to the Department of Planning Services for consideration on application forms prepared by Kent County. Such application forms shall be signed by the owner or owners of record of the subject property.

2. *Application for Development Credit Calculation.* Applications for verification and approval of development credit calculations shall include the following minimum submission requirements:
 - a. Completed application form and applicable fee.
 - b. Current survey drawing of subject property (in the absence of a current survey, the Department shall use the tax assessment maps maintained by the County) to include:
 - (1) Perimeter bearings and distances;
 - (2) Site area calculation;
 - (3) Wetlands area calculation (if applicable);
 - (4) Flood plain delineation (if applicable); and
 - (5) Other features (i.e. structures, natural features, roadways, etc.)
 - c. Draft Irrevocable Preservation Easement
3. *Certification of Transfer Credits.* Upon verification and approval of the total development credits available for transfer from a given sending parcel, the Department of Planning Services shall issue to the owner of record of such parcel, a Certificate of Transfer Credits. The Certificate of Transfer Credits document shall indicate the tax map identification number for the subject parcel, the name and address of the owner of record of the subject parcel, the absolute number of development credits available for transfer from the subject parcel, and a unique serial number of certification for the document. The Certificate of Transfer Credits shall be the official statement of transfer credits per parcel for purposes of this Ordinance.
4. *List of Certified Transfer Credits.* Approved development credit calculation forms will be kept on file by the Department and available for public review.
5. *Preparation of Irrevocable Preservation Easement.* Prior to the issuance of verification and approval of a transfer credit calculation, the Applicant shall cause to be prepared an Irrevocable Preservation Easement for the purpose of establishing a perpetual restriction upon the sending area property from which development credits are being sold or transferred. The Irrevocable Preservation Easement shall be prepared by, and at the expense of the buyer, the seller, or both, of the development rights, and shall be subject to review and approval of the Department of Planning Services.

6. *Recordation of Irrevocable Preservation Easement.* Such preservation easement shall be recorded in the Office of the Recorder of Deeds for Kent County at the time of sale of any development credits, and shall become a permanent, perpetual preservation easement on the deed of the sending property. No such preservation easement shall be recorded without the signature of the Director of Planning Services or designee.

G. Housing Composition

1. *Definitions.*
 - a. *Single Family Detached Dwelling* is a dwelling unit not attached to any other dwelling by any means and is surrounded by open space or yards.
 - b. *Single Family Semi-Detached Dwelling* is a one-family dwelling attached to one other one-family dwelling by at least a common roof system and a common vertical wall, with each dwelling located on a separate lot. For the purposes of this ordinance, this term is synonymous with duplex.
 - c. *Single Family Attached Dwelling* is a one-family dwelling attached to two or more one-family dwellings by common vertical walls. No more than six (6) dwelling units shall be in an attached group.
 - d. *Multifamily Dwelling* is a building containing three (3) or more dwelling units, including units that are located one over the other.
 - e. *Multiplex* is a building containing three (3) to five (5) dwelling units that may separate individual dwelling units within the building by partition wall or by floor.
2. *Permitted dwelling types.* The following dwelling types in Table 187-90.1.A may be permitted within developments in the Primary and Secondary Receiving Areas in addition to those permitted by the Zoning District in which the property is located:

Table 187-90.1-A

<i>Dwelling Type</i>	<i>Primary Receiving Area</i>	<i>Secondary Receiving Area</i>
Single Family Detached	X	X
Single Family Semi-Detached	X	X
Single Family Attached	X	X
Multifamily	X	Not Permitted
Multiplexes designed to emulate single family detached dwellings – must be indicated on the plan	X	X
Apartments constructed as a second story to detached accessory structures – must be indicated on the plan	X	X
Dwellings located on the upper floors of commercial structures	X	X

3. Area and Bulk Standards

- a. Primary Receiving Area. The area and bulk standards within the primary receiving areas are provided in Table 187-90.1-B below:

Table 187-90.1-B

	Single Family detached	Single Family semi detached	Single Family attached	Multifamily	Multiplexes
Minimum Lot Size/Area	7,000 sq. ft.	4,000 sq. ft.	2,000 sq. ft.	1,700 sq. ft. per unit	2,000 sq. ft. per unit
Maximum Impervious Surface Lot Coverage	40%	40%	45%	45%	45%
Maximum Building Height	35'	35'	35'	45'	45'
Minimum Frontage	60'	40'	20'	60'	60'
Minimum Lot Width	60'	40'	20'	60'	60'
Front Yard Setback	15'	10'	10'	30'	20'
Side Yard Setback	10'	10'	15' – End Units Only	15'	15'
Rear Yard Setback	25'	20	20	30'	25

- b. Secondary Receiving Area. The area and bulk standards within the secondary receiving area shall be as enumerated in Table 187-90.1-C below:

Table 187-90.1-C

	Single Family detached	Single Family semi detached	Single Family attached	Multiplexes
Minimum Lot Size	8,000 sq. ft.	5,000 sq. ft.	2000 sq. ft.	2,500 sq. ft.
Maximum Impervious Surface Coverage Lot	35%	40%	45%	35%
Maximum Building Height	35'	35'	35'	45'
Minimum Frontage	70'	50'	20'	60'
Minimum Lot Width	70'	50'	20'	60'
Front Yard Setback	25'	20'	10'	25'
Side Yard Setback	10'	10'	15' – End Units Only	15'
Rear Yard Setback	25'	25'	30'	30'

4. *Diversity of Housing Types – Primary Receiving Area.* Projects shall include a variety of housing types. At least twenty percent (20%) of the proposed units must be of two (2) different dwelling types as defined in §187.90.1, Item G.1 above. Differing housing types shall be integrated throughout the project, and shall not be segregated by housing type.

H. Design Criteria

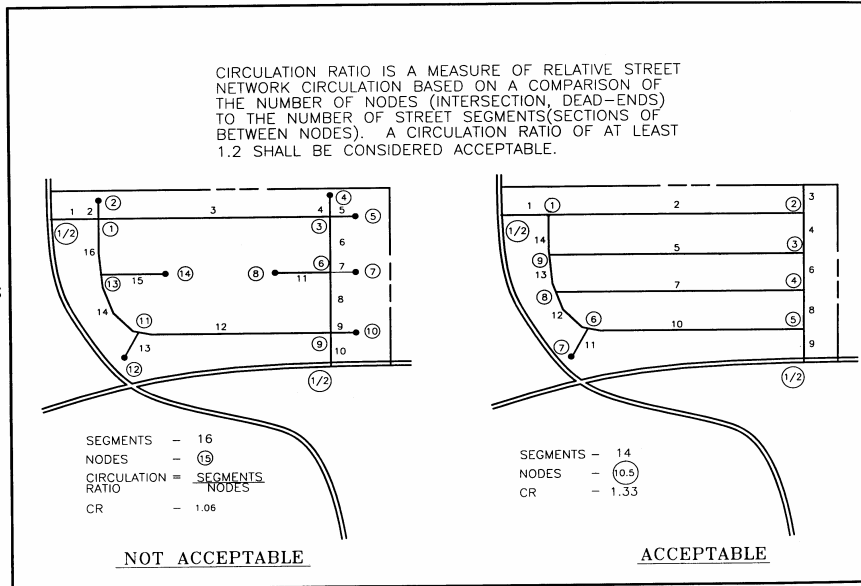
All properties to which development rights are planned to be transferred shall comply with the provisions of Kent County Code, Chapter 187 (Subdivision and Land Development) pertaining to major subdivision plan review. Such proposals shall also demonstrate compliance with the following site/subdivision design criteria:

1. Neighborhood Street System

a. Circulation Index

- (1) All plan submissions shall demonstrate that the proposed subdivision street system will achieve a circulation ratio of 1.2 or greater. If a subdivision is planned to be constructed in distinct development phases, then the plan shall demonstrate that the initial phase individually and in conjunction with all subsequent phases, will achieve and maintain the minimum circulation ratio requirement.
- (2) The circulation ratio is determined by dividing the number of street segments (street sections between intersections and/or cul-de-sac ends) by the number of intersections and cul-de-sac ends (nodes). For purposes of this calculation, proposed street intersections with existing roads and stub roads for future access to vacant developable lands shall count as 0.5 intersections. See Figure 187-90.1-A below.
- (3) The Regional Planning Commission may waive the circulation ratio of 1.2 if the applicant can adequately demonstrate that due to a unique design or unusual site characteristics, the required ratio cannot be achieved.

Figure 187-90.1-A

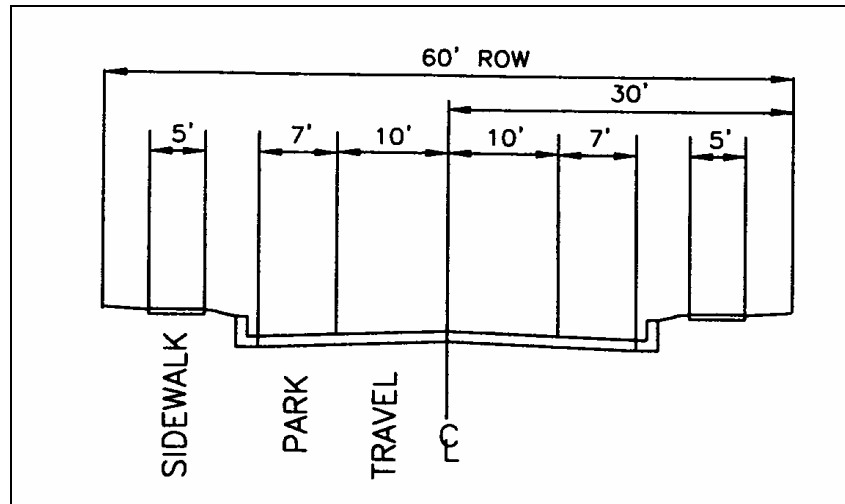


b. *Street Sections.* This section sets forth a hierarchy of subdivision street types for projects developed under the provisions of the Kent County Transfer of Development Rights Program. Subdivision streets planned under this section shall demonstrate compliance with the following minimum design criteria:

(1) *Local Street.* A street primarily used for access and service delivery to abutting properties. No more than 100 dwelling units shall front on a local street.

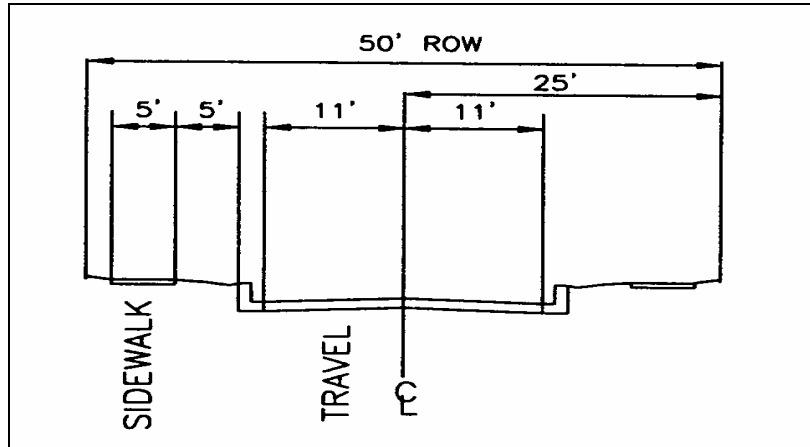
(a) Below Figure 187-90.1-B illustrates the required street section for local streets within the Primary Receiving Area:

Figure 187-90.1-B



(b) Below Figure 187-90.1-C illustrates the required street section for Local Streets within the Secondary Receiving Area:

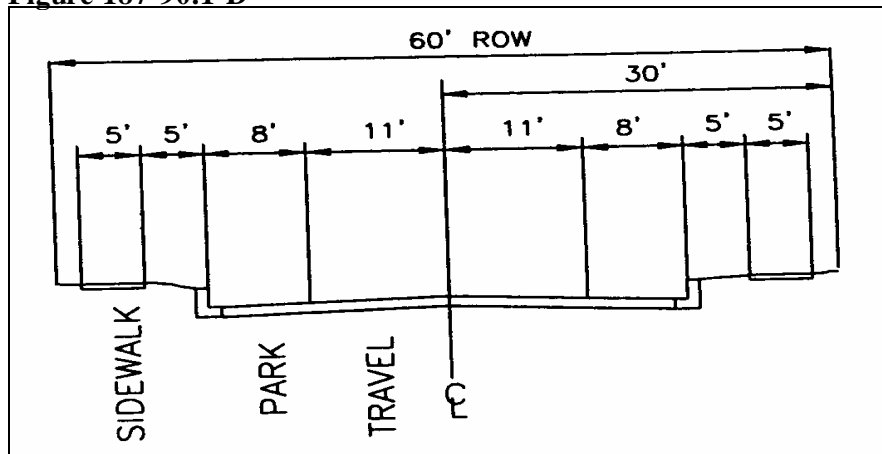
Figure 187-90.1-C



(2) *Minor Collector Street.* A street that serves as a frontage street to abutting properties and which conducts low volumes of traffic between local streets and major collector and/or arterial roadways. No more than 150 lots shall front on a Minor Collector Street and a minor collector street shall serve no more than 300 lots exclusive of other subdivision streets.

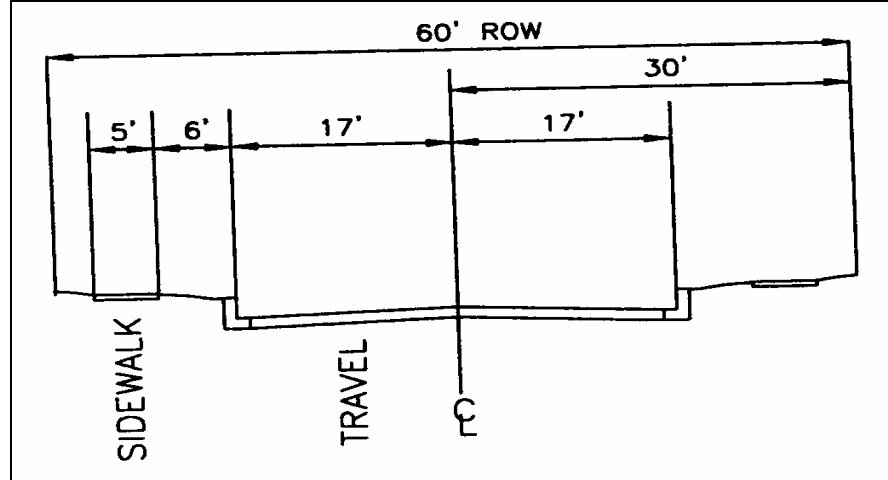
(a) Below Figure 187-90.1-D illustrates the required street section for Minor Collector Streets within the Primary Receiving Area:

Figure 187-90.1-D



(b) Below Figure 187-90.1-E illustrates the required street section for Minor Collector Streets within the Secondary Receiving Area:

Figure 187-90.1-E



(3) *Boulevard Street Design.*

- (a) Minor Collector Service. As an alternative to conventional collector street design, a boulevard street to serve as a minor collector subdivision street within a proposed development may be utilized.
- (b) Open Space Credit. The Regional Planning Commission may count the boulevard landscaped median space toward the minimum neighborhood open space requirement for the proposed development if, in the Commission's opinion, the following conditions have been met:
 - i. The proposed boulevard street configuration enables a superior development pattern for the subject property than would be achieved using conventional street design parameters;
 - ii. The passive recreation benefits of a proposed landscaped median space outweigh the need for an expanse of open space elsewhere in the development; and
 - iii. The boulevard street is an appropriate street type for the development being proposed.
- (c) Dimensions. The minimum dimensional requirements for boulevard street design are illustrated in Figures 187-90.1-F

and 187-90.1-G below:

Figure 187-90.1-F

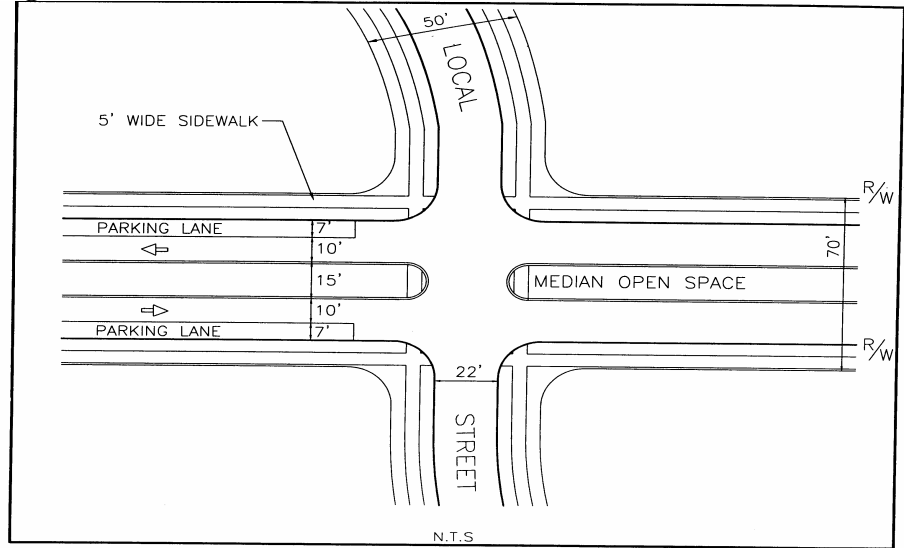
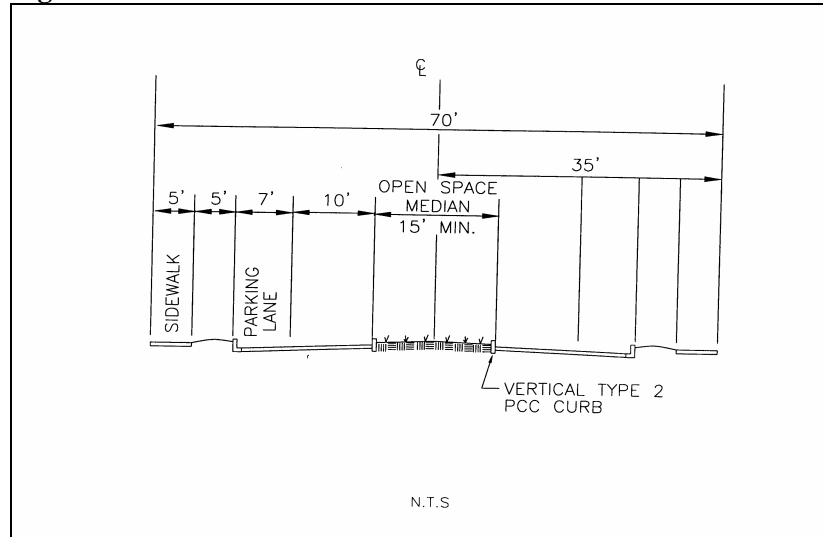


Figure 187-90.1-G



(4) *Alleys.*

- (a) In an effort to accommodate local traffic, provide secondary access to rear lot lines, parking in the rear of buildings and service delivery such as trash collection and utility service, alleys may be utilized.

- (b) The right-of-way and pavement width of alleys as well as ownership and maintenance shall be in accordance with §187-58 of the Subdivision and Land Development Ordinance.

2. Pedestrian Amenities

- a. Residential subdivisions and land developments shall provide sidewalks on both sides of all streets.
- b. The developer shall install sidewalks along arterial and collector roadway frontage of a property whenever such property is the subject of a subdivision or land development proposal that requires Regional Planning Commission or Levy Court approval.
- c. In nonresidential land developments sidewalks shall be constructed along private access roadways and site entrances to provide continuous pedestrian access from the required frontage sidewalk to existing and proposed buildings on the premises. Sidewalks shall be designed and situated so as to provide pedestrian linkages from parking lots to building entrances and between buildings and groups of buildings on the premises.
- d. Sidewalks shall be established at a minimum paved width of five (5) feet.
- e. Sidewalks shall be separated from the edge of road, pavement, driveways, and site entrances by a grass strip or landscape area of at least three (3) feet in width and preferably five (5) feet in width. Where sidewalk is planned to adjoin the pavement edge of parking lot areas, such sidewalk shall be grade separated from the parking lot surface by six (6) inch vertical face curbing.
- f. Sidewalk design and installation shall comply with federal requirements of the Americans with Disabilities Act (ADA) and shall incorporate barrier free access ramping at points of intersection with street crossings and at other locations so as to accommodate barrier free pedestrian movement and access to buildings, parking areas, and other site amenities.
- g. Sidewalks shall be free of utility poles, bushes, plants, and all other obstructions.
- h. All proposals requiring submission of a major subdivision or land development plan for review and approval by the Commission, shall demonstrate

compliance with the provisions of this section on the submission plan.

- i. In projects containing both residential and nonresidential development, pedestrian access shall be provided between the residential and nonresidential portions of the site.
- j. In all cases, sidewalks or other improved pedestrian pathways shall be installed to provide linkages to surrounding properties (whether improved or vacant).

3. Landscape and Tree Planting Requirements

- a. Design should be simple and easy to maintain and shall consist of a combination of hardy canopy trees, low evergreen shrubs and turf grass. Ornamental and evergreen tree plantings may be incorporated in the design but shall not be the predominant plant types on the site.
- b. Trees shall be planted in non-woodland areas at a rate of one (1) tree per 3000 square feet of land area developed. For purposes of this item, the "land area developed" shall mean that non-woodland portion of the site which is situated within the Limits of Disturbance as defined on the development plan. A Tree Preservation and Planting Plan meeting the criteria of Section 187-76 above shall be prepared and submitted for review by the Regional Planning Commission as part of the formal plan review process.
- c. Standard for deciduous tree plantings. Trees shall be of a high canopy variety and shall be limbed to a minimum height of twelve (12) feet above grade at maturity.
- d. Standards for evergreen tree plantings. Evergreen tree plantings shall be at least 4 Feet in height at the time of planting.
- e. Standards for shrubbery. Shrubby shall be of a low evergreen variety and shall be limited to use as foundation plantings and for screening purposes.
- f. Standards for ground cover. Ground cover shall be limited to turf and ornamental grasses and ornamental evergreen ground cover plantings within required landscape areas. Alternative ground covers such as wildflowers and meadow grasses may also be considered.
- g. Replacement guarantee. A one-year full-price replacement guarantee shall be provided by the applicant and noted on the record plan for all required new tree plantings.

- h. *Performance Bond.* The County may require the applicant or applicants provide a performance bond or other guarantee for the cost of required landscaping in accordance with Article XIII, Section 187-83 of the Kent County Subdivision and Land Development Ordinance.

4. Parks and Open Space

- a. Residential subdivision and land development projects within the receiving areas shall comply with the active and passive open space requirements of Chapter 187 of the Kent County Code. Such projects shall also adhere to the following additional requirements:

- (1) All residential subdivisions and land developments shall provide recreational areas in a size equal to (450) square feet per dwelling unit.

5. Community Facilities/Non-Residential Uses

- a. *Area Limitation.* Not more than fifteen percent (15%) of any project site area may be reserved and/or dedicated to non-residential uses. The Regional Planning Commission may approve an increased percentage of non-residential site area provided the applicant demonstrates to the satisfaction of the Regional Planning Commission that the increase will result in an extraordinary benefit to the residents of the development, and within the surrounding neighborhood. Individual commercial and non-residential buildings shall be limited to a maximum floor area not to exceed 10,000 square feet except that neighborhood shopping centers shall be limited to a maximum floor area not to exceed 50,000 square feet. The Levy Court may authorize commercial and non-residential buildings in excess of 10,000 square feet and shopping centers in excess of 50,000 square feet if approved by the Levy Court through the Conditional Use Site Plan Review process as described in §187-40 above. Recreational facilities such as clubhouses for civic associations designed and operated for the exclusive use of a specific subdivision will not count toward the permitted fifteen percent (15%).

- b. *Non-Residential Uses.* Non-residential uses proposed as part of a TDR Receiving Area plan shall be designed as an integral part of the proposed development and primarily intended for the direct benefit of residents of the proposed development.

- (1) Only the following uses may be permitted by the Regional Planning Commission as part of the overall subdivision and land development

plan:

Antique shops
Art galleries
Bakery
Banks
Barber/beauty shop
Bed-and-breakfast - country inn
Bookstore (no adult entertainment space)
Candy store
Charitable and philanthropic organizations without liquor license
Child-care center
Churches and ancillary uses
Coin-operated laundry
Community centers
Community pool and recreational facilities
Delicatessen
Drugstore
Emergency uses - fire, police, rescue
Florist
Food catering establishment
Gift shop
Government buildings
Grocery stores
Hardware store
Ice cream store
Indoor recreation - racquetball, tennis, etc.
Jewelry store
Laundry and dry cleaning pickup
Libraries, museums
Newsstand
Office supply stores
Offices, business, professional or governmental
Parks
Private clubs and service organizations
Private educational facilities
Public educational facilities
Public utilities and public utility uses
Restaurants, taverns, lounges
Shoe repair
Stationery stores
Transportation Uses - multi-modal stations and commuter lots
Variety stores

Video stores (no adult entertainment space)

- (2) Gasoline Pumps. Gasoline pumps proposed as a component a TDR development project shall only be permitted if approved by the Levy Court through the Conditional Use Site Plan Review process as described in §187-40 above. In addition to the minimum requirements for Conditional Use Site Plans, gasoline pumps shall also demonstrate compliance with §205-296 of the Zoning Ordinance and may be subject to any additional conditions determined by Levy Court to protect the health, safety, and welfare of the citizens of Kent County.
 - (3) Drive-In/Drive-Through Service Facilities. Establishments proposed to include drive through service windows such as, but not limited to, drive through restaurants, banks, and pharmacy stores shall only be permitted if approved by the Levy Court through the Conditional Use Site Plan Review process as described in §187-40 above. In addition to the minimum requirements for Conditional Use Site Plans, such drive through facilities shall also demonstrate compliance with the following design standards:
 - (a) When adjoining or across the street from an existing or planned residential lot or use, the drive through lane shall be setback at least 100 Feet from the adjoining residential lot line.
 - (b) When adjoining or across the street from existing or planned residential lots or uses, the drive through lane, order station and pick-up window shall be screened by a continuous opaque barrier of at least 4 Feet in height to run the entire length of that portion of the drive through lane that would be in direct view of the residential lot or use. The opaque barrier shall conform with the material requirements for opaque barriers set forth in §187-79, Item A.(1). (Opaque Barrier Options).
 - (c) Drive through service lanes shall be designed to accommodate at least 6 automobile stacking spaces for each drive through lane. Stacking space shall be at least 108 linear feet in length measured from the beginning of the drive through lane to the pick-up window.
- c. *Lot Coverage.* Each non-residential lot shall have a minimum of twenty-five (25) percent of the lot area dedicated to be landscaped open space .

- d. *Front Yard.* Each lot shall have a landscape open space of at least twenty-five (25) feet in width measured from the back of curb along the entire frontage of the lot, except at points of site access. Trees shall be provided along the frontage perimeter at a minimum rate of one (1) tree for each fifty (50) linear feet of frontage.
- e. *Side and Rear yards.* A minimum of fifteen (15) feet of landscaped open space shall be provided along all side and rear lot lines when abutting a residential use and a minimum of five (5) feet when abutting a nonresidential use. Tree plantings shall be provided along all non-frontage perimeters at a minimum rate of one (1) tree for each seventy-five (75) linear feet.
- f. *Building Placement.* Non-residential buildings shall be situated on the property so as to maximize the use of the frontage along the roadway.
- g. *Landscaped Buffers.* There shall be a landscaped buffer area of at least twelve (12) feet in width between the principal buildings and customer parking lot and drive areas, exclusive of drive-up service lanes and customer service window areas, rear driveways, and loading areas. The buffer area shall include provisions for a sidewalk of at least six (6) feet in width and no greater than eight (8) feet in width. The buffer area and sidewalk shall be grade separated from the parking lot by concrete curbing of at least six (6) inches in height. Drive-in service lanes, canopy areas, customer service windows, and accessory buildings and structures shall be exempt from the design requirements of this item.
- h. *Parking Lot Design.*
 - (1) *Location.* Parking shall not be permitted to be situated within the front yard nor between the right-of-way line and the building except in the following instance:
 - (a) Neighborhood Shopping Centers as defined above, in which case parking may be permitted between the building and the roadway provided that such parking be limited to two (2) rows of single parking spaces between the road and the storefront;
 - (2) *Layout.* Parking lots shall be arranged in such a manner so that not more than twenty (20) parking spaces in a row shall be permitted without a landscaped island. No more than six (6) rows of twenty

(20) spaces shall be provided without provision for a landscaped median. Parking lot landscape islands shall be a minimum of ten (10) feet wide and planting medians shall be no less than eight (8) feet wide.

(3) *Landscape Buffers.* Parking lot screening adjacent to public right-of-way. Low profile screening shall be required when parking spaces would result in vehicles facing onto the roadway. Screening may consist of a low wall, evergreen hedge with minimum height of two (2) feet at time of planting planted three (3) feet apart on center and a maximum height of three (3) feet at maturity, or earth berm. Should a low wall be used, such wall shall be accompanied by evergreen shrub plantings on the roadway side of the wall and spaced ten (10) feet apart on center.

(4) *Interior Landscape.* A minimum of five (5) percent of the interior area of a parking lot shall be reserved for landscape purposes. This provision shall include the landscaping of all required parking islands and medians. Shade trees shall be incorporated within the landscaped islands whenever and wherever practicable.

(5) Vehicular Site Entrances for Nonresidential Uses.

(a) Number of vehicular site entrances. One (1) vehicular site entrance shall be permitted for each street, which abuts a site. For sites with aggregate street frontage in excess of three hundred (300) linear feet, one (1) additional vehicular site entrance may be permitted. For sites with aggregate street frontage in excess of six hundred (600) linear feet, two (2) additional vehicular site entrances may be permitted.

(b) Shared access among adjoining properties shall be provided whenever possible for entrances to adjoining uses, including residential driveways.

(c) Cross access shall be provided among abutting uses of similar use categories, whenever possible, to provide linkage between properties as an alternative to re-entering the main collector corridors to access both existing and future neighboring properties.

(d) Entrance locations for adjoining properties. Non-residential site entrances shall be no closer than twenty-five (25) feet to

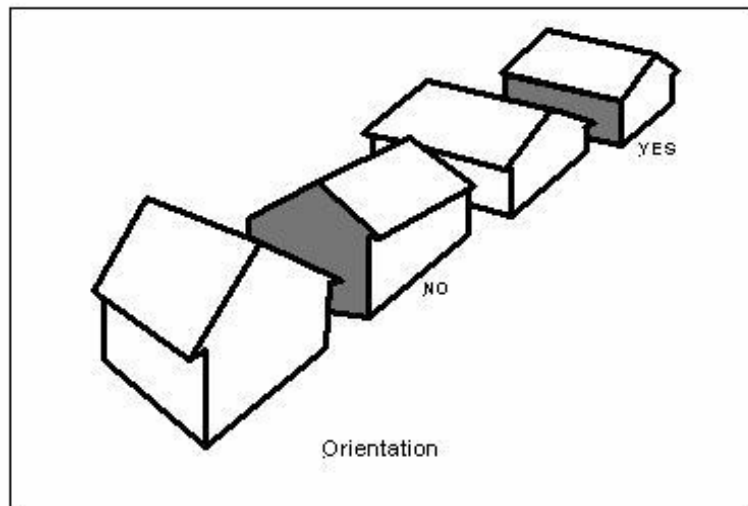
an adjoining property, which is zoned residential and no closer than ten (10) feet to an adjoining property, which is in a nonresidential zoning category.

- (e) The Delaware Department of Transportation has final authority and approval over the location of all access points.
- i. *Adjustments to Bulk Standards.* When it can be demonstrated to the satisfaction of the Regional Planning Commission through the site plan review process that, due to specific constraints related to lot configuration, orientation of existing buildings on adjacent lots, existing built conditions, or specific design objectives, the area and bulk requirements listed above cannot be met, the Commission may authorize alternative lot coverage, setbacks, building placement, and parking lot configurations. However, parking within the front yard or between the right-of-way line and the building shall be limited to no more than fifty (50) percent of the total parking required for the proposed use and such parking must be adequately landscaped and screened from the roadway.

I. Architectural Design Standards

- 1. General. The following standards apply to all buildings:
 - a. Building Orientation and Facade.
 - (1) The principal building facade of proposed buildings should be oriented toward the primary street frontage, and in the same direction as the majority of existing buildings on the frontage street. Proposed buildings on corner properties should reflect a public facade on both street frontages. See Figure 187-90.1-H below.
 - (2) In designing new buildings, consideration should be given to the dominant architectural features of existing buildings in the immediate vicinity, as applicable. However, strict adherence to existing architectural styles is not the predominant goal of this ordinance. Existing architecture should be utilized as a frame of reference for proposed architecture, but should not be the sole design template in every instance.
 - (3) Large expanses of blank walls are to be avoided. The public facade shall incorporate windows and primary doorway entrance along the street frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.

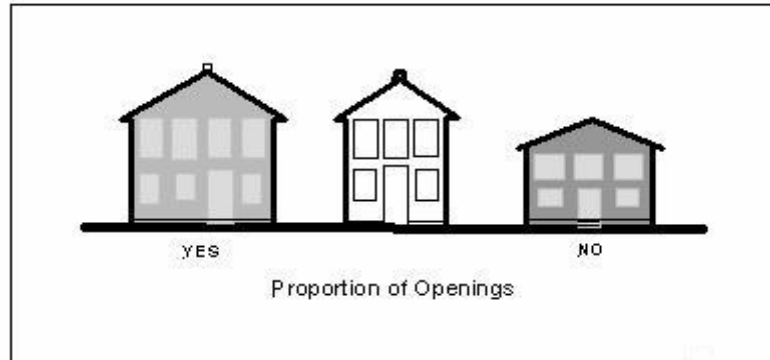
Figure 187-90.1-H



2. General Architectural Characteristics.

- a. Building Proportions. Consideration should be given to proportional attributes including overall height-to-width ratios of existing building facades, doors, windows, projecting canopies, and other architectural features, found in adjacent existing buildings. See Figure 187-90.1-I below:

Figure 187-90.1-I



- b. Building Mass and Scale. Facades of new buildings should incorporate, but not mimic, the sense of lightness or weight exhibited in the architecture of existing buildings on neighboring properties and should incorporate similar proportions of solids (i.e. siding, blank walls, etc.) to voids (i.e. windows, door openings, etc.). See Figures 187-90.1-J, 187-90.1-K, and 187-90.1-L below:

Figure 187-90.1-J

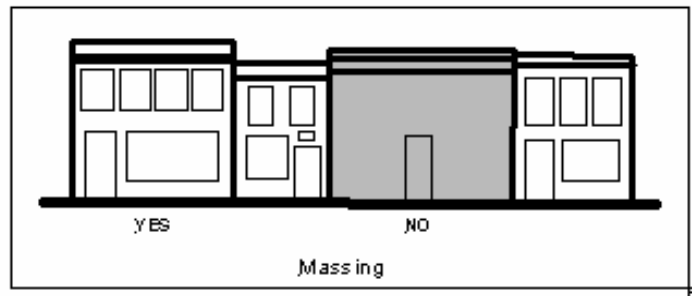


Figure 187-90.1-K

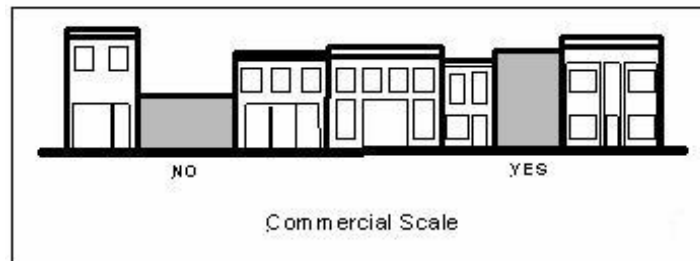


Figure 187-90.1-L



- c. Materials. The Plan shall incorporate durable exterior surface materials complementary with the color, texture, size, and scale of exterior materials reflected on existing buildings in the immediate vicinity.
- d. Roofs. The general roof shape, ridge and eave heights, and material characteristics proposed shall be visually compatible with these same attributes expressed in existing buildings along the Subject Street, or in the immediate vicinity.

3. Residential Buildings

- a. Because of the higher density permitted within TDR receiving area communities, structures in such communities are expected to achieve a higher standard of community and architectural design. Developments should be designed with architectural diversity and character in mind to provide a high level of design quality in the built environment.
- b. Developers, architects, and designers are to be afforded flexibility to meet the challenge of designing attractive, higher density communities but are compelled to follow the design standards in this Article.
- c. In designing the proposed dwelling units, applicants are expected to follow the general criteria listed in Section 187-90.1, Item I above as well as utilize more specific design criteria as described below. The following are illustrative of the types of architectural design tools deemed to count toward satisfaction of architectural requirements:
 - (1) Variation in exterior architectural materials (siding, roofing);
 - (2) Vertical and horizontal relief in buildings (roof lines, eaves, bump outs);

- (3) Variation in house styles/types; and
 - (4) Inclusion of front porches, projecting bays, vestibules.
- d. *Single-Family Attached Dwellings.* In addition to the design criteria listed above, developments including attached dwelling units must also meet the following guidelines:
- (1) Single-Family attached dwelling units containing more than two (2) units in a row shall have facades, which alternate siding styles and patterns to provide visual distinction to each unit. Alternation between siding and brick is encouraged.
 - (2) The facades of single-family attached dwelling units containing more than two (2) units in a row shall be offset by at least three (3) feet per unit in order to provide architectural relief.
 - (3) No more than six (6) attached dwelling units in a row are permitted.
 - (4) *Rear Access.* The use of alleys for purposes of utility routing, service delivery, off-street parking, and rear lot access is required. However, when it can be demonstrated to the satisfaction of the Regional Planning Commission that due to unique circumstances alleys would be impractical in certain portions of a development plan, the Commission may waive the requirement for rear access.
- e. *Multi-family Structures.* Multi-family residential buildings shall demonstrate compliance with the following criteria:
- (1) At least sixty percent (60%) of the exterior of each multi-family building shall be of masonry brick construction.
 - (2) The proportion of window and door openings to solid wall areas shall be consistent throughout the architecture.
 - (3) At least two (2) vertical off-sets for each of the long sides of each building shall be incorporated. Off-sets shall be at least 5 feet in depth and extend a distance equivalent to at least one-third of the long side building façade.
 - (4) Horizontal elements such as masonry band courses, lintels, balcony projections, projecting eaves and cornices shall be incorporated.

4. Community Facilities/Non-Residential Structures

- a. Architectural Review. The side of any building which fronts on a major or minor collector or arterial roadway shall be referred to as a "corridor elevation." The corridor elevation shall contain architectural elements traditionally associated with the front of a building. Blank walls without functioning windows are prohibited along the corridor. Windows must be incorporated into the overall design concept of the corridor elevation. Providing one or several small windows on a large corridor elevation shall not constitute compliance with this ordinance.
- b. A functioning window shall be defined as a window, which lets light into the interior of the structure, and is integrated and related to the interior layout of the space.
- c. In addition to functioning windows, the corridor elevation shall have two or more of the following elements:
 - (1) A primary entrance door or doors (except for loading doors).
 - (2) A primary entrance feature, such as a porch, portico, awning, entrance walk, or other similar feature.
 - (3) Landscaping integrated into the building design concept.
 - (4) Architectural or urban design elements, which link adjacent structures together, such as plazas, walkways, colonnades, or similar features.
 - (5) Architectural relief, such as vertical and horizontal off-sets in exterior wall elevations, band courses, lintels and sill courses, cornices and the like to create shadow lines.
 - (6) Screening. The following items shall be located so as to minimize visibility from the roadway, adjacent properties and other public areas and shall be screened from public view:
 - (a) Service bays;
 - (b) Loading docks and platforms;
 - (c) Rooftop utilities;
 - (d) Satellite dishes;
 - (e) Dumpsters; and
 - (f) Storage areas.

- d. To foster increased architectural diversity, the Regional Planning Commission may authorize a deviation from the stated architectural design standards when in the opinion of the Commission such action is warranted to yield superior architectural quality and neighborhood design.

J. Plan Requirements

1. The Regional Planning Commission shall consider the physical orientation and architectural characteristics of proposed buildings, the relationship of proposed buildings to existing buildings and to other proposed buildings, and their contributions to the overall image of the immediate vicinity. Design characteristics of proposed buildings and building additions should not detract or devalue existing buildings in the immediate vicinity.
2. Site Plan and Subdivision Plan submissions made under the provisions of the Section shall include the following elements:
 - a. The plan shall meet all requirements of Chapter 187, Subdivision and Land Development.
 - b. County approved Certificate of Transfer Credits from which the proposed development transfer credits are derived as set forth in Section 187-90.1, Item F above.
 - c. A sanitary sewer Technical Feasibility Study in accordance with Chapter 180 of the Kent County Code and approved by the Kent County Department of Public Works prior to submission. No project shall be considered by the RPC without certification by the Department of Public Works that such study has been completed and approved. In no case shall a project be considered by the Regional Planning Commission unless and until sanitary sewer is legally and technically available. This provision applies to residential and nonresidential projects of any size.
 - d. Architectural elevation drawings or other graphic representation illustrating exterior building characteristics of proposed buildings and/or building additions that would be visible from the public right-of-way. Elevation drawings shall be drawn to scale and shall reflect major architectural elements such as exterior surface materials, windows, doors, columns, and wall-mounted signage. Elevation plans are intended to provide a general depiction of the physical appearance, massing and scale of the proposed construction.
 - e. A final record plat for a subdivision using transferred development rights shall

contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance of development rights.

K. Review Process

1. *TDR Development Projects.* All proposed Subdivision and Land Development Projects located within the Primary and Secondary Receiving Areas shall follow the applicable review processes as provided in Articles IV through VI for Major Subdivisions and Article VIII for Land Development Projects of this chapter, except that in every case the required Public Hearing for the application shall occur at the Sketch Plan Review stage as an initial review and authorization step by the Levy Court.
2. *Public Workshop.* At least thirty (30) days but not more than 180 days prior to formal submission of the Sketch Plan for any major subdivision or land development application proposal for consideration by the Levy Court under Section 187-90.1, the applicant shall be responsible for organizing a Public Workshop for the purpose of informing the public of the pending development project, and for addressing concerns expressed by the public. The Public Workshop is expressly intended to establish a dialog between the developer and residents of the surrounding area for the purpose of identifying concerns and possible resolutions.
 - a. *Required Materials.* The applicant shall provide the Department with both a paper and electronic copy of the proposed Conceptual Sketch Plan as well as the time, date, and location of the Public Workshop at least thirty (30) days in advance of the public workshop. The location for the workshop shall be in a facility that is easily accessible to the immediate community surrounding the project.
 - b. *Mailed Notice.* The applicant shall provide notice of the time, date and place of such Public Workshop to all property owners within 200 feet of the extreme limits of the subject property as their names appear in the County tax record and to such other interested parties as may be determined by the Department. Such notices shall be mailed at least ten (10) days prior to the workshop.
 - c. *Published Notice.* In addition, notice of the workshop shall be published in a newspaper of general circulation, in the area of the application site, at least ten (10) but no more than thirty (30) days prior to the workshop.
 - d. *Posted Notice.* The applicant shall provide and post a sign in compliance

with specifications established by the Department of Planning Services, which shall be placed in a conspicuous location [no greater than seven (7) feet from a residential or local road right-of-way, and no greater than ten (10) feet from a collector or arterial right-of-way]; one (1) along each adjacent right-of-way [two (2) if the parcel is bisected by a public road] perpendicular to the street so as to be clearly visible to the public. The posted sign shall consist of a 4-foot by 4-foot laminated sign with a yellow background with two (2) inch black lettering in a sans serif typeface. The sign shall include a brief description and data column of the proposed development project; the time, date, and place of the public workshop; and a full size copy of the proposed development plan. The applicant shall provide to the Department photographic proof of posting with a signed affidavit. Failure of any such posted notice to remain in place after the notice has been posted shall not be deemed a failure to comply with these standards or be grounds to challenge the validity of any decision made on the application unless the notice was removed by the applicant or at his or her direction.

- e. The Applicant shall cause the preparation of a detailed transcript of the Public Workshop by a court reporter for the purpose of recording and transcribing the presentation and discussion at the workshop. The transcript of the workshop shall be furnished to the Department for review, reference, and inclusion in the application file.
 - f. The applicant shall be responsible for all costs associated with the workshop including, but not limited to, advertising, mailing and postage, Department staff time, and court reporting.
3. *Public Hearing.* At the initial Public Hearing step with the Levy Court, the applicant shall present a Conceptual Sketch Plan, a written statement documenting the projects compliance with the provisions of §187-90.1, Subsection A (Purpose and Intent) of this Ordinance, and the official transcript from the Public Workshop step described above. The Conceptual Sketch Plan shall reflect the general layout of streets, housing areas and types, and open space and recreation areas, and shall include all information required in accordance with §187-18 and Appendix A for Major Subdivision sketch plan submissions, and in accordance with §187-36 and Appendix D for other Land Development sketch plan submissions.
- a. The Levy Court shall determine whether the proposed project is of such a design and type that warrants further review by the Regional Planning Commission.
 - b. If the Levy Court determines that further review is warranted, the second

step in the review process shall involve a submission of the Preliminary Plan for review and consideration by the Regional Planning Commission in accordance with the provisions of §187-20 for Major Subdivision Plans and in accordance with §187-38 for other Land Development projects.

- c. If the Levy Court determines that a project as proposed does not satisfactorily meet the purpose and intent of this Ordinance as articulated in §187-90.1, and that further review of the project is not warranted, then the project shall not proceed to the Regional Planning Commission.
4. *Public Notice.* The public hearing on the Conceptual Sketch Plan shall be conducted during a regularly scheduled meeting of the Levy Court, no later than 60 days after the filing of the application for consideration. Such period may be extended by mutual agreement between the Levy Court and the applicant.
 - a. No public hearing shall be held by the Levy Court until notice of time and place thereof has been provided to the applicant; property owners within 200 feet of the subject property, and to such other interested parties as may be determined by the Levy Court at least 10 days prior to the date of said hearing. Notice shall be provided as follows:
 - (1) The applicant shall notify by mail all property owners within 200 feet of the extreme limits of the proposed Transfer of Development Rights project as their names appear in the County tax record at least 10 days prior to the hearing. The applicant shall provide the Department of Planning Services with a copy of the notice sent to property owners and post office receipts on or before the public hearing date.
 - (2) The Department of Planning Services shall provide notice to the general public of the public hearing before the Levy Court by publishing the date, time, place, and nature of the hearing at least 10 days before the hearing in a newspaper of general circulation in the County.
 - (3) The Planning Services Staff shall post a notice outlining the time, date, place, and nature of the hearing in a conspicuous location on the property.
 - (4) The published and posted notices shall contain reference to the time and place or places within the County where the proposed Conceptual Sketch Plan may be examined.

- b. At the hearing, the Levy Court shall receive a report from the Planning Services Staff, together with any comments and recommendations received from other County Departments and/or outside agencies. Interested parties shall have the opportunity to offer testimony both in favor of and in opposition to the proposed Sketch Plan.
5. *Preliminary and Final Plans.* Preliminary and Final plans shall require review and approval by the Regional Planning Commission as well as a determination of consistency by the Levy Court resulting in a resolution of approval as set forth in Articles V, VI, and VII above.

L. Municipal Review

1. *Municipal Review.* For Transfer of Development Rights projects located within a one (1) mile radius of a municipality, the municipality shall be provided the opportunity to review and comment upon the proposed plan. The Department shall be responsible for forwarding plans to the respective municipalities at least forty-five (45) days prior to the RPC meeting.
2. *Annexation Provision.* When the receiving area for a Transfer of Development Rights project is located within a municipal annexation area as designated in the certified comprehensive plan for the municipality, the applicant for the project shall afford the municipality the opportunity to annex the land and accept the planned TDR project.
 - a. If the municipality should choose to annex the land, the applicant shall be obligated to proceed with the annexation and develop the TDR project within the municipality. Written notification of the municipality's decision to permit the Transfer of Development Rights project shall be provided to Kent County.
 - b. Should the municipality choose not to annex the property, the applicant may develop according to Kent County's TDR requirements. Written notification of the municipality's decision to not annex the property and permit the Transfer of Development Rights project shall be provided to Kent County.
3. *Memorandum of Understanding.* Kent County shall enter into an agreement with interested municipalities through a Memorandum of Understanding detailing the process and requirements for TDR development within the municipality's boundaries.
4. *Municipal Annexation Plans.* In the event that a municipality initiates a formal amendment proceeding with the State of Delaware for the purpose of amending the

Annexation Plan component of its certified Comprehensive Plan to incorporate specific lands designated as TDR Receiving Areas into its Annexation Plan, then Kent County shall refrain from considering TDR Development Projects within such specific Receiving Areas for a period not to exceed 183 calendar days (6 months) from the date of enactment of the Kent County Transfer of Development Rights Ordinance, or until the date of re-certification of the municipality's Comprehensive Plan and Annexation Plan as amended by the State of Delaware, which ever comes first.

M. Performance Review

This section shall be reviewed every five years from the date of adoption for consistency with the Kent County Comprehensive Plan and for general effectiveness in land use planning. This five (5) year review shall not be construed to mean the County cannot review and amend the section more frequently.

N. Strategies for State Policies and Spending

Upon the enactment and/or adoption of the Strategies for State Policies and Spending document by the State of Delaware, and upon any update or revision of that document, Kent County shall review the Transfer of Development Rights program Sending Areas and Receiving Areas Maps to ensure consistency with the State of Delaware investment strategies maps. Kent County Levy Court reserves the right to amend the Sending Areas and Receiving Areas Maps as integral components of the Kent County Zoning Map under the provisions of Chapter 205, Zoning of the Kent County Code.

O. Effective Date

This Transfer of Development Rights Program Ordinance shall become effective on January 1, 2005 and shall remain in effect unless and until amended or repealed by the Levy Court of Kent County.

Section 2. This section shall be reviewed by the Levy Court two (2) years from the effective date in order to evaluate the success of the ordinance and whether the results of implementation are consistent with the purpose and intent stated above.

Section 3. The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall

not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

ADOPTED BY THE LEVY COURT
OF KENT COUNTY, DELAWARE

President, Kent County Levy Court

This _____ day of _____, 2004

ATTEST: _____
Clerk of the Peace

Synopsis: This ordinance establishes within the Kent County Subdivision and Land Development regulations the process and development criteria for a Transfer of Development Rights program.