

## Article II

### Definitions

#### § 205-5 **Word use.**

Except as otherwise provided in this section, all words shall have the customary dictionary meaning. The present tense includes the future tense and the future includes the present tense. The singular number includes the plural and the plural includes the singular. The word "person" includes a firm, corporation, association, organization, trust or partnership. The word "lot" includes "plot" or "parcel." The word "building" includes "structure" and includes any part thereof. The word "shall" is always mandatory. The words "used" or "occupied" as applied to any building or land shall be construed to include the words "intended, arranged or designed to be used or occupied." The word "map" means the "Official Zoning Map for Kent County, Delaware."

#### § 205-6 **Definitions.**

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

#### **ACCESSORY USE**

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

#### **ADMINISTRATOR**

The resident professional staff of the Regional Planning Commission.

#### **AGGRIEVED**

Having suffered loss or injury.

#### **ALLEY**

A public or private way affording secondary means of access to abutting property.

#### **ALTERATION**

See "structural alteration."

#### **ANCILLARY**

Auxiliary or subordinate.

#### **ANIMAL UNIT**

The formula to determine the number of equivalent animals to be allowed on a non-agricultural use property. For animals not defined, a determination will be made based on the animal size and activity to determine how it will be categorized.

#### **ANTENNA**

Equipment designed to transmit or receive electronic signals.

**AREA, BUILDING**

The area included within surrounding exterior walls (or exterior walls and fire walls) 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.

**AREA OF PETITION**

Area for which a conditional use or rezoning application is being submitted.

**ARTERIAL STREET**

Streets which are used primarily for fast or heavy traffic.

**ATTIC**

The space between the ceiling beams of the top story and the roof rafters.

**ATTIC, HABITABLE**

An attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7 1/3 feet above the attic floor is not more than 1/3 the area of the floor next below.

**AUTOMOBILE, ANTIQUE, CLASSIC OR COLLECTIBLE**

An automobile which is at least 25 years old, or any automobile in which the vehicle has surpassed its original factory value.

**BASE FLOOD**

The flood having a one-percent chance of being equaled or exceeded in any given year. Also known as the "one-hundred-year flood."

**BASEMENT**

That portion of a building which is partly below and partly above grade, and having 1/2 or more of its height above grade. A story of a building partly or wholly underground.

**BIRD UNIT**

The formula to determine the number of equivalent domestic birds to be allowed on a non-agricultural use property. For birds not defined, a determination will be made based on the bird's size and activity to determine how it will be categorized.

**BOARD**

The Board of Adjustment of Kent County.

**BOUNDARY LINE**

Limits of land holdings described by linear measurements of the borders.

**BUFFER (SCREENING)**

Any combination of living plant material, solid fences, walls or earth berms with a sufficient height above grade so as to create a substantial and complete visual barrier; the design thereof shall be

approved by the Department of Planning Services, Division of Planning.

**BUILDABLE AREA**

The area of that part of the lot not included within the setback areas or required open spaces herein required.

**BUILDING**

A structure used or intended for supporting or sheltering any use or occupancy.

**BUILDING, EXISTING**

Any structure erected prior to the adoption of the appropriate code, or one for which a legal building permit has been issued.

**BUILDING LINE**

A line, usually fixed parallel to the lot line, beyond which a building cannot be located under the terms of this chapter. It is the same as the "setback line."

**BUILDING, PRINCIPAL**

The primary building on a lot or a building that houses a principal use.

**BUILDING SITE**

The area occupied by a building or structure, including the yards and courts required for light and ventilation, and such areas that are prescribed for access to the street.

**BULK**

A term used in this chapter to describe the size and shape of a building or structure and its relationship to other buildings, to the lot area for a building, and to open spaces and yards.

**BURDEN OF GOING FORWARD**

The onus on a party to a case to refute or to explain.

**BURDEN OF PERSUASION**

The onus on the party with the burden of proof to convince the trier of the fact of all elements of his case.

**BURDEN OF PROOF**

The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause.

**CANOPY**

A rooflike structure on framework sheltering an area or forming a sheltered walk to the entrance of a building.

**CAPITAL IMPROVEMENT PROJECT**

Any nonrecurring expenditure of government, including but not limited to the acquisition of land or major equipment, construction of buildings or other structures, major alterations to an existing

facility and major or unique nonphysical projects, such as consultant studies.

**CENTER LINE**

A real or imaginary line which equally divides a street, highway, alley, easement, right-of-way or waterway.

**CENTRAL SYSTEM**

A water or sewer system which serves a number of residences or a community from a single location such as a single deep well water system or alternative sewage disposal system.

**CERTIFICATE OF OCCUPANCY**

The certificate issued by the Staff 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.

**CERTIFICATE OF USE**

The certificate issued by the Department of Planning Services, Division of Planning, which permits the use of a building, property or premises in accordance with the approved plans and specifications.

**CHANGE OF COPY SIGNS**

A sign that is designed so that characters, letters or illustrations on the sign can be changed or rearranged without altering the face or surface of the sign.

**CHANGE OF USE**

Any alteration, by change of use in a building or on a parcel heretofore existing, which imposes other special provisions of this chapter governing parking, screening or means of egress.

**COLLECTOR STREET**

A street which is intended to collect traffic from the minor streets and distribute such traffic to major roadways.

**COMMERCIAL USE**

An occupation, employment or enterprise that is carried on for profit by the owner, lessee or licensee.

**COMMERCIAL VEHICLE**

A vehicle used or maintained for the transportation of persons or property for hire, compensation or profit, except taxicabs. The vehicle may or may not be required to be registered commercially by Title 21 of the Delaware Code.

**COMMISSION**

The Kent County Regional Planning Commission.

## **COMMUNITY SYSTEM**

A utility such as a water or sewer system which is owned by a community, developer or utility company which is designed to serve the specific population of the community.

## **COMPREHENSIVE PLAN**

A comprehensive, long range plan intended to guide the growth and development of a community or region that typically includes inventory and analytics sections leading to recommendations for the community's future economic development, housing, recreation & open space, transportation, community facilities, and land use, all related to the community's goals and objectives. (Moskowitz & Lindbloom, 1993)

## **CONDITIONAL USE**

A use listed as such in this chapter and which may be permitted in a specified district under certain conditions, such conditions to be determined in each case by the terms of this chapter and by the Levy Court of Kent County after public hearing and report by the Planning Commission in accordance with the procedures specified by this chapter and applicable state law.

## **CONSTRUCTION EQUIPMENT**

The construction machinery, tools, derricks, hoists, scaffolds, platforms, runways, ladders and all material-handling equipment, safeguard and protective devices used in construction operations.

## **CONTROLLED-ACCESS HIGHWAY**

A highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic, or they may be parkways from which trucks, buses and other commercial vehicles shall be excluded.

## **CONTROLLING INTEREST**

A person having a financial, pecuniary, beneficial, management, supervisory or other interest in a property that is, direct or indirect, however small, as a director, officer, shareholder, partner, associate, employee or member in any corporation, partnership, association, proprietorship or other entity or has any authority whatsoever to supervise, manage, control or direct the operation of the owner of record's business, or to hire, terminate or discipline its employees, or to issue any orders, policies, or directives, concerning its business.

## **CONVALESCENT HOME**

An establishment used as a short-term, temporary and/or intermediate care facility for medical/nursing service, care and supervision of recuperating, injured, ill, sick or infirm persons in which not less than three persons live or are provided for on the premises for compensation, excluding clinics and hospitals and similar institutions devoted to the diagnosis, treatment and/or medical/nursing care of injured and/or ill persons. It shall also exclude nursing homes and similar institutions used as a dwelling place for the aged, incurably afflicted, chronically ill and/or infirm persons.

## **CUL-DE-SAC**

A local street that has one outlet and a paved, circular turnaround area at the closed end.

## **CURB CUT**

A means of vehicular approach or entry to or exit from property.

## **DANGEROUS ANIMALS**

Any mammal, amphibian, reptile or arachnid that, because of its size, nature or other characteristic(s), would constitute a danger to human life or property if it escaped from secure quarters. Such animals shall include but not be limited to alligators, bears, boids (constrictor snakes), caimans, crocodiles, felids, gavials, nonhuman primates, wolves and any poisonous amphibian, reptile or arachnid. The term shall not include livestock or any domestic cat or dog.

## **DEPARTMENT**

The Kent County Department of Planning Services, Division of Planning.

## **DISABLED PERSON**

A. Any person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

B. As used in this definition:

1. **PHYSICAL OR MENTAL IMPAIRMENT** Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness and specific learning disabilities.
2. **MAJOR LIFE ACTIVITIES** Disabilities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. **HAS A RECORD OF SUCH AN IMPAIRMENT** Has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
4. **IS REGARDED AS HAVING AN IMPAIRMENT:**
  - a. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation;
  - b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

- c. Has none of the impairments defined in this definition but is treated as having such an impairment.

**DISTRICT**

Any section of Kent County in which the zoning regulations are uniform.

**DIVIDED HIGHWAY(S)**

A thoroughfare (road) where two or more lanes are provided in each direction of travel and a median strip, usually at least four feet wide, is constructed or marked in a manner to prevent its use by moving vehicles, except in emergencies, or designated for left turns. Having the opposing streams of traffic separated (as by a median strip).

**DOMESTIC PET**

Any animal that:

1. has been bred or raised to live in or near the habitations of humans,
2. is not kept for slaughter, milk, eggs or the harvesting of fur, wool or plumage, and;
3. is dependent on humans for food and shelter.

Domestic pets include, but are not limited to: dogs and cats. Domesticated songbirds, rabbits, aquarium fish or reptiles, and certain domesticated rodents (such as gerbils, hamsters, guinea pigs), kept indoors and owned by a resident of the property are considered domestic pets, but shall not be subject to the number limitation of this chapter. Domestic pets do not include: horses, sheep, endangered species, wildlife, livestock, or domestic fowl.

**DRIVE AISLE**

The traveled way by which vehicles enter and depart parking or loading spaces.

**DWELLING**

A building or portion thereof, designed or used exclusively for residential occupancy, but not including travel trailers, hotels, motels, tourist courts or tourist homes.

**DWELLING UNIT**

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EARTH PRODUCT**

Any solid material, aggregate or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including but not limited to clay, silt, sand, gravel, stone, metallic ores, shale and top soil.

**EASEMENT**

A right of use over the property of another.

**ENERGY SYSTEM, LARGE SCALE SOLAR & WIND**

A collection of devices or structural design features for the purpose of generating power with the primary purpose of wholesale or retail sales of generated electricity.

## **ENVIRONMENTAL STUDY**

This study would outline the proposed action by the applicant, existing natural resources (forest coverage, wildlife, streams, ponds and wetlands) and cultural resources (historic buildings, known archaeological sites) of the proposed site. Once the study is documented, a legal notice shall be published by the applicant outlining the proposed action, location of action and where the study document can be reviewed (located at the Dover public library or library nearest the proposed site and the Kent County Department of Planning Services, Division of Planning) for public comment. The study shall be at the local public library and Kent County Department of Planning Services, Division of Planning, for no less than 30 days from the legal notification date. Any public comment shall be noted by the applicant and submitted with his/her application for conditional use. The environmental study shall include the following:

- A. Description of the proposed extractive operation (the who, what, when, where and why).
- B. Affected environment (description of the current environmental condition of the extractive operation area).
- C. Impacts to the affected environment (air quality, water quality, waste disposal, noise, transportation, prehistoric and historic cultural resources, utilities, vegetation, wildlife, construction effects, hazardous materials and permits required).
- D. List of agencies and persons consulted.

## **EXCAVATION**

To remove any earth product by digging or scooping out.

## **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 staff employed and residing on the premises shall be considered as part of the family.

## **FLOODPLAIN**

Any land area susceptible to being inundated by water from the base flood. As used in this chapter, the term refers to that area designated as subject to flooding from the base flood (one-hundred-year flood) on the Flood Boundary and Floodway Map prepared by the United States Department of Housing and Urban Development, a copy of which is on file in the Department of Planning Services, Division of Planning.

## **FLOODWAY**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in



order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

## **FLOOR AREA**

- A. 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 center line of walls separating two buildings, but not including:
- (1) Attic space providing headroom of less than seven feet.
  - (2) Basement or cellar space not used for retailing.
  - (3) Accessory steps or fire escapes.
  - (4) Accessory water towers.
  - (5) Accessory off-street parking spaces.
  - (6) Accessory off-street loading spaces.
- B. Residential buildings: 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 RATIO**

The floor area as defined herein divided by the total lot area.

## **FOUNDATION PLANTING**

A landscaped area between a building's foundation and a perimeter row of parking spaces adjacent to the building.

## **FRONTAGE**

Denotes line of property on a street.

## **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 unless otherwise permitted by district regulations.

## **GRADE**

A reference plane representing the average of finished ground level adjoining the building at all exterior walls.

## **GUEST HOUSE**

Living quarters within a detached accessory building located on the same premises with the main

building for use by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utility meters, and not rented or otherwise used as a separate dwelling.

#### **HABITABLE SPACE**

Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not considered habitable space.

#### **HEIGHT, BUILDING**

The vertical distance from the average finished grade at the front building line to the highest point of the coping of a flat roof, or to the deck line or highest point of coping or parapet of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, shed and gambrel roofs. When the highest wall of a building with a shed roof is within 35 feet of a street, the height of such building shall be measured to the highest point of coping or parapet. See Appendix E.

#### **HEIGHT, STORY**

The vertical distance from the top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top floor of the floor finish to the tip of the ceiling joists, or, when there is not a ceiling, to the top of the roof rafters.

#### **HEIGHT, WALLS**

The vertical distance from the foundation wall or other support of such wall to the top of the wall.

#### **HIGHWAY**

A free and public roadway, one which every person has the right to use.

#### **IMPERVIOUS**

Not permitting penetration or passage.

#### **INJUNCTION**

A judicial process operating against the person, and requiring person to whom it is directed to do or refrain from doing a particular thing.

#### **INUNDATION**

To flood or swamp. The overflow of waters by coming out of their natural bed or confines.

#### **JUNK**

Scrap material, such as glass, rags, motor vehicle parts, appliances, lumber or metal objects, which are not usable or are fit to be discarded.

#### **JUNK VEHICLE**

Any vehicle which is without a current valid license plate or plates and is either rusted, wrecked, discarded, dismantled or partially dismantled or inoperable.

#### **JUNKYARD**

The use of any land in any location for the storage, keeping, reduction or abandonment of junk, including scrap metals, paper, rags or any other dilapidated materials, including automobiles, on

any lot exposed to weather. For the purpose of this chapter any lot on which more than one automobile incapable of being operated is stored, will be considered a junkyard.

#### **KENNEL, PRIVATE**

Any building or land used for the housing, breeding or care of four or less domestic dogs or cats, or other household animals, over four months of age, belonging to the owner of the kennel and kept as an accessory use which will not create a nuisance to adjacent properties.

#### **LAND USE APPLICATION**

Kent County planning application including, but not limited to, rezoning, conditional use, certificate of occupancy, conditional use with site plan, major subdivision, minor subdivision, text amendment, variance and permit.

#### **LAND USE RELATED VIOLATIONS**

Violations of any Kent County regulation, rule, law, ordinance or other requirement relating to land use.

#### **LIMITED- OR DENIED-ACCESS HIGHWAY**

A highway in which vehicular access to the highway is limited specifically to interchanges.

#### **LIVESTOCK**

Bovine animals, equine animals, goats, poultry, sheep, swine, farm raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish. These animals may only be kept on a bona fide farm per the definition included in this chapter. Animals meeting the criteria for domestic pet or domestic fowl shall not be considered livestock.

#### **LOADING SPACE**

Area designated for loading and unloading cargo, supplies, material, etc.

#### **LOCAL PLANNING AGENCY**

The agency designated to prepare the Comprehensive Plan in accordance with the Quality of Life Act.

#### **LOCAL STREET**

A street other than a major roadway or collector street and intended primarily for providing access to abutting properties.

#### **LOT**

A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, which is recognized as a separate legal entity for purposes of transfer of title.

#### **LOT AREA**

The area contained within the boundary lines of a lot.

**LOT, CORNER**

A lot bordering on two streets where they intersect at an angle of not greater than 135°. (See definition for "lot line, front.")

**LOT, FRONTAGE**

Lot width measured at the street lot line.

**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. In the case of a corner or multi frontage lot, the "front lot line" shall mean all street frontages.

**LOT LINE HOUSE**

A single-family detached dwelling which is sited on one side of a lot line. No doors, windows or other openings are permitted in the house wall which is located on the lot line. A five-foot wide maintenance easement along the adjacent lot and parallel to the lot line wall is a definitional characteristic of this dwelling type. The maintenance easement must be referenced in the deed of the properties and identified on a recorded plat.

**LOT LINE, REAR**

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

**LOT LINE, SIDE**

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

**LOT LINE, SIDE STREET**

A side lot line separating a lot from a street.

**MAINTENANCE**

Conformance of a building, landscape screen or buffer, open space or parcel to the code under which the structure or planting was constructed or planted.

**MAJOR ROADWAY**

Any County or state roadway, which is identified as either an arterial or collector by the Kent County Road Functional Classification System, located within the Kent County Comprehensive Plan.

**MANDAMUS**

A writ issuing from a court of competent jurisdiction commanding an inferior tribunal, board, corporation or person to perform a purely ministerial duty imposed by law.

**MEAN HIGH-WATER LINE**

The intersection of the tidal plane of mean high water with the shore.

**MEDIAN STRIP**

A dividing area, either landscaped or paved, between opposing highway traffic lanes which is to prevent its use by moving vehicles, except for emergencies or designated left turns.

**MERCHANDISE**

All goods which persons usually buy and sell, whether at wholesale or retail; wares and commodities such as are ordinarily the objects of trade and commerce.

**MULTIPLE USE**

A principal structure which contains a number of independent uses (e.g., a shopping center would constitute a principal structure; the various stores within the shopping center designate the shopping center as a multiple use facility).

**MUNICIPAL BOUNDARY**

Limits of land holdings included in an incorporated city or town.

**NOISE ATTENUATION**

Material used to weaken or reduce in force the transfer of sound.

**NOISE INSULATION**

Material used to prevent or reduce the transfer of sound.

**NONCONFORMING USE**

A nonconforming situation which occurs when property is used for a purpose or in a manner made unlawful by reason of the adoption of or amendment to regulations applicable to the district in which the property is located.

**NOT IN GOOD STANDING**

At the time of the request the applicant is delinquent in the payment of monies owed to the County (unless the applicant is on a tax payment plan approved by the Kent County Receiver of Taxes) and/or the Applicant is in violation of the County Code and/or has existing land use related violations.

**NUISANCE, PUBLIC**

Includes the following:

- A. The physical condition or use of any premises regarded as a public nuisance at common law;
- B. Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations and unsafe fences or structures;
- C. Any premises designated as having unsanitary sewage or plumbing facilities;
- D. Any premises designated as unsafe for human habitation or use;

- E. Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecured so as to endanger life, limb or property;
- F. Any premises from which the plumbing, heating or other facilities required by the Kent County Housing Code have been removed, or from which utilities such as water, sewer, gas and electricity have been disconnected, destroyed, removed or rendered ineffective, or the required precautions against trespassers have not been provided;
- G. Any premises which are unsanitary, or which are littered with rubbish or garbage or which have an uncontrolled growth of weeds at a height of 12 inches or more; or
- H. Any structure or building that is in an advanced state of dilapidation, deterioration or decay; faulty construction; overcrowded, open, vacant or abandoned; damaged by fire to the extent as not to provide adequate shelter; in danger of collapse or structural failure; and is dangerous to anyone on or near the premises.

### **NURSING HOME**

An establishment used as a dwelling place by the aged, infirm, chronically ill and/or incurably afflicted persons, in which not less than three persons live or are provided for on the premises for compensation, excluding clinics and hospitals and similar institutions devoted to the diagnosis, treatment or care of the sick or injured and also excluding convalescent home or similar institutions devoted to the short-term, temporary or intermediate medical/nursing care of ill, sick, injured or infirm persons who are convalescing and recuperating therein.

### **OCCUPANCY**

The purpose for which a building, or part thereof, is used or intended to be used.

### **OCCUPANT**

Any person over one year in age living or sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.

### **OFF-STREET PARKING**

Parking spaces provided in a parking lot, parking structure or private driveway.

### **OPEN SPACE**

Undeveloped land used primarily for resource protection or recreational purposes.

### **OPERATIONS PLAN**

This plan shall address specific actions to be taken on the site relative to excavation activities, fuel and chemical handling and storage, dust control, traffic, noise control and abatement and comprehensive site safety of unauthorized persons.

### **OWNER**

Any person, agent, firm or corporation having a legal or equitable interest in the property.

### **OWNER OF RECORD**

Person or corporate entity who is the title owner as indicated on the land management system at the time of the violation.

**PAD SITE**

The area on which a principal structure is located.

**PARAPET WALL**

That part of any wall entirely above the roof line.

**PARCEL**

A contiguous quantity of land in possession of, owned by or recorded as property of the same claimant person or company.

**PERMIT**

An official document or certificate issued by the authority having jurisdiction authorizing performance of a specified activity.

**PERSON**

Any individual, firm, partnership, corporation, company, association, joint-stock association or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

**PLANTING AREA**

A landscaped section of a parking lot located at the end of a row of parking spaces.

**PLANTING ISLAND**

A landscaped area which is raised and usually curbed, used to guide traffic in parking areas and along roadways.

**PLANTING STRIPS**

Elongated areas of landscaping located between rows of parking spaces within a parking lot.

**PLAT**

A map of a town, section or subdivision showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, easements, etc., usually drawn to scale.

**PREMISES**

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

**PRINCIPAL STRUCTURE**

A structure in which is conducted, or in which is intended to be conducted, the main or principal use of the lot on which it is located.

**PRINCIPAL USE**

For the purpose of this chapter, the primary structure or activity occurring on a lot shall be considered the principal use.

**PROFESSIONAL ENGINEER OR LAND SURVEYOR**

An individual technically and legally qualified to practice the profession of engineering or land surveying.

**PUBLIC UTILITY**

An organization supplying water, electricity, transportation, etc., to the public, operated by a private corporation under government regulation or by the government directly.

**RECLAMATION PLAN**

A plan delineating the renewing of the extracted area to a self-sustaining long-term use which is compatible with contiguous land uses and compatible with the Kent County Comprehensive Plan.

**RECREATIONAL VEHICLE**

A vehicle that is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and is designed for temporary use as sleeping quarters, but does not satisfy one or more of the definitional criteria of a mobile home. Such structures shall not be considered dwelling units to be occupied for long term or permanent occupation.

**RENOVATION**

Work on a building and its facilities to make it conform to present-day minimum standards of sanitation, fire and life safety.

**REPAIR, BUILDING**

The reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

**RESERVE PARCEL**

A part or portion of land, physically separated from another parcel, which contains a major use or structure, set aside for future use.

**RESPONSIBLE PARTY**

The agent, contractor, or entity or individual receiving present or future financial benefit.

**RIGHT-OF-WAY**

A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm sewer main or shade trees, or for another special use.

**RUBBISH**

Combustible and noncombustible waste materials, except garbage, and the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.



**SALVAGE**

Any part, piece of machinery, structural member or component of a motor vehicle, machine or building which has been destroyed or partially destroyed, which is being stored for personal use or for resale.

**SANDWICH SIGN**

Lightweight, double-faced A-frame sign.

**SEPTAGE**

Waste content of a septic tank.

**SEPTAGE PROCESSING AND STORAGE**

A facility designed and constructed to receive, treat and/or store septage in accordance with the regulations of the Delaware Department of Natural Resources and Environmental Control (DNREC).

**SETBACK**

The required minimum horizontal distance between the building line and the related front, side or rear lot line.

**SETBACK AREA**

That portion of any front, side or rear yard which is between the property line and the building line.

**SETBACK LINE**

See "building line."

**SIGN**

Any fabricated sign or outdoor display structure, including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter or illuminating device, constructed, attached, erected, fastened or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, merchandise whatsoever, and displayed in any manner outdoors for advertising purpose.

**SITE PLAN**

A drawing illustrating a proposed development and prepared in accordance with the specifications of Article **XXIX**. See Appendix F.

**SLOPE**

A portion of ground having a natural incline, as the side of a hill.

**SMALL CELL TELECOMMUNICATIONS FACILITY**

A facility, excluding a satellite television dish antenna, established for the purpose of providing wire voice, data, and/or image transmission within a designated service areas. A small cell telecommunications facility must not be staffed and consists of one or more antennas attached to a support structure. An antenna or wireless antenna base station which provides wireless

voice, data, and image transmission within a designated service area as part of a small cell telecommunications facility may consist of a low-powered access node with not more than five watts of transmitter output power per antenna channel and may not be larger than a maximum height of three (3) feet and maximum width of two (2) feet. A small cell telecommunications antenna may be installed on existing rooftops, structures, or support structures where permitted. A small cell telecommunications facility also consists of related equipment which may be located within a building, an equipment cabinet outside a building, an equipment cabinet on a rooftop that is at least fifteen (15) feet high when in a commercial zone or attached to a commercial structure or twenty (20) feet high when in a residential zone or attached to a residential structure, or an equipment room within a building. Such related equipment shall be a maximum of ten (10) square feet in area and two (2) feet in height.

### **SPECIAL EVENT**

Circuses, fairs, carnivals or other types of special events that:

- A. Run longer than one day but no longer than two weeks;
- B. Are intended to or likely to attract substantial crowds; and
- C. Are unlike the customary or usual activities generally associated with the property where the special event is to be located.

### **STABLE**

A building for the housing of horses, cattle and other domestic livestock traditionally associated with agriculture.

### **STEALTH TELECOMMUNICATIONS FACILITY**

Any telecommunication facility that is integrated as an architectural feature of a structure or the landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.

### **STORY**

That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above.

### **STORY, FIRST (FIRST FLOOR LEVEL)**

The lowermost story entirely above the grade plane.

### **STREET**

A public thoroughfare (such as street, avenue or boulevard) which has been dedicated for public use.

### **STRUCTURAL ALTERATION**

Any change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one position to another.

**STRUCTURE**

That which is built or constructed.

**SUBDIVISION**

The division of any tract of land into two or more plots, parcels, lots or sites for the purpose, whether immediate or future, of transfer of ownership or of building development; provided, however, that the division or partition land not involving the opening, widening or extension of any streets or easements shall be exempt from this definition.

**SWIMMING POOL, COMMERCIAL**

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

**TEMPORARY**

That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration.

**TENANT**

One who has the temporary use and occupation of real property owned by another person.

**TOWER**

Any structure whose principal function is to support an antenna.

**TOWER, BROADCASTING AND TELECOMMUNICATIONS**

An above-grade tower or similar structure for communications equipment principally intended for the transmittal or reception of commercial, governmental and related radio, television, microwave, cellular phone and similar telecommunications electromagnetic signals. Towers or similar structures installed on or attached to tops of building, water tanks or similar facilities shall be included in this definition. This definition includes the accessory buildings, storage facilities and related equipment required for broadcasting and telecommunications towers and any such equipment for telecommunications antennas that may be attached to or on the facades of buildings or structures.

**UNDERPLANTING**

Low-growing plant specimens used in landscaping such as understory trees, small shrubs and ground cover plants and vines.

**UNINCORPORATED AREA**

That portion of Kent County which lies outside of all municipal boundaries within the County.

**USE**

The purpose for which a building, structure or parcel, is designed, used or intended to be used for.

**VARIANCE**

A grant of permission by the Board of Adjustment that authorizes the recipient to do that which,

according to the strict letter of this chapter, he could not otherwise do legally. (See Article **XXVII**, § **205-400**.)

#### **WATER LOT LINE**

A line bounding a lot which divides the lot from a body of water (river, lake, stream, bay, etc.).

#### **WATER-ORIENTED ACCESSORY STRUCTURES**

For the purpose of this chapter, a water-oriented accessory structure shall consist of the following: boat houses, decks, docks, porches and walkways for water/shoreline access.

#### **WATERWAY**

A running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, runs and rivulets.

#### **WEEDS**

For the purpose of this chapter, "weeds" shall mean grasses, bushes and any other type of vegetation other than trees, ornamental shrubbery, flowers, garden vegetables that are properly tended and agricultural products.

#### **WETLANDS**

Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface of the land is covered by shallow water. Wetlands must have one or more of the following key attributes:

- A. Saturated with water or covered by water at some time during the growing season each year;
- B. Predominantly hydric soils; and/or
- C. Wetlands vegetation.

#### **YARD**

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

#### **YARD, FRONT**

A yard of uniform depth 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.

#### **YARD, REAR**

A yard of uniform depth across the full width of the lot extending from the rear line of the principal structure to the rear line of the lot.

#### **YARD SALE (i.e., GARAGE SALES)**

A permitted temporary sales activity principally involving household items and/or consumer goods, conducted by the owner (or residential tenant) of real property upon said property which is residentially zoned. A yard sale is typically limited to a one-day event but not longer than two

consecutive days. Provided, however, that such temporary sales activity shall, under no circumstances, last more than eight total days during any particular calendar year upon any real property. Uses prohibited in this definition include commercial sales for vehicles, boats, appliances, furniture and related activities.

#### **YARD, SIDE**

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

#### **ZONING**

The reservation of certain specified areas within a community, County or city for building and structures, or use of land, for certain purposes with other limitations such as height, lot coverage and other stipulated requirements.

### Article III Districts and District Maps

#### **§ 205-7 Division of County into districts.**

Due to the purpose of this chapter, the County is hereby divided into the following zones:

[

#### A. AC - Agricultural Conservation

The purpose of the AC - Agricultural Conservation District is:

1. To provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity;
2. To foster environmentally sound development in areas of environmental concern;
3. To allow for a variety of low-density planned residential and cluster developments in a rural setting; and
4. To serve as a transitional/buffer zone between agricultural and residential uses.

#### B. AR - Agricultural Residential

The purpose of the AR - Agricultural Residential District is:

1. To provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity;
2. To foster environmentally sound development in areas of environmental concern;

3. To allow for a variety of low-density planned residential and cluster developments in a rural setting; and
4. To serve as a transitional/buffer zone between agricultural and residential uses.

C. RS1 - Single-family Residential

The purpose of the RS1 - Single-Family Residential District is:

1. To provide for low-density residential development of a suburban character on lot sizes determined by the type of water and sewer service provided: individual on-site well and septic or public water and County sewer; and
2. To offer the possibility of a variety of housing types and life styles to be harmonious with low-density residential and low-intensity compatible agricultural uses.

D. RS5 - Medium-Density Residential

The purpose of the RS5 - Medium-Density Residential District is:

1. To encourage growth in areas where public facilities are located or can be reasonably extended;
2. To provide for medium-density single and multifamily residential development on reduced size lots in areas where public facilities, including water and sewer, are available; and
3. To provide for areas of nonresidential use, recreational facilities and such neighborhood support facilities as are compatible with medium-density residential development.

E. RMH - Residential Manufactured Home

The purpose of the RMH - Residential Manufactured Home District is:

1. To provide for well-designed manufactured home parks and subdivisions in areas where public services are available; and
2. To provide well-located areas within the County for the development of manufactured housing as an alternative to site-built housing in a suburban setting.

F. RM - Multifamily Residential

The purpose of the RM - Multifamily Residential District is:

1. To encourage variety in housing types and to provide for the highest residential district density considered appropriate for the environmental nature of the County;
2. To require the provision of public water and sewer for all multifamily residential development; and

3. To encourage higher density development in areas well located with respect to major roadways, institutional uses, recreational facilities, shopping facilities and employment.

G. BN - Neighborhood Business

The purpose of the BN - Neighborhood Business District is:

1. To provide locations for commercial establishments offering general retail shopping and personal services, compatible with residential uses; and
2. To reduce transportation costs by providing retail and service uses adjacent to residential areas.

H. OC – Office/Office Complex District

The purpose of the OC - Office/Office Complex District is to:

1. Encourage, promote and protect professional office development;
2. Encourage the establishment and grouping of office complexes for safer access, greater convenience and to prevent the development of professional offices in healthy, mature residential neighborhoods, office; and
3. Serve as a transition area between low, medium-,and high-intensity development.

I. BG - General Business

The purpose of the BG - General Business District is:

1. To provide for a broad range of commercial activities and a variety of large retail stores and related activities occupying prime retail land and serving a regional community; and
2. To prohibit uses which may be detrimental to residential neighborhoods and communities for reasons such as odor, smoke, dust, fumes, fire, vibrations, noise or hazardous conditions.

J. IL - Limited Industrial

The purpose of the IL - Limited Industrial District is:

1. To provide locations for the development of light to moderate intensity industrial, office, warehouse, wholesale and research establishments, which could be compatible with residential uses;
2. To provide for the development of industrial parks and research and development complexes;
3. To provide employment opportunities in non-offensive industries in close proximity to centers of population; and

4. To provide for performance standards which would control and confine offensive features such as noise, vibration, heat, smoke, glare, dust, odors and storage, to the premise and within enclosed buildings.

K. IG - General Industrial

The purpose of the IG - General Industrial District is:

1. To provide a wide variety of industrial uses, including those which may produce some objectionable conditions; and
2. To concentrate more intense industrial uses in areas which would least impact neighboring land uses.

**§ 205-8 Establishment; attestation; location.**

- A. The boundaries of the zones are shown on the Official Zoning Maps of Kent County, Delaware, except for zones to be mapped at a later date which, together with all notations and explanatory materials, are hereby made part of this chapter, and along with amendments thereto, shall be as much a part of this chapter as if fully described herein. Boundaries of the RS5 and BC Districts are to be established following proper rezoning procedures as specified by this chapter. The Official Zoning Maps shall be signed by the President of the Levy Court and attested by the Director of Planning Services, upon adoption. Copies of the Official Zoning Map shall be kept on file by the Recorder of Deeds of Kent County, and additional copies shall be kept on file for public inspection in the Kent County Department of Planning Services, Division of Planning.
- B. Any person desiring a copy of any sheet of said Zoning District Map shall pay a reasonable fee, as established by the Levy Court, for each copy thereof to the appropriate County official. Such fees shall be applied to defray the cost of revising and printing the District Map.

**§ 205-9 Changes to Official Zoning Maps.**

If, in accordance with the provisions of this chapter, changes are made in zone boundaries or other matter portrayed on the Official Zoning Maps, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Levy Court. Drafting errors or omissions may be corrected, but no changes in zoning district boundaries may be made except to show amendments properly adopted by the Levy Court. Any unauthorized change shall be considered a violation of this chapter.

**§ 205-10 Periodic review.**

- A. At least once every five years, the local planning agency shall review the Zoning Chapter and the Zoning District Maps to determine the need for amending the chapter or the maps, or both. In a report to the Levy Court, the local planning agency will examine the following:
  1. Accordance with the objectives of the Comprehensive Plan.
  2. Development of new techniques or improved building practices which may be applicable in Kent County.



3. Deficiencies or difficulties in the administration of the chapter and/or maps.
  4. Any other issues or areas of concern as determined by the local planning agency.
- B. In preparing their report, the local planning agency shall consult with County agencies responsible for the development of the Comprehensive Plan and the administration of the Zoning Chapter, and other such persons that the agency believes may contribute to the review.

§ 205-11 **Rules for determining district boundaries.**

A district name or letter/number combination shown on the district Zoning Maps indicates that the corresponding regulations pertain to that district and that those same regulations extend to the district boundary lines. Where uncertainty exists as to the boundaries of zones as shown on the Official Zoning Maps, the following rules apply:

- A. Boundaries indicated as approximately following the center lines of existing or proposed streets, highways, alleys, easements, rights-of-way or waterways shall be construed as following such center lines.
- B. Boundary lines indicated as approximately following property lines, municipal boundaries or County boundary lines shall be construed as following such property, municipal or County boundary lines.
- C. Boundaries indicated as parallel to or extensions of features indicated in Subsections **A** and **B** above shall be so construed.
- D. Where a boundary line is indicated as obviously not coinciding with property lines, center lines, municipal boundaries or other features as indicated in Subsections **A** through **C** above, the boundary shall be determined by the scale of the map.
- E. All areas within the limits of the unincorporated area of Kent County which are under water are considered to be within a zoning district and controlled by applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, by relations to physical features, by coincidence with the County line or by a straight line projection of the district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other or with the County limit line.

Article IV  
**General Provisions**

§ 205-12 **Scope of regulations.**

The provisions of this chapter apply to every parcel of land in the County; are minimum requirements; and are in addition to, and not instead of, other legal requirements.

§ 205-13 **Intent.**

The intent of this chapter is:

- A. To provide for the public health, security and general welfare.

- B. To guide and direct the arrangement and location of uses in accordance with the Comprehensive Plan for the County.
- C. To relate density of uses to the proper locations.
- D. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
- E. To conserve the value of buildings and other structures.
- F. To divide the County into zoning districts of such character, number, shape and area as are best suited to effect these purposes.
- G. To conserve natural resources.

**§ 205-14 Application of regulations;**

A structure or parcel of land in the County may not be used, designed, constructed or altered in any manner inconsistent with this chapter.

**§ 205-15 Variation from approved plans prohibited.**

If a building permit is issued on the basis of plans and applications that have been considered and approved by the planning office, the Regional Planning Commission, the County Board of Adjustment or the Levy Court, the permit authorizes only the use, arrangement and construction set forth in the plans and applications and any variation from the plans or applications violates this chapter.

**§ 205-16 Lot area requirements.**

In this section, "properly recorded lot" means a lot of record, recorded with all appropriate documentation within the office of the Kent County Recorder of Deeds and created in compliance with the zoning and subdivision regulations in effect when the lot was created.

**§ 205-17 Temporary activities.**

- A.** A temporary activity, such as a fair, circus, carnival, bazaar or similar activities (fundraiser, etc.), that does not have any permanent improvements shall be permitted in all zoning districts as a permitted use, provided that the activity does not occur more than seven consecutive days or a maximum of 14 days in a calendar year. Parking for the above-referenced activities will be exempt from off-site requirements contained in this chapter.
- B.** Uses prohibited from this provision are commercial sales for vehicles, boats, appliances, furniture and related activities.
- C.** A temporary certificate of occupancy permit shall be required should a temporary structure such as a tent, ticket booth, concession stand, etc., be placed on the property in which the owner must comply with the following: the owner shall submit a plan to the Division of Inspections and Enforcement delineating all existing structures and any other pertinent information deemed appropriate for this permit. Example: Fire Marshal's approval will be required should a tent be placed on the site. The fee for this use shall be as set from time to time by ordinance of the Levy Court.

- D. A temporary certificate of occupancy permit for off-site parking shall comply with the following: the owner shall submit a plan to the Division of Inspections and Enforcement delineating the proposed parking area, number of parking spaces and any other pertinent information deemed appropriate for the permit. Example: size of area to be utilized, number of days, date, etc. The fee for this use shall be as set from time to time by ordinance of the Levy Court (DELDOT permission if applicable).
- E. Upon issuance of the temporary certificate of occupancy permit the Building Official shall enforce any and all provisions attached to the permit. The department shall close out the permit 10 days after the expiration of the permit issued.
- F. Should the land owner request an appeal regarding the Building Official's determination regarding these provisions, the appeal would be processed through the Kent County Board of Adjustment for a final decision.

§ 205-18 **Refuse collection areas.**

Each refuse collection area shall be screened in accordance with the provisions of this chapter and shall be subject to the following additional requirements:

- A. Refuse and containers may not be visible from outside of the screening when viewed from ground level at the property line.
- B. The height of the screening may not be less than that of the refuse or containers.
- C. Whenever possible, refuse collection areas and storage and loading docks shall be located away from residential or residentially-zoned areas.
- D. Refuse collection areas shall not be located in or adjacent to drainageways or storm drains.

§ 205-19 **Lighting.**

The type, height, location and shading of exterior lighting shall be designed not to shine or reflect light into adjacent buildings or onto adjacent property. Flashing, revolving or intermittent lights may not be used, except as needed for safety.

§ 205-20 **Piers.**

- A. Private piers, wharves, moorings, pilings and buoy installations shall comply with all applicable regulations of the Delaware Department of Natural Resources and Environmental Control and the Army Corps of Engineers.
- B. The location of a pier, piling or buoy installation shall be designated by the Department of Planning Services, Division of Planning, provided that the choice of location is limited only to the option specified in Subsection C of this section that will cause the least interference to neighboring uses.
- C. A pier, piling or buoy installation shall be located at least 15 feet from a line extended:
  - 1. From the side property line at a ninety-degree angle to the main course of the body of water;
  - 2. From the extension of the last course of the property line into the water;

3. From the side property lines to the center of the cove; or
4. From the side property lines generally parallel with existing piers located on adjacent properties.

§ 205-21 **Retaining structures; landfills.**

- A. All retaining structures and landfills for the purpose of maintaining the natural shoreline or for the prevention of shore erosion shall be subject to the following provisions:
  1. The location and design of the structures shall be determined by the Department of Natural Resources.
  2. The composition of fill materials shall be acceptable to the Kent County Soil Conservation District and the Department of Natural Resources.
  3. The structures and fill material may not extend beyond the extreme limit of those of adjoining properties, and shall tie into the structures of adjoining properties.
  4. Natural drainage areas may not be obstructed, and the design of each retaining structure and fill shall provide for the passage of water in the manner approved by the Department of Public Works and the Kent Conservation District.
- B. All retaining structures and landfills for the purpose of land beyond the natural shoreline shall be subject to special use approval, in addition to the following provisions:
  1. The structures and fill shall be subject to the provisions of Subsection **A(1), (2) and (4)** of this section.
  2. The structures and fill and their use shall be subject to all applicable requirements and regulations of the Department of Natural Resources and the Army Corps of Engineers.
  3. The structures and fill shall be permitted only if evidence submitted demonstrates that there is no other practical method to permit the anticipated use except through the creation of land.

§ 205-22 **Public utility essential services.**

This chapter does not apply to any Delaware Public Service Commission regulated public utility essential services, provided that the plans for overhead transmission, cross-County telephone trunk lines, microwave transmission and transmission pipeline proposed to be erected or installed shall be submitted to the Department of Planning Services, Division of Planning, in adequate time, in relation to the magnitude of the project, for review and recommendations.

§ 205-23 **Public services.**

Structures for public services, such as post offices, police stations, fire stations and government owned and operated schools are permitted in residential, commercial and industrial districts if the location is essential to service the area in which it is located.

§ 205-24 **Recreation Vehicle Prohibited Activities.**

- A. Recreational Vehicles shall not be considered dwelling units intended for permanent habitation.

- B. For purposes of this section evidence of human habitation shall include activities such as sleeping, setting up housekeeping or cooking, eating, recreating, and/or any other activity where it reasonably appears, in light of all the circumstances, that the vehicle is being used as a living accommodation.
- C. Running electrical cords, extension cords, hoses, cables, or other items across, above, or on the parkway or sidewalk from any property to a recreational vehicle parked on a public street at any time is prohibited;
- D. Making a sewer connection with a recreational vehicle or dumping wastes from a recreational vehicle onto public or private land other than a designated RV dump is prohibited.

**§ 205-25 Permanent attachment of structure.**

Buildings or Structures shall be permanently attached to the ground or to something having permanent foundation in the ground.

**§ 205-26 Security, Barbed wire or electrified fences.**

- A. Except as provided in Subsection **B** of this section, security, barbed wire or electrified fences are permitted only when used in connection with a farm operation.
- B. Up to six strands of barbed wire along the top of a chain link or other nonbarbed wire fence at least six feet in height, but no taller than ten feet, are permitted:
  - 1. In a nonresidential zone if the fence is used to secure a warehouse or other storage area or life-endangering use that necessitates security from access; or
  - 2. To secure a public utility, public service, state or federal prison, telecommunication tower, construction site, community or commercial swimming pool, stormwater management, sediment or erosion control pond or other life-endangering use of a site from access.

**§ 205-27 Junkyards; solid waste disposal facilities; unregistered vehicles.**

- A. This section does not apply to:
  - 1. Sanitary landfills in full compliance with all state and County laws.
  - 2. Automotive dismantling and recycling facilities in compliance with this chapter.
  - 3. Storage of motor vehicles as accessory to lawfully operated automobile service and sales facilities.
  - 4. Storage or maintenance of unregistered vehicles or other junk within a roofed structure entirely enclosed on all sides.
- B. Land may not be used partially or principally as a junkyard or a solid waste disposal facility.
- C. Land may not be used for the parking, storage, collection, accumulation or abandonment of:
  - 1. Any inoperable, wrecked, partially dismantled or destroyed motor vehicles;

2. Any motor vehicle that is subject to the registration requirements of the Delaware Vehicle Law that does not display current registration plates and a validation tag issued for the current year by the Division of Motor Vehicles; or
  3. Any motor vehicle that poses a threat to the health, safety and general welfare of the occupants or other persons.
- D. No more than two motor vehicles on any one lot may be exempted from this provision if the property owner can demonstrate that the vehicle is:
1. Recently purchased, pending inspection, for a period not to exceed 60 consecutive days;
  2. Being advertised for sale, for a period not to exceed 60 days;
  3. Actively being repaired to a permitted condition and that it will be registered within a ninety-day period or within an extension of that period granted by the Department after application, in writing, showing good cause; or
  4. Being held pending settlement of insurance, estate or similar claims.
- E. Parked vehicles which are mentioned above may not encroach into the front and side yard setback lines.

#### § 205-28 **Portable Storage Units**

- A. *Portable storage unit* means any container designed for the storage of personal property which is typically rented to owners or occupants of property for their temporary use and which is delivered and removed by truck.
- B. There shall be no more than one portable storage unit per lot. No portable storage unit shall remain on a lot in a residential district in excess of 30 consecutive days, unless the lot is the subject of an active building permit, in which case it may remain as long as the building permit is active.
- C. No portable storage unit as defined as defined above shall be placed at any one site in a residential district in excess of 60 days in any calendar year, unless the lot is the subject of an active building permit.
- D. The location of the portable storage unit shall not affect the health, safety and/or welfare of the neighborhood including, but not limited to, blocking access to a fire hydrant and obstructing the view of street intersections.

#### § 205-29 **Fuel storage tanks.**

- A. To protect the health, safety and welfare of County residents, no aboveground fuel storage tanks, excluding fuel tanks used in conjunction with a structure's heating/cooling system, shall be located closer than 100 feet to any lot line, nor located closer than 300 feet to any dwelling not located on the premises.

- B. Bulk storage of fuel shall be prohibited on all residential lots in all residential districts, except for a bona fide farm operation.
- C. All fuel storage tanks, either above or below ground, must comply with all regulations established by the State Fire Marshal's Office and the Department of Natural Resources and Environmental Control. In a situation where County and state regulations conflict, the more restrictive regulations shall apply.

**§ 205-30 Enclosure of livestock.**

To protect the health and safety of County residents, farm animals such as horses, cattle, hogs, goats and sheep shall be confined within a completely fenced area. Fences used for the enclosure of livestock shall be constructed of wire, wood, masonry or any appropriate material. Manure management practices recommended by DNREC and the Kent Conservation District should be practiced in all livestock enclosure areas.

**§ 205-31 Right of entry.**

- A. In order to effectively enforce the Ordinances of Kent County, any Code Enforcement Constables employed in good terms by the County government shall have full right of entry onto any property within the unincorporated territory of Kent County where a reported violation of any County Code is taking place. Entry of Code Enforcement Constables shall be limited to reasonable hours of the day.
- B. If any owner, occupant or other person in charge of a property or structure subject to the provisions of this chapter refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to any part of the property, structure or premises where inspections authorized by this chapter are sought, the Code Enforcement Constables may seek in a court of competent jurisdiction an order that such owner, occupant or other person in charge cease and desist with such interference.

**§ 205-32 Nuisance growth of vegetation.**

It shall be unlawful and considered a public nuisance for the owner, occupant or tenant of any premises to permit any weeds, underbrush, deleterious or unhealthful growths or other noxious matter to grow to a height of 12 inches or more. This provision shall not apply to any legitimate farm operations, farm fields and woodland areas.

**§ 205-33 Storage of antique automobiles.**

The placement/storage of antique, collectible and/or classic automobiles on a residential lot shall be permitted if the following conditions are met:

- A. Any antique, collectible or classic vehicle must be covered by a building or vehicle cover.
- B. Vehicles must be contained within a nonrevealing barrier, such as, but not limited to, a stockade fence, privet hedge or evergreen trees.
- C. The property owner must provide the Division of Inspections and Enforcement documentation from an appraiser validating the automobile(s) is, in fact, an antique, classic or collectible should a dispute arise.
- D. This provision shall not apply in subdivisions or on individual lots of less than 1/2 acre in area unless

the vehicles are stored within a garage.

- E. On lots of one acre or more, three antique, classic or collectible automobiles may be stored outdoors if the automobiles are covered and buffered from public view and proper documentation of the value is a matter of record.
- F. No storage shall take place in a front yard.
- G. In no instance shall more than five antique, classic or collectible automobiles be stored at any time on any residential lot.

**§ 205-34 Pets, Livestock, Fowl**

- A. The keeping of pets for other than commercial purposes is permitted. The keeping of dogs and cats shall be in accordance with the following schedule:

Maximum number of Dogs and/or Cats	Minimum Lot Size
4	No requirement
6	2 acres or more
8	5 acres or more
10	10 acres or more

- B. Livestock or fowl. The keeping of livestock or domestic fowl is permitted on a lot in accordance with the following:

- 1. No parcel under 2 acres shall be permitted to have livestock (0 animal units allowed).
- 2. In the AC and AR districts, parcels larger than 2 acre but less than 5 acres shall be permitted 1 animal unit.
- 3. In the AC and AR districts, parcels 5 acres or larger but less than 10 acres, shall be allowed 2 animal units.
- 4. In the AC and AR districts, parcels larger than 10 acres shall be allowed 3 animal units.
- 5. The number of domestic fowl (bird unit) shall be limited to:
  - a. One (1) bird unit for properties ½ acre or less in size.
  - b. Two (2) bird units for properties larger than ½ acre but 1 acre or less in size.
  - c. Three (3) bird units for properties larger than 1 acre.
- 6. No roosters shall be kept.
- 7. The number of livestock kept on any lot shall not exceed the animal unit ratio listed above. An animal unit is defined as follows:

2 horses or mules	= 1 animal unit
2 head of cattle	= 1 animal unit
2 ponies, burros, miniature horses, or donkeys	= 1 animal unit
6 sheep or goats	= 1 animal unit
4 swine	= 1 animal unit



4 llamas	= 1 animal unit
4 alpacas	= 1 animal unit
3 turkeys	= 1 animal unit
3 geese	= 1 animal unit
1 ostrich	= 1 animal unit
2 emus	= 1 animal unit

8. The number of domestic fowl kept on a lot shall not exceed the bird unit ratio listed above. A bird unit is defined as follows:

2 chickens	= 1 bird unit
2 ducks	= 1 bird unit
2 quail	= 1 bird unit

9. Combinations of animals are permitted if the ratio of animal units/bird units to acreage is maintained.
10. All animals shall have an enclosure to be housed within.
11. Enclosures shall be kept in a neat and sanitary condition at all times and much be cleaned on a regular basis so as to prevent offensive odors.
12. All livestock and fowl shall be kept in a fenced area or enclosure and not permitted to run at large.
13. There shall be no slaughtering of livestock and no outside slaughtering of birds.
14. Compliance with Chapter 161, Noise is required.
15. This section shall not apply to farms as defined by this Chapter.

**§ 205-35 Keeping of dangerous animals.**

- A. It shall be unlawful for any person to be in possession of any dangerous animal(s) within the unincorporated area of Kent County. The purpose of this section is to protect the health, safety and welfare of persons and property within Kent County's jurisdiction. These animals are incapable of adapting to human companionship and their possession by individuals as pets has proven to be a menace to emergency personnel, including firemen, police officers and utility workers, as well as the general public.
- B. Exemptions.
1. This provision shall not apply to a property/person legally constituted (permitted), such as a zoological park, licensed wildlife rehabilitator, licensed veterinarian, bona fide educational or medical institution, animal shelter as defined by 7 Del. C. § 1701 or any traveling circus, carnival or exhibit.
  2. Any person keeping, maintaining or possessing a dangerous animal that is exotic to Delaware on the effective date of this section may continue to possess said animal provided that the person does not breed or attempt to breed said animal; the person obtains a permit under 3 Del. C. § 7201 for said animal within 30 days of the effective date of this law from the Department of Agriculture; and the person does not obtain any additional dangerous animals.
- C. Enforcement.

1. Any agent of the Kent County Society for Prevention of Cruelty to Animals and/or the State of Delaware Office of Animal Welfare may impound an animal kept, maintained or possessed in apparent violation of this section. The Kent County Society for Prevention of Cruelty to Animals may dispose of this animal in accordance with 3 Del. C. Chapter 80.
2. Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000. Each dangerous animal possessed is a violation of this section, and each day it is possessed shall constitute and be punishable as a separate offense. Any fine imposed for a violation of this section shall not be suspended to any amount less than the minimum prescribed fine.

§ 205-36 **Reserved.**

§ 205-37 **Reserved.**

§ 205-38 **Reserved.**

§ 205-39 **Reserved.**

§ 205-40 **Reserved.**

§ 205-41 **Reserved.**

§ 205-42 **Reserved.**

§ 205-43 **Reserved.**

§ 205-44 **Reserved.**

§ 205-45 **Reserved.**

§ 205-46 **Reserved.**

§ 205-47 **Reserved.**

§ 205-48 **Reserved.**

§ 205-49 **Reserved.**

§ 205-50 **Reserved.**

## Article V Permitted Uses

§ 205-51 **Purpose.**

The purpose of this Article is to regulate the land uses in each zoning district.

§ 205-52 **Use Regulations.**

- A. All land uses or structures shall be permitted in districts only as indicated in §205-53, General Use Table below. All permitted uses shall also include accessory uses and structures as defined in this Article. Any use not specifically permitted within a particular zoning district, either by-right or as a conditional use, shall be considered prohibited except as provided in Item B below. No use prohibited in a district shall be permitted under any circumstances.
- B. Should any economic activity which is not listed as a permitted, conditional or hazardous use within this chapter be proposed within Kent County, the economic activity shall be reviewed by the Director and placed into the most similar category. For nonresidential uses, the Director shall evaluate the use by referencing the most recent North American Industry Classification System (NAICS) manual. Where the same NAICS code is found in several use categories, the Director shall consider the characteristics of the

use, including the intensity of the use and its likely adverse impacts. Where a choice remains after reviewing for adverse impacts, the use should be classified with the similar use that has the most adverse impacts.

- C. Except as otherwise provided, there may not be more than one principal use or principal structure on a lot, except for lots with split zoning in which case there shall not be more than one principal use or principal structure per zoning classification on a lot. Any use other than agricultural or residential shall require site plan review for that portion of the lot subject to such use. Multiple uses may be permitted on properties with nonresidential zoning provided all area and bulk requirements are satisfied.
- D. Each independent use is a principal use. However, in a structure that is specifically designated a multiple use principal structure, independent uses do not constitute principal uses.
- E. Accessory uses shall not be permitted without a principal use.
- F. Zoning Certificate of Use. Except for single-family residences, agricultural uses, and uses approved through a separate review process, no premises or structure, including a nonconforming use, may be used or altered until a zoning certificate of use is issued by the Department of Planning Services, Division of Planning.
  - a. A zoning certificate of use authorizes the occupancy and use of the structure or premises to which it applies and continues in effect as long as the use is in complete conformity with the provisions of this chapter.
  - b. A zoning certificate of use authorizes the occupancy and use of the structure or premises to which it applies and continues in effect as long as the use is in complete conformity with the provisions of this chapter.
  - c. A zoning certificate of use is required for each use. As long as a use does not change, a zoning Certificate of Use continues in effect when the ownership of the property changes.
  - d. A fee as set from time to time by ordinance of the Levy Court shall be paid to the County for each zoning certificate of use.

#### **§205-53. Permitted Use Table**

- A. The following symbols are used in the General Use Table:
  - 1. "P" indicates a permitted use, where the use is permitted as a matter of right.
  - 2. "PC" indicates a permitted use with specific conditions of approval.
  - 3. "C" indicates a use is permitted with conditional use approval.
  - 4. "CSP" indicates a use is permitted as a conditional use as described above and requires a site plan as part of the application.

5. "PC/C" indicates a use is permitted through an administrative review process but can be subject to formal conditional use review. Such uses also include specific conditions of approval.

B. Permitted Use Table

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
<b>AGRICULTURAL USES</b>												
Accessory Agricultural Dwellings	PC	PC										
Agriculture and Aquaculture	P	P	P	P	P	P		P	P	P	P	P
Agricultural Manufacturing and Waste Services	CSP	CSP										CSP
Agricultural Support and other Rural Services	PC	PC							PC			
Agricultural Extractive Use	PC	PC										
Blacksmith	PC	PC						PC	PC		PC	PC
Buggy Repair	PC	PC						PC	PC		PC	PC
Commercial Kennel	CSP	CSP							PC			
Commercial Stables and Horse Training	PC	PC										
Dog Grooming Establishment	C	C						P	P			
Farm Machinery/Equipment repair, service, and/or sales	C	C							PC		PC	PC
Farm tenant houses	PC	PC										
Farm winery, brewery,	CSP	CSP										

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
or distillery, with accessory gift shop, meeting hall, retail sales and tasting facility												
Greenhouses	P	P										
Hay, Grain, and Feed Stores	C	C							P			
Hunting - commercial, private or public	P	P	P	P	P	P		P	P	P	P	P
Nursery	P	P							P			
Roadside Stands	PC	PC							P			
Slaughterhouse	CSP	CSP									CSP	CSP
Stockyard	PC	PC										
Storage of agricultural chemicals in bulk, retail and wholesale	CSP	CSP							CSP		CSP	CSP
Tack and harness shops	C	C						P	P			
<b>RESIDENTIAL USES</b>												
Accessory Dwelling Unit	PC	PC	PC	PC	PC	PC						
Cluster development	PC	PC	PC	PC	PC							
ECHO housing	PC	PC			PC	PC						
Group homes (for the Care of Elderly or Disabled) (no more than 10 residents)	P	P	P	P	P	P						
Group Homes (no more than 10 residents)	C	C	C	C	C	C						

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
Home based contractor establishment, no outdoor storage	PC/C	PC/C										
Home occupations	PC/C	PC/C	PC/C	PC/C	PC/C	PC/C						
Home office	PC	PC	PC	PC	PC	PC						
Manufactured home parks					P	P						
Manufactured homes on individual lots	P	P			P	P						
Model Home/Sales Office	P	P	P	P	P	P						
Multi-family (Apartments)					P			CSP	CSP			
Professional Office(home based)	PC/C	PC/C	PC/C	PC/C	PC/C	PC/C						
PUD (Planned Unit Development)	CSP	CSP	CSP	CSP	CSP	CSP						
Short Term Rentals	PC	PC	PC	PC	PC	PC						
Single-family, attached (townhouse)				P	P							
Single-family detached dwellings	P	P	P	P	P	P						
Single-Family, semi-detached (duplex)			P	P	P	P						
Temporary Emergency Residence	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC
INSTITUTIONAL												

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
Colleges	CSP	CSP							PC			
Hospitals	CSP	CSP	CSP	CSP	CSP				PC			
Institutional, Neighborhood and Regional, to include Assembly and Worship	CSP	CSP	CSP	CSP	CSP	CSP		CSP	PC	CSP		
Institutional, Residential	C	C	C	C	C	C		C	C			
Protective Care	CSP	CSP							CSP		CSP	CSP
Public service	P	P	P	P	P	P		P	P	P	P	P
Schools (Public or Private; no on-site residential)	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC
Schools (including on-site residential)	CSP	CSP	CSP	CSP	CSP	CSP		CSP	CSP	CSP		
Emergency Shelter Facility				C	C			C	C			
<b>RECREATION AND OPEN SPACE USES</b>												
Campgrounds	PC/C	PC/C										
Commercial recreation (High Intensity)	C	C						C	P			
Racetrack (Motorsports)	CSP	CSP							CSP		CSP	CSP
Open Space Recreation (Low Intensity)	P	P						P	P			

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
COMMERCIAL												
Adult Uses									C			
Auction Facilities	C	C							<u>PC</u>			
Banquet or Gathering Facility	C	C						P	<u>P</u>			
Bed-and-breakfast or Commercial Hunting Lodge	C	C	C	C	C	C		P	P			
Casino									CSP		CSP	
Commercial lodging									P			
Commercial, Retail, and Professional Services								P	P			
Contractor's Establishments, Utilities(maintenance facilities), Outdoor Storage									PC		PC	PC
Drive Through Facility								PC	PC	PC		
Gas Stations								C	PC			
Heavy Commercial Retail and Service									CSP		CSP	CSP
Mini-Storage/Mini-Warehouse								CSP	PC		PC	PC
Mixed Use					CSP			PC	PC	PC		
Motor Vehicle sales, service, storage, rental, and repair									PC		PC	PC
Restaurants								P	P			



USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
Offices								P	P	P		
Neighborhood Shopping Center								P	P			
Regional Shopping Center									CSP			
Sports Medicine Facility	CSP							P	P	P		
<b>INDUSTRIAL</b>												
Extractive Uses	CSP	CSP										CSP
Heavy Industrial												P
Light Industrial											P	P
Outdoor Storage									PC		PC	PC
Potentially Hazardous Uses												CSP
Recycling and Storage											CSP	CSP
Sawmills and Mulching operations	CSP	CSP									PC	PC
Utilities, minor	CSP	CSP	CSP	CSP	CSP	CSP		CSP	CSP	CSP	CSP	CSP
Utilities, major											CSP	CSP
Warehouses									PC		PC	PC
<b>OTHER USES</b>												
Accessory Small Scale Solar and Wind Energy Systems	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC
Airports / Airstrips /	CSP	CSP							CSP		CSP	CSP

USES	AC	AR	RS-1	RS-5	RM	RMH		BN	BG	OC	IL	IG
Airfields / Heliports / Helipads												
Billboards									C		P	P
Business/Industrial Parks									PC		PC	PC
Community recycling bins	P	P	P	P	P	P		P	P	P	P	P
Off-premise Monument Signs	C	C						C	C	C	C	C
Park and Ride Facility	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC
Public Interest and Special Events (Temporary Activity)	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC
School Bus Parking	PC/C	PC/C	C						P		P	P
Small Cell Telecommunications Facility					PC			PC	PC	PC	PC	PC
Telecommunications Towers	PC/C	PC/C	PC/C	PC/C	PC/C	PC/C		PC/C	PC/C	PC/C	PC/C	PC/C
Transportation Shelters (Bus, Taxi, etc)	PC	PC	PC	PC	PC	PC		PC	PC	PC	PC	PC

**§205-54. Agricultural Uses**

**ACCESSORY AGRICULTURAL DWELLINGS**

Additional dwelling units that are allowed as accessory on an active farm where family members or farm help are housed on said farm in accordance with the conditions of §205-67

**AGRICULTURE**

These uses include crop production and animal production. These uses also include any other agricultural use recognized by Delaware law. See also description of Farm. (NAICS Reference - 11: Agriculture, Forestry, Fishing and Hunting, except Horse Training, Nursery, and Landscaping/Horticultural Services)

## AGRICULTURAL MANUFACTURING AND WASTE SERVICES

This use includes farms that may grow or raise agricultural materials and processes them on-site. This may include the full production of a product to multiple forms, packaging, and shipping. This also includes locations for sanitary landfills and septage processing/storage.

(NAICS Reference - 3111: Animal Food Manufacturing; 3112: Grain and Oilseed Milling; 311421 Fruit and Vegetable Canning; portion of 32192 Wood Pallet Manufacturing only; 22132: Sewage Treatment Facilities; 562212 Solid Waste Landfill)

## AGRICULTURAL SUPPORT AND OTHER RURAL SERVICES

This use includes butcher shops (no slaughterhouse or rendering plant), clam shell storage, storage of fishing/crabbing equipment, cold storage lockers (if related to agricultural use on-site), farm supply services, grain storage, farm product warehousing and storage, fishing, hunting and trapping industries, taxidermist, leather/hide/raw fur dressing, and nursery and garden center and associated office space. Retail nurseries, garden centers, and retail greenhouses must be customary and incidental to an agricultural use on the same property; if they are the principal use on the property or if the majority of the merchandise is not produced on the farm then this would be a commercial use. Landscaping (horticultural) services are not included. (NAICS Reference - 31611: Leather and Hide Tanning and Finishing, 49313: Farm Product Warehousing and Storage, 44422: Nursery, Garden Center, and Farm Supply Stores, 44521: Meat Markets, 44522: Fish and Seafood Markets, 44523: Fruit and Vegetable Markets)

## AGRICULTURAL EXTRACTIVE USE

(Level One Extractive Use). These extractions are for agricultural purposes only. The owner or operator (with written permission from the owner) of a farm at least 10 acres in size may utilize an extractive use to create alternative uses for his/her farm. Some of these uses can include but are not limited to cranberry bogs, aquatic farming or any other uses defined as "agricultural" in Delaware. The extractive material may be removed from property for sale. No more than 10% (at one time or cumulatively) of the total farm acreage may be utilized for agricultural extractions. Should more than 10% of total farm acreage be extracted, Level Two Extractive Use measures shall be applied.

## BLACKSMITH

A person who forges objects of iron. They may make or repair items in iron by hand. The uses approved under this section are not meant to be full manufacturing uses, but repair and creating of products that can be done by hand and not with large scale industrial machinery (NAICS Reference -332111: Iron and Steel Forging, further manufacturing a specific product are classified in that industries finished product.)

## BUGGY REPAIR

A location which services, fixes, or modifies horse drawn carriages. The use applies to non-motorized buggies only.

## COMMERCIAL STABLES and HORSE TRAINING

The stabling, training, and feeding of horses, or the provision of riding facilities for other than the use of the resident of the property; this also includes riding academies. This is any structure or place where horses, mules, donkeys, or ponies are kept for riding, driving, or stabling for compensation or incidental

to the operation of any club, association, ranch or similar establishment. (NAICS Reference - Portion of 115210: Horse Training and Boarding, Portion of 713990: riding stables)

#### DOG GROOMING ESTABLISHMENT

A location where domestic pets are groomed, washed, cut or otherwise physically maintained. No overnight boarding is contemplated with this use. (NAICS Reference - Portion of 81291: Animal grooming services, Grooming services, animal, Pet grooming services uses only)

#### FARM

A parcel of land primarily used for agricultural purposes, including farming, dairying, pasturing, agriculture, horticulture, floriculture, viticulture, animal and poultry husbandry and the necessary accessory uses for packing, treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities. Above uses shall not include raising of animals for use in medical or other tests or experiments on the same property. Delaware Code further defines this use category in this following way:

1. Agricultural use land.

Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. (§8330)

2. Horticultural use land.

Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. (§8331)

3. Forest use land.

Land shall be deemed to be in forest use when devoted to tree growth in such quantity and so spaced and maintained as to constitute in the opinion of the State Forester a forest area.

4. Criteria for land use.

Land shall be deemed to be actively devoted to agricultural, horticultural or forestry use when:

- a. Not less than 10 acres are in such use, and the gross sales of agricultural, horticultural or

forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs have averaged at least \$1,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$1,000 per year, within a 2-year period of time; or

- b. Less than 10 acres are in such use and the gross sales of agricultural, horticultural or forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs shall have averaged at least \$10,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$10,000 per year within a 2-year period of time. In computing such anticipated yearly gross sales for land under 10 acres in such use, the maximum amount computed from future sales of forestry products shall be not more than \$2,000 annually.
- c. In applying these criteria, and in determining whether the minimum acreage requirements are met, all contiguous parcels of land held by identical owners in identical proportions of ownership and in identical legal form of title, shall be considered as a single unit. (§8333)

#### FARM MACHINERY/EQUIPMENT REPAIR, SERVICE, AND/OR SALES

A business which repairs or maintains farm equipment that is brought to the site from a farm operation located elsewhere. This use also allows the sale of farm equipment. The equipment in both categories must be clearly used for a farming operation and cannot be for normal residential equipment (i.e. lawnmowers, cars, etc). (NAICS Reference - Portion of 811310: tractor, farm machinery equipment repair and maintenance services; Portion of 423820: Farm and Garden Machinery and Equipment Merchant Wholesalers)

#### FARM TENANT HOUSES

Building(s) located on an agricultural use property that is meant for the housing of employees working on the farm and other farms owned by that property owner.

#### FARM WINERY, BREWERY, OR DISTILLERY, WITH ACCESSORY GIFT SHOP, MEETING HALL, RETAIL SALES AND TASTING FACILITY

A bona fide farm that grows some or all of the raw materials needed to manufacture alcoholic beverages. The farm must be sized so that the majority of the ingredients are grown on site with limited outside materials delivered. This use would include all associated uses to consider promoting this use as an agri-tourism business.

#### GREENHOUSES

Personal use or wholesale/warehouse.

#### HAY, GRAIN, AND FEED STORES

Store that is generally found in an agricultural area that sells farm animal food supplies and other agricultural related products.

(NAICS Reference - Portion of 444220: Feed stores (except pet))

#### HUNTING COMMERCIAL PRIVATE OR PUBLIC

Must follow all state and federal hunting laws and receive any necessary permits. (NAICS Reference – 1142: Hunting and Trapping)

#### KENNEL, COMMERCIAL

Any building or land used for the housing, breeding, training or care of more animals than are permitted by §205-86.F. This use includes animal hospitals. A kennel license is required for all commercial kennels. Dog day care and dog training shall also be included in this category. Animal grooming services, Grooming services, animal, and Pet grooming services are located in its own category. (NAICS Reference - 81291: Pet Care Services, 54194: Veterinary Services)

#### NURSERY

A farm where young plants and trees are grown for sale or for planting elsewhere. Wholesale of the products is allowed on-site as part of this use. (NAICS Reference - 42493: Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers; 11142 Nursery and Floriculture Production)

#### ROADSIDE STAND

Product must be grown on the property or be grown as part of a local farm. Can be located within a permanent structure provided the products offered for sale are grown or produced on the subject farm or lands in agriculture production associated with such farm operation or the products are grown or produced on a local regional farm, and such farm market or roadside stand shall comply with the following provisions:

1. All buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. All construction shall conform to applicable building codes and building permit requirements as enacted by the local jurisdiction;
2. Off street customer parking shall be provided in accordance with the provisions of the zoning ordinance of the local jurisdiction provided that at least 1 parking space shall be provided for each 100 square feet of floor area of the establishment. The area of 1 parking space shall be equivalent to a standard parking stall of 9' x 18';
3. If a new vehicular entrance is proposed to support a farm market or roadside stand, an entrance permit shall be obtained from the Delaware Department of Transportation prior to the start of construction; and
4. Signage shall comply with signage provisions and permitting requirements established by the local jurisdiction within its zoning ordinances.

#### SLAUGHTERHOUSES

An establishment where animals are butchered and preparing processed meats and meat byproducts. (NAICS Reference - 3116: Animal Slaughtering and Processing)

## STOCKYARD

An enclosure with pens, sheds, etc., connected with a slaughterhouse, railroad, market, etc., for the temporary housing of cattle, sheep, swine, or horses

## STORAGE OF AGRICULTURAL CHEMICALS IN BULK, RETAIL AND WHOLESALE

Pesticides, Fertilizers, and animal health products (No manufacturing). (NAICS Reference - Portion of 493120: to cover Farm product warehousing and storage, refrigerated; 493130: Farm Product Warehousing and Storage)

## TACK AND HARNESS SHOPS

An equestrian supply store. Buyers may purchase various pieces of riding equipment and training aids, as well as boots and riding apparel, stable equipment, horse care products, grooming supplies, horse blankets and sheets, model horses, and equine books, magazines, and videos. (NAICS Reference - Portion of 451110: Tack shops and Saddlery stores)

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## **§205-55. Residential Uses**

### ACCESSORY APARTMENT

A separate complete housekeeping unit that is contained within the structure of a single-family dwelling or within a portion of a detached garage or other outbuilding.

### ACCESSORY BUILDING

A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot. When the term "accessory" is used in this chapter, it shall have the same meaning as "accessory use."

### ACCESSORY COTTAGE

A separate and subordinate dwelling unit that is located on the same lot as a single-family dwelling.

### ACCESSORY DWELLING UNIT (ADU)

An accessory apartment or accessory cottage. To constitute an ADU a structure will have finished space with a kitchen and at least two of the following three facilities: sleeping area, laundry room, and bathroom. A kitchen is an indoor area used for food preparation.

### 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.

### CLUSTER DEVELOPMENT

A development approach in which building lots may be reduced in size and buildings sited closer together, usually in groups or clusters, provided that the total development does not exceed that which could be constructed on the site under conventional zoning and subdivision regulations.

## DUPLEX

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. A building designed with a dwelling unit to be located on each horizontal floor may be considered a duplex but the lot must be able to meet all bulk, area, and density provisions in the zoning district for each unit.

## ECHO HOUSING

A small, self-contained, secondary dwelling unit designed for temporary installation on the same property as an existing single family home for use by an elderly relative for whom members of the family who reside on the same parcel are providing assistance and care. ECHO Housing / Elder Cottages provide an option for frail, elderly individuals who require some daily assistance, but are not in need of 24-hour medical supervision (i.e. nursing home).

## FAMILY CHILD-CARE HOME

A residential dwelling unit that is licensed by the State of Delaware or that is qualified to be licensed by the State of Delaware, as a family child-care home that furnishes care, supervision, and/or guidance to children other than those children that comprise the immediate family or relatives of the resident of the dwelling unit. Such care, supervision and/or guidance shall be limited to a maximum of six full-time children and three part-time or "latch key" children as defined by the State of Delaware, for a maximum limit of nine children, and shall be approved by Kent County Levy Court as an authorized home occupation.

## GROUP HOME, FOR THE CARE OF DISABLED OR ELDERLY PERSONS

A community-based residential dwelling for persons with disabilities or elderly persons in which more than four, but not more than 10, unrelated individuals live together, prepare their meals together, and function as a single-housekeeping unit using certain rooms and housekeeping facilities in common. Persons with disabilities shall include persons as defined by the Delaware Fair Housing Act and the Americans with Disabilities Act to include those persons with a physical or mental impairment which substantially limits one or more of such person's major life activities; persons with a record of having such impairment; and persons being regarded as having such impairment; but not including persons currently illegally using a controlled substance. Staffing is required as outlined by the appropriate state licensing or approval agency.

## GROUP HOMES, OTHER THAN FOR THE CARE OF DISABLED AND ELDERLY PERSONS

A community-based residential dwelling, halfway house or treatment center operated with a single-family orientation in which more than four, but not more than 10 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.

## HOME-BASED CONTRACTOR ESTABLISHMENT

A parcel of land that has a residential dwelling unit as its principal use to include as an accessory use involving a contractor's business that is owned and operated by the owner-occupants of the dwelling unit. Within the context of the term "home-based contractor establishment" the word "contractor"



shall mean an owner-occupant of the premises that is engaged in a contractual service business which may provide durable goods and/or services for use and/or consumption at an off-site location and that involves contractor storage, service or production uses on the residential dwelling parcel in compliance with applied conditions of approval.

#### HOME OCCUPATIONS

An accessory use of a dwelling for an occupation, profession, enterprise or activity conducted solely by one or more members of a family residing on the premises which is clearly incidental and secondary to the use of the premises for dwelling purposes. No home occupation shall be permitted that:

- A. Changes the outside appearance of the dwelling or is visible from the street;
- B. Generates traffic, parking, sewerage or water use in excess of what is normal in the residential neighborhood;
- C. Creates objectionable noise, smoke, fumes, odor, dust or electrical interference; or
- D. Results in outside storage or display of anything.
- E. The following shall not be considered suitable uses for home occupation:

- (1) Antique shops.
- (2) Child-care centers (more than nine children).
- (3) Manufacturing:
- (4) Automobiles and accessories.
- (5) Watercraft and accessories.
- (6) Mortuaries.
- (7) Product distribution centers (on-premises).
- (8) Service and/or repairs:

- a. Automobile and accessories.
- b. Watercraft and accessories.
- c. Machinery.
- d. Teaching of more than four pupils at one time.
- e. Veterinarian services (on-premises).

#### HOME OFFICE

An office in a residential dwelling used solely for a business operated by a single resident of the home. These will typically be online businesses or other work that is typically done with only paperwork, phone, or computer work. No customers, employees, or other persons involved with the business can be at the site. Examples include but are not limited to: writer, musician, artist, bookkeeper, stock broker, "gig economy" office, computer science, online web sales, editor, broadcasting/podcasting, online instruction. This use is distinct from "Professional Office" which would allow for employees and customers to visit site.

#### MANUFACTURED HOME

A single-family dwelling unit fabricated in an off-site manufacturing facility bearing a label certifying that the unit is built in conformance with Federal Manufactured Housing Construction and Safety

Standards (24 CFR 3280), transportable in one or more sections which, in the traveling mode, is eight feet or more in width, or 40 feet or more in length, and built on a permanent chassis designed for use with or without a permanent foundation when connected to the required utilities.

#### MOBILE HOME

A transportable, factory-built dwelling, designated to be used as a year-round dwelling and built prior to enactment of the Federal Manufactured Housing Act of 1974, which became effective June 1976. For the purpose of this chapter, a mobile home shall be considered a manufactured home.

#### MOBILE/MANUFACTURED HOME PARK

A parcel of land under single ownership on which two or more mobile/manufactured homes are located on individually designated spaces. For purposes of this chapter, location of two or more manufactured homes or mobile homes on a farm for temporary workers employed on the farm does not constitute a manufactured home park.

#### MODEL HOMES (SAMPLE HOME)/SALES OFFICE

A dwelling unit in a subdivision used as a sales office, or a modular unit used as a sales office for a subdivision. This is a permitted use as part of that subdivision or development.

#### 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 DWELLING

A residential dwelling consisting of a building containing three or more dwelling units. For the purpose of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor or wall.

#### PROFESSIONAL OFFICE

The rooms, studio, office or occupational service area of a doctor, dentist, lawyer, musician, artist, architect, writer, clergyman or similar professional person. Examples include: auditor, adjuster, advertising, audio visual, book dealer (no on-premises sales), bookkeeper, booking agent, broadcasting, broker, clergymen, collector (no on-premises buying or selling), computer science, consumer organization, consultant, counselor, crafts (use of major mechanical or electrical equipment shall be prohibited), decorator, designer, doctor (excluding veterinarians), drafting, drama (theater crafts), economist, editor, educator, engineer, entertainment bureau, fashion (nonmanufacturing), financial planning, housing consultant, human resource planning, human services, insurance, investigator, investment counselor, lawyer, management, marketing, placement service, promoter, real estate, stock broker, therapist. This use is distinct from "Home Office" which does not allow any customers or employees to be on-site.

#### PUD (PLANNED UNIT DEVELOPMENT)

A residential development within the growth zone that can be approved outside of the normal zoning requirements of this chapter and can include commercial areas in a residential district under certain provisions.

#### SHORT TERM RENTALS (30 DAYS OR LESS)

Renting of a furnished home or portion of a home listed for use on a daily or weekly basis in a residential district and not considered commercial lodging. Can be listed online (“Air Bnb”, “HomeAway”, or similar sites) or in physical media (newspaper, bulletin boards, etc.) If a stay is longer than 30 consecutive days, then this is not considered a short term rental and the conditions would not apply.

#### 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.

#### TOWNHOUSE (single-family attached)

A single-family dwelling unit constructed in a row of attached units separated by property lines and with open space on at least two sides.

#### TEMPORARY EMERGENCY RESIDENCE

A residential shelter used for the temporary habitation of the occupants of a home that has been damaged or destroyed. This structure is to be located on the same property as the destroyed or damaged home by temporarily waiving the use, setback, yard, area and dimension requirements of this chapter until said damage can be repaired or the dwelling replaced. This residence may be a mobile home.

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### **§205-56. Institutional Uses**

#### ASSEMBLY AND WORSHIP

This includes religious, grantmaking, civic, professional, and similar organizations. This use is included in the Institutional, Regional & Neighborhood category.

#### CHILD CARE CENTER

A facility licensed by the State of Delaware, or qualified to be licensed by the State of Delaware, as a child-care center that furnishes care, supervision and/or guidance for more than nine children, unaccompanied by parents and/or guardian for periods of less than 24 hours per day. This use is included in the Institutional, Regional & Neighborhood category.

#### CLUB, PRIVATE

Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. This use is included in the Institutional, Regional & Neighborhood category.

#### COLLEGES

This includes colleges, universities, and professional schools. These uses may include student housing

and other related facilities on-site. (NAICS Reference - 6112: Junior Colleges; 6113: Colleges, Universities, and Professional Schools)

#### HOSPITAL

A building or group of buildings, having room facilities for overnight patients, used for providing services for the inpatient medical or surgical care of sick or injured humans and which may include related facilities, central service facilities and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operations. (NAICS Reference - 622 Hospitals)

#### INSTITUTIONAL, REGIONAL & NEIGHBORHOOD

These uses include museums, aquariums, zoos, cultural or arts centers, civic and social organizations, day care centers for all ages, cemeteries and all other public or private indoor institutional uses which are not otherwise defined in this Section. (NAICS Reference - 71211: Museums; 71212: Historical Sites; 71213: Zoos and Botanical Gardens; 62412: Services for the Elderly and Persons with Disabilities; 6244: Child Day Care Services; 813: Religious, Grantmaking, Civic, Professional, and Similar Organizations (unless a paper office only, with no additional use attached); 8122: Death Care Services)

#### INSTITUTIONAL, RESIDENTIAL

All sheltered care, and group care, except group home facilities (of any type) where total occupancy is ten (10) or less, shall be considered institutional residential use. Also, Institutional housing where there is commercial rental or condominium ownership combined with any of the following: common food service, nursing, or health care. Dormitories, fraternities, or sororities are in this category if not on the same property as the school, university, or college. (NAICS Reference - 623: Nursing and Residential Care Facilities; 62422: Community Housing Services, 813110: Convents or monasteries not attached to proper religious use or school (i.e. residences only); 7213: Rooming and Boarding Houses)

#### PROTECTIVE CARE

This is housing where the residents are assigned to the facility and are under the protective care of the city, County, State or federal government. This use includes jails, prisons, work release, other similar facilities. (NAICS Reference - Portion of 561210: Correctional facility or jail operation on a contract or fee basis, Jails, privately operated; 92214: Correctional Institutions)

#### PUBLIC SERVICE

These uses include public service facilities e.g., ambulance, fire, libraries, police, rescue, national security, and government buildings. (NAICS Reference - 62423: Emergency and Other Relief Services (disaster shelters); 92: Public Administration (except 92214: Correctional Institutions which are classified elsewhere); 491: Postal Service)

#### SCHOOLS

All public and private schools are permitted by right in all districts except IG and IL. If a residential component is part of the campus and conditional use will be required. (NAICS Reference - 6111: Elementary and Secondary Schools)

#### EMERGENCY SHELTER FACILITY

A facility maintained for the purpose of providing accommodations for persons who are in need of temporary housing or shelter.

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**§205-57. Recreation and Open Space**

**CAMPGROUND**

A parcel of land where campsites are established as temporary living quarters for recreation, education or vacation purposes. (NAICS Reference - 7212: RV (Recreational Vehicle) Parks and Recreational Camps)

**COMMERCIAL RECREATION (HIGH INTENSITY)**

These uses are characterized by one (1) or more of the following: building or site development intensive, regional in nature, spectator oriented, fee required, community impacts; e.g., lighting, trash, noise, traffic.

Indoor uses include, but are not limited to:

Indoor swimming pools	Sports clubs	Archery/shooting ranges
Amusement/carnival ride concession operators	Trampoline facilities	Obstacle courses
Rock climbing	Bungee jumping	Sky diving
Roller/Ice skating	Lasertag	Bowling alleys

Outdoor uses include, but are not limited to:

Fairgrounds	Haunted hayrides (Permanent)	Carnivals (Permanent)
Marinas	Miniature golf	Batting cages
Model Airplane/Drone(UAV) Site	Golf driving ranges	Rodeo
BMX or skateboard parks (unless connected with an approved government owned public park)	Amusement Parks or Water Parks	Paintball and similar fields or arenas

(NAICS Reference - 487: Scenic and Sightseeing Transportation [an airstrip or helipad as part of this use is subject to conditional use review]; 7111: Performing Arts Companies; 7112: Spectator Sports (except 711212); 71311: Amusement and Theme Parks; 71392: Skiing Facilities; 71393: Marinas; 71394: Fitness and Recreational Sports Centers (Indoor); 71395: Bowling Centers; Portion of 71399: All Other Amusement and Recreation Industries. Motorsports are specifically excluded.

**MOTORSPORTS (RACETRACK)**

Competition around any facility, track, or course upon which racing or timed events are conducted using motorized vehicles, including but not limited to automobiles, motorcycles, dirt bikes, go-karts, and ATVs. This also includes incidental uses such as driving schools, practice sessions, test sessions, exhibitions, visitor track days, and repair or modification of vehicles. (NAICS Reference - 711212: Racetracks)

## OPEN SPACE RECREATION (LOW INTENSITY)

These uses are characterized by one (1) or more of the following: open area emphasis, minimal site impact, community compatible, low spectator emphasis, club membership. The uses include, but are not limited to passive recreational uses that are or are similar to the following:

Game preserves	Arboretums	Wildlife sanctuaries
Areas for hiking, jogging, cycling	Equestrian facilities (non commercial)	Parks and Nature areas
Other passive recreation-oriented parks	Tot-lots and playgrounds	Playing Fields
Zipline or Ropes Course		Dog Parks

This category also includes clubs and associations, such as outdoor swimming pools, tennis courts, golf courses, and country clubs. (NAICS Reference - 71219: Nature Parks and Other Similar Institutions; 71391: Golf Courses and Country Clubs; 71392: Skiing Facilities; 71394: Fitness and Recreational Sports Centers (Outdoor); Portion of 71399: All Other Amusement and Recreation Industries)

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## §205-58. Commercial Uses

### ADULT USES:

Any establishment or portion thereof which offers sexually-oriented material, devices, paraphernalia, services or performances, or any combination thereof, or in any other form, whether printed, filmed, recorded or live; and which excludes admission or participation in any manner by persons under the age of 18. Furthermore, the term "sexually-oriented" shall be interpreted in the context of the following specified sexual activities and anatomical areas:

- (1) Genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, sodomy, sadism, masochism or bestiality;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
- (4) Less than completely or opaquely covered human genitals, pubic region, buttock, female breasts below a point immediately above the top of the areola; and
- (5) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

### AUCTION FACILITY

A publicly held sale at which property or goods are sold to the highest bidder.

### BANQUET OR GATHERING FACILITY

A building and/or property that can be rented or leased for a single event (i.e. wedding receptions, graduation parties, business parties, retirement luncheons). The owner may provide food service with proper licensing or may allow an off-site company to cater the event. (NAICS Reference – Portion of 531120: Lessors of Nonresidential Buildings (except Miniwarehouses); Portion of 72232: Caterers) Properties that meet the criteria of Delaware Code – Title 9 §306 are not subject to the process required as part of this use category. This section states that “agritourism activities” may be allowed statewide on farms of 10 acres or more. One such approved tourism activity is barn parties or farm

festivals.

#### BED AND BREAKFAST and COMMERCIAL HUNTING LODGES

This is any place of lodging in which there are no more than eight (8) guestrooms, or suites of rooms, available for temporary occupancy for varying lengths of time, with compensation to the owner, by the general public, and in which meals may be prepared for them, provided that no meals may be sold to persons other than such guests, and that the owner resides therein as his or her principal place of residence. Commercial Hunting Lodges do not have to be the principal home of the owner of the lodge, but an operator of the business must be on site at all times as long as rooms are being rented. (NAICS Reference - 721191: Bed-and-Breakfast Inns)

#### CASINO

A public room or building where gambling games are played. All casino operating under this section must also be approved by the State of Delaware (NAICS Reference - 71321: Casinos (except Casino Hotels); 72112: Casino Hotels)

#### COMMERCIAL LODGING

These uses include hotels, motels, or a building or group of buildings offering transient lodging accommodations on a daily rate to the general public. Additional services to be provided may include a restaurant, meeting rooms, and recreational facilities. (NAICS Reference - 72111: Hotels (except Casino Hotels which are classified elsewhere) and Motels; 721199: All Other Traveler Accommodation)

#### COMMERCIAL, RETAIL, AND PROFESSIONAL SERVICES

All uses in the following categories are included, unless listed in Heavy Retail or elsewhere in this chapter. (NAICS Reference - 44131: Automotive Parts and Accessories Stores; 442: Furniture and Home Furnishings Stores; 443: Electronics and Appliance Stores; 44411: Home Centers; 44412: Paint and Wallpaper Stores; 44413: Hardware Stores; 44421: Outdoor Power Equipment Stores; 445: Food and Beverage Stores; 446: Health and Personal Care Stores; 448: Clothing and Clothing Accessories Stores; 451: Sporting Goods, Hobby, Musical Instrument, and Book Stores; 452: General Merchandise Stores; 453: Miscellaneous Store Retailers; 454: Nonstore Retailers; 511: Publishing Industries (except Internet); 512: Motion Picture and Sound Recording Industries; 518: Data Processing, Hosting, and Related Services; 519: Other Information Services; 52: Finance and Insurance; 53: Real Estate and Rental and Leasing (Except 53113, 5321, 53241); 54: Professional, Scientific, and Technical Services (except Veterinary Services. See: Comm. Kennel); 55: Management of Companies and Enterprises; 5611: Office Administrative Services; 5612: Facilities Support Services (except jail or correctional facility operation); 5613: Employment Services; 5614: Business Support Services; 5615: Travel Arrangement and Reservation Services; 5616: Investigation and Security Services; 5619: Other Support Services; 6114: Business Schools and Computer and Management Training; 6115: Technical and Trade Schools; 61161: Fine Arts Schools; 61162: Sports and Recreation Instruction; 61163: Language Schools; 61169 All Other Schools and Instruction; 61171: Educational Support Services; 621: Ambulatory Health Care Services (includes all doctors offices); 62411: Child and Youth Services; 62419: Other Individual and Family Services; 624210: Community Food Services; 6243: Vocational Rehabilitation Services; 7113: Promoters of Performing Arts, Sports, and Similar Events; 7114: Agents

and Managers for Artists, Athletes, Entertainers, and Other Public Figures; 7115: Independent Artists, Writers, and Performers (or a Home Occupation); 71312: Amusement Arcades; 71329: Other Gambling Industries; Portion of 71399: All Other Amusement and Recreation Industries (examples include dancehalls, discotheques, billiard halls, eSports facility, escape rooms, axe throwing, etc.); 8112: Electronic and Precision Equipment Repair and Maintenance; 8114: Personal and Household Goods Repair and Maintenance; 812: Personal and Laundry Services (except Dry Cleaning Plants, dog grooming, kennels, and death care services which are classified elsewhere))

#### CONTRACTOR ESTABLISHMENTS AND SHOPS, UTILITIES (MAINTENANCE FACILITIES), OUTDOOR STORAGE

A building or outdoor yard for vehicle or equipment storage, repair, maintenance and service, which may include offices (administrative or business). Utility companies that have their maintenance or equipment/material storage yards. Uses that are solely outdoor storage of equipment, vehicles, or materials. (NAICS Reference - 238: Specialty Trade Contractors; 56172: Janitorial Services; 56173: Landscaping (Horticultural) Services; 56174: Carpet and Upholstery Cleaning Services; 56179: Other Services to Buildings and Dwellings

#### DRIVE THROUGH FACILITY

A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle.

#### GAS STATIONS

A place where fuel is sold for vehicles, often with accessory convenience store, car wash, and/or vehicle charging stations.

(NAICS Reference - 447: Gasoline Stations)

#### HEAVY COMMERCIAL RETAIL AND SERVICE

All uses in the following categories are included, unless stated elsewhere in this chapter.

(NAICS Reference - 42: Wholesale Trade (except those uses consider agriculture under DE state law); 492: Couriers and Messengers; 44419: Other Building Material Dealers (e.g. lumberyards); 484: Truck Transportation; 4884: Support Activities for Road Transportation; 485: Transit and Ground Passenger Transportation; 4885: Freight Transportation Arrangement; 4889: Other Support Activities for Transportation; ; 515: Broadcasting (except Internet); 517: Telecommunications; 53241: Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing; 56171: Exterminating and Pest Control Services; 8113: Commercial and Industrial Machinery and Equipment (except Automotive and Electronic which are classified elsewhere) Repair and Maintenance; 812320: Only Dry Cleaning Plants from this section

#### MINI STORAGE/ MINI WAREHOUSES

A building or group of buildings that are used for self storage. They contain a variety of individual units that are rented out for the purpose of storing personal belongings.

(NAICS Reference – 53113 Lessors of Miniwarehouses and Self-Storage Units)



#### MIXED USE

A building or group of buildings on a lot planned, designed and managed as an integrated development comprised of residential and nonresidential uses in a single building oriented to a pedestrian scale and intended to provide convenient shopping, employment and residential opportunities while reducing vehicular trip generation. This use is meant to be predominantly commercial in nature, but residential uses and live/work spaces are to be provided in deference to the character of the commercial design.

#### MOTOR VEHICLE SALES, SERVICE, STORAGE, RENTAL, AND REPAIR

All uses related to a moving vehicles and supporting services like gas stations and car washes (but not manufactured/mobile homes). (NAICS Reference - 4411: Automobile Dealers; 4412: Other Motor Vehicle Dealers; 44132: Tire Dealers; 447: Gasoline Stations; 5321: Automotive Equipment Rental and Leasing; 8111: Automotive Repair and Maintenance)

#### OFFICES

(NAICS Reference - 52: Finance and Insurance; 5312: Offices of Real Estate Agents and Brokers; 5313: Activities Related to Real Estate; 54: Professional, Scientific, and Technical Services (except Veterinary Services. See: Commercial Kennel); 55: Management of Companies and Enterprises; 5611: Office Administrative Services; 5613: Employment Services; 56141: Document Preparation Services; 56151: Travel Agencies; 621: Ambulatory Health Care Services (includes all doctors offices))

#### RESTAURANTS

Includes bars and taverns (NAICS Reference - 722: Food Services and Drinking Places)

#### NEIGHBORHOOD SHOPPING CENTER

Any commercial structure or group of structures less than 75,000 sq. ft. is not considered a regional shopping center automatically requiring a conditional use. This use would follow the normal process established for the specific business proposed.

#### REGIONAL SHOPPING CENTER

Any structure or group of structures that meets or exceeds 75,000 sq. ft. of total floor area is considered a shopping center (which will also require review from the State of Delaware's Preliminary Land Use Service). This use may be an establishment planned, developed and managed as a unit, with shared off-street parking, signage, utilities, landscaping, pedestrian and vehicular access provided on the site. Once approved through the conditional use process all permitted or conditional uses in that zoning district may locate in the shopping center (except adult uses).

#### SPORTS MEDICINE FACILITY

Location which specializes in the treatment and preventive care of athletes. It may provide athlete and/or non-athlete care, physical therapy, and medical rehabilitation.

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### **§205-59. Industrial Uses**

#### EXTRACTIVE USES

This category includes extraction uses such as mining and quarrying, and any other extraction use

(NAICS Reference - 21: Mining, Quarrying, and Oil and Gas Extraction). Excavation of any earth product on a property, for any nonexempt purpose.

#### EXTRACTIVE COMMERCIAL USE (LEVEL TWO EXTRACTIVE USE)

These extractions are for commercial uses regarding the excavation of sand, clay, gravel, stone and/or other earth material where no material is processed. There is no size limitation on the property utilizing Level Two Extractive Use. There is no requirement to keep excavated material on the property for extractive commercial uses.

#### EXTRACTIVE COMMERCIAL USE WITH PROCESSING (LEVEL THREE EXTRACTIVE USE)

These extractions are for commercial uses with the additional function of processing the borrowed/extracted material. If the applicant wanted to create a processing site without extractive operations at a site, this same process would apply. Processing is defined as the act of screening, mixing, blending, treating and/or washing the excavated/borrowed material.

#### POTENTIALLY HAZARDOUS USES

(NAICS Reference - 22132: Sewage Treatment Facilities; 3111: Animal Food Manufacturing; 3112: Grain and Oilseed Milling; 3121: Beverage Manufacturing; 3161: Leather and Hide Tanning and Finishing; 322: Paper Manufacturing; 324: Petroleum and Coal Products Manufacturing; 325: Chemical Manufacturing; 32621: Tire Manufacturing; 327211: Flat Glass Manufacturing; 327212: Other Pressed and Blown Glass and Glassware Manufacturing; 327213: Glass Container Manufacturing; 3273: Cement and Concrete Product Manufacturing; 3274: Lime and Gypsum Product Manufacturing; 3279: Other Nonmetallic Mineral Product Manufacturing (except 327991 (light Ind.)); 331: Primary Metal Manufacturing; 3321: Forging and Stamping; 332992: Small Arms Ammunition Manufacturing; 332993: Ammunition (except Small Arms) Manufacturing; 332994: Small Arms, Ordnance, and Ordnance Accessories Manufacturing; 3334: Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing; 333318: Other Commercial and Service Industry Machinery Manufacturing; 333913: Measuring and Dispensing Pump Manufacturing; 336: Transportation Equipment Manufacturing; 562: Waste Management and Remediation Services (except where listed elsewhere))

#### HEAVY INDUSTRY

Accessory retail storefront/gift shop is permitted for products that are manufactured on site. The area for this use must be subordinate to the manufacturing use and must meet all commercial building code requirements for the use.

(NAICS Reference - 3113: Sugar and Confectionery Product Manufacturing; 3114: Fruit and Vegetable Preserving and Specialty Food Manufacturing; 3115: Dairy Product Manufacturing; 3117: Seafood Product Preparation and Packaging; 3118: Bakeries and Tortilla Manufacturing; 3119: Other Food Manufacturing; 3122: Tobacco Manufacturing; 321: Wood Product Manufacturing (except sawmills which are classified elsewhere); 327215: Glass Product Manufacturing Made of Purchased Glass; 482: Rail Transportation; 4882: Support Activities for Rail Transportation; 483: Water Transportation; 4883: Support Activities for Water Transportation)

#### LIGHT INDUSTRY

Accessory retail storefront/gift shop is permitted for products that are manufactured on site. The area

for this use must be incidental and subordinate to the manufacturing use and must meet all commercial building code requirements for the use.(NAICS Reference - 313: Textile Mills; 314: Textile Product Mills; 315: Apparel Manufacturing; 316: Leather and Allied Product Manufacturing (except 3161 {Hazardous}); 323: Printing and Related Support Activities; 326: Plastics and Rubber Products Manufacturing (except tires 32621{Hazardous}); 3271: Clay Product and Refractory Manufacturing; 327991: Cut Stone and Stone Product Manufacturing; 3322: Cutlery and Handtool Manufacturing; 3323: Architectural and Structural Metals Manufacturing; 3324: Boiler, Tank, and Shipping Container Manufacturing; 3325: Hardware Manufacturing; 3326: Spring and Wire Product Manufacturing; 3327: Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing; 3328: Coating, Engraving, Heat Treating, and Allied Activities; 33291: Metal Valve Manufacturing; 332991: Ball and Roller Bearing Manufacturing; 332996: Fabricated Pipe and Pipe Fitting Manufacturing; 332999: All Other Miscellaneous Fabricated Metal Product Manufacturing; 3331: Agriculture, Construction, and Mining Machinery Manufacturing; 3332: Industrial Machinery Manufacturing; 333314: Optical Instrument and Lens Manufacturing; 333316: Photographic and Photocopying Equipment Manufacturing; 3335: Metalworking Machinery Manufacturing; 3336: Engine, Turbine, and Power Transmission Equipment Manufacturing; 3339: Other General Purpose Machinery Manufacturing (except 333913 {Hazardous}); 334: Computer and Electronic Product Manufacturing; 335: Electrical Equipment, Appliance, and Component Manufacturing; 337: Furniture and Related Product Manufacturing; 339: Miscellaneous Manufacturing)

#### RECYCLING OR STORAGE

This use includes any land or structure used for salvaging, recycling, resource recovery, or storing of waste paper, rags, scrap metal, and discarded materials, and the collection, dismantlement, storage, and salvage of two (2) or more inoperative vehicles, automobiles, boats, trucks, farm vehicles or equipment, or other types of machinery. This use also includes the dismantling and/or recycling of mobile and manufactured homes. This includes the aggregate storage of manmade equipment, machinery, scrap, or other used materials having a total cubic volume of seven hundred (700) cubic feet. Where there is no exterior storage, and all the material is stored inside buildings with impervious floors, the use shall be considered light industry. This use is not meant to allow for the approval of a junkyard. (NAICS Reference - 56292 Materials Recovery Facilities; 42393 Recyclable Material Merchant Wholesalers; 42314 Motor Vehicle Parts (Used) Merchant Wholesalers)

#### SAWMILLS and MULCHING OPERATIONS

A place where wood is cut into boards or other forms, usually with heavy machinery. Mulching operations create mulch out of wood products and other materials.(NAICS Reference - 321113: Sawmills)

#### UTILITIES, MAJOR

Any facility for the regional generation, transmission, distribution, treatment, disposal, or storage of power, and water. This use shall exclude disposal of hazardous or radioactive waste materials, which are prohibited. (NAICS Reference - 221: Utilities (except 22132: Sewage Treatment Facilities))

#### UTILITIES, MINOR

Utility substations, gas regulators, public water supply well or intake, transmission or local distribution

facilities including water storage tank, reservoir and treatment at the wellhead or spray irrigation facility. This section does not apply to minor government utilities. (NAICS Reference - 221: Utilities (except 22132: Sewage Treatment Facilities)) This use includes large scale solar and wind energy systems.

#### WAREHOUSES

49311: General Warehousing and Storage; 49312: Refrigerated Warehousing and Storage (except for farm products grown on site); 49319: Other Warehousing and Storage)

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### **§205-60. Other Uses**

#### ACCESSORY SMALL SCALE SOLAR & WIND ENERGY SYSTEM

Small Scale Solar & Wind Energy System: a device or structural design feature for primary purpose of which is to provide for the collection, storage and distribution of energy for heating or cooling, electricity generating, or water heating for the purpose of reducing or meeting on-site needs.

#### AIRPORTS / AIRSTRIPS / AIRFIELDS / HELIPORTS / HELIPADS

This use includes all airports and flight training schools, including those for the private use of an individual. This term shall include Commercial Service Category Airport as defined as a publicly owned airport classified as a Commercial Service Category Airport pursuant to the National Plan of Integrated Airport Systems and also having a Part 139 Certification pursuant to 14 CFR Part 139. (NAICS Reference - 481: Air Transportation; 4881: Support Activities for Air Transportation)

#### BILLBOARDS

Off-premise advertising

#### BUSINESS/INDUSTRIAL PARKS

An area specially designated and landscaped to accommodate offices, commercial uses, retail and service uses, and industrial uses within a planned development. Such development is intended to be designed to provide for a related group of activities, which are functionally integrated relative to land uses, vehicular and pedestrian circulation, and the arrangement of structures. Permitted uses include Light Industry; Warehouses; Commercial, Retail, And Professional Services; Commercial Recreation (High Intensity); Contractor Establishments And Shops; Utilities(Maintenance Facilities); Outdoor Storage; Automotive Repair and Maintenance; Public Service; Winery, Brewery, or Distillery, with Accessory Tasting Facility; Kennel, Commercial; and Farm Machinery/Equipment Repair and Service as defined in this Chapter. Any conditions of specific individual uses remain in effect.

Hazardous Uses, Heavy Industrial, retail uses that are not connected with a manufacturing use, taverns or restaurants that are not connected with the products creation, mini-storage, slaughterhouse, extractive uses, sawmills/mulching, recycling centers, commercial lodging, and all residential uses are not permitted as part of this use.

#### COMMUNITY RECYCLING BINS

Locations where bins are provided for residents to deposit their recyclable goods. Bins would then be

emptied by a public or private waste management service.

**OFF PREMISE MONUMENT SIGN**

A freestanding sign with no visible support structure with low overall height (see article xviii, signs)

**PARK AND RIDE FACILITY**

These are locations where a public parking lot is provided for commuting with other drivers or public transit.

**PUBLIC INTEREST AND SPECIAL EVENTS (TEMPORARY ACTIVITY)**

Fundraisers and other similar events

A temporary activity, such as a fair, circus, carnival, bazaar or similar activities (fundraiser, etc.), that does not have any permanent improvements shall be permitted in all zoning districts as a permitted use, provided that the activity does not occur more than seven consecutive days or a maximum of 14 days in a calendar year.

**SCHOOL BUS PARKING**

A location where school buses are parked.

**TELECOMMUNICATION TOWERS.**

This category includes radio or television broadcasting towers, cellular communications towers, and antenna arrays, except residential and retail receiving satellite dishes.

**TRANSPORTATION SHELTERS**

A small, roofed structure, which may be enclosed by walls, located near a street and designed primarily for the protection and convenience of bus, taxi, or other passengers waiting for transit.

**§205-61. Reserved**

**§205-62. Reserved**

**§205-63. Reserved**

**§205-64. Reserved**

**§205-65. Reserved**

**Article VI**

**Conditions of Approval**

**§205-66. General Guidelines and Standards**

A. The purpose of conditions of approval the conditional use procedure is to provide for certain uses which cannot be well-adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These uses either have unusual characteristics or are generally of a public or semipublic character and are essential and desirable for general convenience and welfare, but because of the nature of the use, the importance of its relationship to the Comprehensive Plan, and possible impact, not only on

neighboring properties, but on a large section of the County, require the exercise of planning judgment on location and site plan. A conditional use should be approved only if it is found that the location is appropriate and not in conflict with the Comprehensive Plan; that the public health, safety and general welfare will not be adversely affected; that adequate off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property and persons and further, provided, that the additional standards of this article are complied with. Unless otherwise specified in this article or specified as a condition of approval, the height limits, yard spaces, lot area and sign requirements shall be the same as for other uses in the district in which the conditional use is located.

- B. Some of the uses contained herein are permitted by right but are subject to specific conditions while others are subject to the conditional use approval process. Refer to the Permitted Use Table in Article V to determine if a specific use is permitted by right or as a conditional use.
- C. The specific conditions contained herein shall be considered minimum requirements. The Levy Court and/or Regional Planning Commission may determine that additional or more stringent conditions are warranted due to the nature or location of the proposed use.
- D. The Levy Court and/or Regional Planning Commission may modify or waive any of the conditions included herein when it has been demonstrated that strict compliance with the requirements would result in extraordinary hardship to the applicant because of unusual topography or other conditions which are not self-imposed or that the conditions would result in inhibiting the achievement of the objectives of these regulations; provided, however, that such modification or waiver will not have the effect of nullifying the intent and purpose of this chapter or be contrary to the goals and objectives of the Comprehensive Plan for the County. Waivers may be requested prior to seeking approval of the conditional use or as part of the conditional use application review.
- E. General Conditions for all uses contained herein:
  - (1) All applicable federal, state, and local licenses and/or permits for the specific use must be obtained and kept current.
  - (2) Off-street parking is provided in accordance with requirements for the specific use and/or such other uses as may be proposed accessory to the primary use as listed in Article [XVII](#), Parking.
  - (3) Exterior lighting shall be shielded so that it is deflected away from adjacent properties and passing motorists.
  - (4) A solid fence, wall or landscape screen shall be erected along all property lines as required by §187-79.
  - (5) Signage for the use shall be consistent with the zoning district where the project is located as outline in Article XVIII.
  - (6) All requirements, regulations and recommendations submitted by any agency as part of the Quality of Life notification shall be considered.

- (7) All known safeguards shall be implemented to ensure the protection of the air, water and soil of Kent County from pollution and degradation of quality.
- (8) The reviewing body may impose any other appropriate or more stringent conditions it deems necessary to protect the health, safety and welfare of the neighborhood.

## **§205-67. Agricultural Uses**

### **A. Accessory Agricultural Dwellings**

1. Every owner of a bona fide farm of more than 10 acres and less than 50 acres shall be permitted to have one dwelling or manufactured home in addition to a principal residence located on said farm for the purpose of housing family members and/or farm workers employed on said farm.
2. Every owner of a bona fide farm of more than 50 acres shall be permitted to have no more than two dwellings or manufactured homes in addition to a principal residence located on said farm for the purpose of housing family members and/or farm workers employed on said farm.
3. Each accessory dwelling or manufactured home shall meet all setback requirements as required of principal dwellings.

### **B. Agricultural Manufacturing and Waste Services**

1. If located in AC or AR, to assure preservation of the agricultural character of the neighborhood, the activity shall be designed so that the appearance of the premises remains that of an agricultural area.
2. The operation shall be located at least 100 feet from the front property line, 200 feet from all other property lines and 500 feet from any dwelling located on an adjacent property.
3. All manufacturing and storage shall take place within a building
4. All noise and dust emissions shall be attenuated per the Occupational Safety and Health Act of 1970, and the Delaware Department of Natural Resources and Environmental Control Regulations.
5. Sanitary landfills have specific conditions listed in §205-172.B.5.
6. Septage processing and storage has specific conditions listed in §205-172.B.6.

### **C. Agricultural Support and Other Rural Services**

1. Any outside storage shall be screened from view from access streets and adjoining properties with a six-foot-high landscape, fencing, or berming buffer or a combination of such that meets the intent of this section.
2. All structures used as part of the service must meet the principal structure setbacks for the district, including if the use is located in a detached accessory structure.
3. All manufacturing and repair is conducted within a completely enclosed building.
4. All displays of products are set back behind the building setback line.
5. To assure preservation of the agricultural character of the neighborhood, the activity shall be designed so that the appearance of the premises remains that of an agricultural area.
6. Those uses which will provide retail sales to the public inside a building will require site plan approval over 5,000 sq. ft. of impervious area for the use. Other uses will fall under a full agricultural uses that will not require site plan.
7. Clam Shell Storage uses shall:

- a. Be located on a property of five (5) acres or more.
  - b. Approval by the applicable agency at DNREC shall be required.
8. Storage of Fishing and Crabbing Equipment uses shall:
- a. All equipment is stored in a neat and orderly fashion.
  - b. No washing or cleaning of equipment may occur in a location where the run-off impacts neighboring properties.
9. Farm Product Warehousing and Storage must be located on a Farm, as defined by this chapter.
10. Taxidermy Shops, Leather/Fur/Raw Hide Dressing, and Butcher Shops shall:
- a. Have adequate room to park and maneuver vehicles.
  - b. A waste management plan shall be submitted to show how animal waste will be properly disposed.

D. Agricultural Extractive Use (Level One Extractive Use)

1. The use must maintain the principal structure setbacks for the district for any part of the operation.
2. The following items must be provided for this use:
  - a. Letters of approval from DNREC, Delaware Department of Agriculture, DeIDOT, and Kent Conservation District.
  - b. Topographical map with two-foot contours indicating current elevation and proposed extractive depth limit.
  - c. No more than 10% (at one time or cumulatively) of the total farm acreage may be utilized for agricultural extractions.
  - d. Description of how the extractive material will be managed.

E. Blacksmiths

1. All operations are enclosed within a building,
2. Catalytic smoke scrubbers be installed on the forge exhaust,
3. Buildings are noise insulated/attenuated per United States Occupational Safety and Health Act of 1970.
4. All displays of products are set back behind the building setback line.
5. Any outside storage shall be screened from view from access streets and adjoining properties with a six-foot-high landscape, fencing, or berming buffer or a combination of such that meets the intent of this section.
6. All structures used as part of the service must meet the principal structure setbacks for the district, including if the use is located in a detached accessory structure.

F. Buggy Repair

1. All storage of vehicles shall be behind the building setback line.
2. Any fabrication of parts or repair activities shall take place within a building.

G. Commercial Kennel

1. All kennels and runs are located at least 100 feet from any adjoining property line and 300 feet from any dwelling not located on the subject parcel.
2. There will be twenty-four-hour security with a caretaker on duty at all times.



3. Any exterior lighting will be focused away from all adjacent properties.
4. Buildings are noise insulated/attenuated per United States Occupational Safety and Health Act of 1970 as amended.

H. Dog Grooming Establishment

1. There shall be no overnight boarding of animals, and there are no kennels on the property.

I. Farm Machinery/Equipment Repair, Service, and/or Sales

1. All repair and service must be within a completely enclosed building.
2. The minimum lot size required shall be 5 acres.
3. To assure preservation of the agricultural character of the neighborhood, the activity shall be designed so that the appearance of the premises remains that of an agricultural area.
4. Any outside storage shall be screened from view from access streets and adjoining properties with a fence not to exceed 7 feet in height or a landscape buffer. All materials stored within the area shall not exceed the height of the buffer.
5. No junk (as defined in this chapter) shall be stored on-site.
6. All structures used as part of the business must be located at least 100 ft. from all property lines.
7. In the AC and AR Zoning Districts:
  - a. The operation shall be conducted only between the hours of 7:00 a.m. and 8:00 p.m.
  - b. Vehicles that are licensed for over-the-road use shall be prohibited.
  - c. The retail sales and display of merchandise must be conducted in an enclosed structure not to exceed 2,500 square feet in total floor area.
  - d. If retail sales are included, the use must be accessed by a major roadway.

J. Farm Tenant Houses

1. The structures meet all provisions of the Delaware State Housing Code and regulations set forth by the Delaware Department of Health and Social Services.
2. They are clearly accessory to the principal farming use and are occupied solely by persons full-time, part-time, or seasonally employed by the owner of the premises.
3. Structures must comply with the currently adopted Kent County Building Code.

K. Farm Winery, brewery, or distillery, with accessory gift shop, meeting hall, retail sales, and tasting

1. This operation is permitted on a farm of 10 acres or more.
2. All processing must be within an enclosed structure.
3. The owner/operator shall be licensed by the State of Delaware Alcohol Beverage Control Board and Federal Bureau of Alcohol, Tobacco and Firearms.
4. To ensure the preservation of the agricultural character of the neighborhood, the winery/brewery/distillery and accessory structures shall be designed to maintain the appearance of the agricultural area.
5. The operation shall be conducted at least 100 feet from any property lines. These setbacks do not apply to the planted crops on the farm.
6. The retail sale of beverages and related goods are only permitted in an enclosed structure (gift shop), not larger than 1,500 square feet.
7. The meeting hall shall not exceed 5,000 square feet in area and shall allow the preparation of

food on premises.[Amended 5-8-2001 by Ord. No. 01-09]

8. Any outside storage shall be screened from view from access streets and adjoining properties with a six-foot-high screening buffer.

L. Hay, Grain, and Feed Stores

1. The building used for the shop must meet the normal principal structure setbacks for the zoning district.
2. There shall be no outside storage of any merchandise. Items can be displayed outdoors but only during the hours that the business is open and never within the front setback.

M. Riding clubs, commercial stables or horse training

1. Any buildings used for stables are distant at least 100 feet from any lot line and 300 feet from any dwelling not located on the subject parcel.

N. Roadside Stands

1. The stand and any storage and/or display of merchandise shall be set back not less than 15 feet from the street or road right-of-way.
2. An entrance-exit permit shall be obtained from the Delaware Department of Transportation.
3. The screening requirement of §205-66.E.(4) does not apply to this use.

O. Slaughterhouses

1. No slaughterhouse shall be located closer than 100 feet of any adjacent property line and 300 feet from any dwelling not located on the subject parcel.
2. All operations must be entirely inside a building.
3. Facility shall be in compliance with all appropriate Delaware Department of Natural Resources and Environmental Control Regulations.
4. No rendering of waste products shall be conducted on the premises.
5. If a stockyard is associated with the use, then it shall be completely fenced and the perimeter of the yard shall be set back at least 300 feet from all adjacent property lines.

P. Storage and sale of Agricultural Chemicals

1. The facilities are restricted to the storage and dispensing, but there shall be no manufacturing of chemicals on site.
2. The chemicals shall be stored not less than 100 feet from any property line, and not less than 200 feet from any dwelling not located on the subject parcel.
3. The chemicals shall be properly stored in appropriate containers.
4. The chemicals shall be used in accordance with United States Environmental Protection Agency regulations.

Q. Tack and Harness Shops

1. The building used for the shop must meet the normal principal structure setbacks for the zoning district.
2. There shall be no outside storage of any merchandise. Items can be displayed outdoors but only during the hours that the business is open and never within the front setback.

## §205-68. Residential Uses

### A. Accessory Dwelling Unit

1. The purpose and intent of the provisions concerning accessory dwelling units, which shall include accessory apartments and accessory cottages, is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units shall be permitted in accordance with the following criteria:
  - a. One dwelling unit on the property shall be owner-occupied. A notice and declaration of land use restriction to this effect shall be signed and recorded prior to issuance of a certificate of use and/or building permit for the accessory dwelling unit.
  - b. Two off-street parking spaces shall be provided for each dwelling unit.
  - c. Any request for an accessory dwelling unit shall conform to all provisions of the Delaware State Plumbing Code, and no dwelling unit that is served by an on-site wastewater disposal system shall be modified to create an accessory dwelling unit until a permit for such has been secured by the Department of Natural Resources and Environmental Control.
  - d. Outside stairways (either open or enclosed) that service accessory apartments on upper stories are permitted, provided that they are integrated into and consistent with the architecture of the building, as opposed to having a tacked on, obtrusive appearance.
  - e. Only one accessory dwelling unit (either apartment or cottage) shall be permitted per lot.
  - f. Outdoor kitchens as part of a legally constructed porch or patio shall not be considered an Accessory Dwelling Unit.
2. Accessory apartments.
  - a. The single-family dwelling unit shall have only one main entrance, and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted.
  - b. The floor area of an accessory apartment shall not exceed 40% of floor area of the single-family dwelling unit to which it is accessory. This floor area shall be exclusive of garages, porches, or unfinished basements.
  - c. If the accessory apartment is to be located within a basement, there shall be no size restriction. It may incorporate the entire available area of that basement.
  - d. Any exterior modifications to the single-family dwelling associated with the construction or installation of an accessory apartment shall be consistent with the architectural style of the single-family dwelling in terms of exterior materials, roof form, and window spacing.
  - e. Applications shall include:
    - (1) Full building plans for entire new structure or addition/renovation
    - (2) Separate floor layout of all finished levels
    - (3) Use of all rooms
    - (4) All entrances/exits
3. Accessory cottages
  - a. In no case shall a manufactured home be used as an accessory cottage.
  - b. The total size of a detached building must be consistent with the size limits of §205-24.D.

- c. An accessory cottage must be located on a lot having direct legal vehicular access onto a numbered state or county road.
- d. The maximum living area allowable in an accessory cottage is 800 sq. ft.
- e. If the cottage is solely located on the second story of a detached building, there shall be no size limitation. The second story is included in the square footage requirements listed in (b) above.
- f. For an accessory cottage which is a stand-alone structure or will be located within a new structure, building plan review shall be required with the application submittal to show compliance within this section. The exterior of the accessory cottage shall complement the exterior of the single-family dwelling.
- g. For an accessory cottage located within an existing garage or other outbuilding, any exterior modification should be consistent with the architectural style of the home and shall not change the appearance to that of a home.
- h. Accessory cottages shall comply with the accessory structure setbacks and lot coverage requirements for the respective zoning district.
- i. Applications for accessory dwelling units shall also include:
  - (1) Full building plans for entire new structure or addition/renovation
  - (2) Separate floor layout of all finished levels
  - (3) Use of all rooms
  - (4) All entrances/exits

B. Apartments (multifamily)

- 1. There is at least 600 square feet of living space within each unit.
- 2. There is at least 2,000 square feet of lot area per each dwelling unit.

C. ECHO Housing

- 1. Purpose.
  - a. To permit adult children to provide small temporary residences for their aging parents who are in need of support, while maintaining as much of the independence of the two generations as possible.
  - b. To reduce the degree to which frail elderly homeowners have to choose between increasing isolation in their own homes and institutionalization in nursing homes.
  - c. To develop housing types in single-family neighborhoods that are appropriate for households at a variety of stages in the life cycle.
  - d. To permit ECHO housing in a manner that protects the property values and single-family character of neighborhoods by ensuring that the units are compatible with the neighborhood and are easily removed.
- 2. Conditions for approval of ECHO units. The following conditions must be met in order for an administrative approval of an ECHO housing unit:
  - a. Size of unit
    - (1) Maximum area: Equal to living square footage of principal dwelling or 1,200 square feet, whichever is less.
    - (2) Maximum height: 16 feet or one story.
  - b. Lot coverage by ECHO unit.

- (1) Addition of ECHO may increase allowable impervious coverage up to 5% during the time that ECHO is onsite. At time of application, lot must not exceed the allowable impervious coverage – not including the additional 5% - so that when the ECHO is removed, coverage on property is still in compliance. When ECHO is removed, allowable coverage reverts back to maximum limit based on zoning.
- c. Placement of ECHO unit on lot.
    - (1) ECHO unit should be placed so that yard space remains as usable as possible.
    - (2) Access must be provided to the ECHO unit without going through principal residence.
    - (3) Walls of the ECHO unit containing large windows should not be placed near lot lines or overlooking abutting property.
  - d. Removability.
    - (1) ECHO units are for a temporary placement only and cannot be made permanent. The unit must be removed within 180 days after Qualifying Relative no longer needs assistance. (death, nursing home, move offsite)
    - (2) The ECHO may not be built on site and must meet the construction standards of a manufactured home. (National Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426))
    - (3) The unit's foundation should be of easily removable materials such as timber pilings or cement block piers, so that the lot may be restored to its original use after removal, with as little expense as possible.
    - (4) No permanent fencing, walls or other structures should be installed that will hinder removal of the ECHO unit from the lot.
  - e. Occupancy.
    - (1) The owner(s) of the principal residence and lot must live in one of the dwelling units on the lot for as long as the ECHO remains.
    - (2) At least one occupant of the principal residence and at least one occupant of the ECHO unit must be related by blood, marriage or legal adoption and shall be limited to a son or daughter or lineal descendant, antecedent, or sibling.
    - (3) In no case shall there be more than two occupants of an ECHO unit.
    - (4) At least one occupant of the ECHO unit must be over 62 and unable to live independently..
  - f. Parking. Adequate off-street parking must be provided for any vehicles owned by occupants of the ECHO unit. The number of spaces required will be determined on a case-by-case basis by the Director of Planning Services, taking into account existing parking availability.
  - g. Access.
    - (1) All walkways from parking areas and the principal residence to the ECHO unit should be suitable for wheelchair and stretcher access, as determined by the Director of Planning Services.
    - (2) The ECHO unit and the principal dwelling must share a driveway entrance from the road that is used for legal access to the property.
  - h. Compatibility. The exterior of the ECHO should complement the exterior of the primary residence and blend in with the community. ECHOs are required to be fitted with temporary skirting that may be easily removed.

- i. Setback. ECHO units shall meet the minimum side and rear setbacks required for a principal structure within the zoning district in which it is located. ECHO units may not be placed closer to the public street right-of-way than the rear elevation of the main dwelling. If located on a corner lot, the ECHO may not be closer to that side road frontage than the closest point of the main dwelling.
  - j. General.
    - (1) ECHO Housing is a temporary accessory dwelling unit (ADU). Only one ADU is permitted per parcel. Any property with an existing ADU does not qualify for an ECHO.
    - (2) ECHO Housing is meant to share utility hookups with the principal residence. No new permanent, lasting utility installations may be added for an ECHO. If a second septic/well already exists onsite, it may be used for an ECHO, but a new septic/well may not be added for the sole purpose of adding a temporary ECHO unit.
    - (3) Other appropriate or more stringent conditions may be added where deemed necessary by the Director of Planning Services to protect public health, safety and welfare, and the single-family character of the neighborhood.
3. Applications for ECHO units shall also include:
- a. Names of all owners of record and proposed occupants of the ECHO unit. If owner of record is to inhabit the ECHO unit, then Names of Qualified Relative and any additional ECHO occupant, if applicable.
  - b. Addresses and contact information of same
  - c. Proof of age must be in the form of a birth certificate or State-issued I.D.
  - d. Relationship of occupant(s) to owner(s) and agreement that occupant(s) will meet the eligibility standards
  - e. Square footage of ECHO unit and principal residence
  - f. Where private water and/or sewage systems will be used the applicant must provide approval from the Delaware Department of Natural Resources and Environmental Control to add capacity on existing septic and/or well, or provide LONO from Public Works if on County Sewer. If second septic/well already exists onsite, it may be used for ECHO, but a new septic/well may not be added for the sole purpose of adding a temporary ECHO unit.
  - g. Proof of ownership of the ECHO unit must be provided. This satisfactory proof includes a copy of a document confirming ownership of the ECHO unit, such as a Bill of Sale or title, that shall include at a minimum the serial number or VIN.
  - h. Agreement to special conditions. A property owner must agree to the following conditions as part of the application process and prior to any building permit being issued. These conditions shall include:
    - (1) Verification that the installation, use and occupancy of the ECHO unit meets the conditions set by the Director of Planning Services.

- (2) Recognition that if a building permit expires, is revoked or invalidated, application for renewal or for a new permit must be made.
- (3) Acknowledgment that when the elderly residents of the ECHO unit cease living the ECHO unit must be removed within 180 days.
- (4) Acknowledgment that the ECHO unit must be removed prior to the sale of the property, unless a new ECHO application is approved to allow the use of the ECHO unit by the prospective buyer.
- (5) Acknowledgment that if the unit is not removed within 180 days, the County may remove the unit and salvage the structure to defray any costs incurred.
- (6) The Director of Planning Services may require additional conditions if deemed to be necessary.

B. Group Home (other than for the care of the disabled or elderly)

1. The lot on which the group home is proposed shall not be located within 500 feet of a lot on which another group home is located.
2. All required state licenses and permits for such a facility shall be obtained prior to the issuance of a Certificate of Occupancy for said use and shall be maintained as current throughout the period of such usage as a group home.
3. Off-street parking shall be provided at a rate of one (1) parking space per two sleeping rooms within the dwelling.
4. Floor plans and a plot plan shall be submitted with the application.
5. No alteration, addition, or other structural change to the interior or the exterior of any single-family building in which a group home is proposed to be located shall be permitted if such alteration, addition, or other structural change would alter the essential single-family character of the building.

C. Home based Contractor Establishment

1. The subject property shall be the primary residence of the owner of the home-based contractor business and shall remain the primary residence of the owner of the business for the entire length of time that the business exists on the subject property.
2. Approval of a home-based contractor establishment shall be location-specific and shall not be transferable to another location.
3. Approval of a home-based contractor establishment shall be applicant/owner-specific and shall not be transferred or conveyed to another person without reapproval.
4. Except for vehicles already permitted by the parking regulations of Chapter 205, Zoning, all other vehicles and construction equipment shall be stored within a building.
5. Retail sale of goods and products shall be prohibited on the premises.
6. Outdoor storage of all equipment, materials, and commercial vehicles, as defined by this chapter, is prohibited.
7. The hours of operation shall be limited to 7:00 a.m. to 9:00 p.m. unless further restricted by the reviewing body

8. Accessory buildings planned to house a home-based contractor establishment use under this provision shall not be subject to the floor area limitations for residential accessory structures, provided that the applicant demonstrates to the satisfaction of the Levy Court that:
  - a. The proposed accessory structure would not be out of character with the surrounding area;
  - b. The accessory structure shall be set back from the public street right-of-way a minimum distance equivalent to the requirements for accessory structures from §205-85.A.
  - c. The proposed accessory structure shall be set back 15 feet from all side and rear lot lines unless a larger setback distance is specified by Levy Court through the conditional use process.
  - d. The aggregate floor area within accessory buildings on the premises is no greater than 5% (lot area x .05 = maximum aggregate accessory building floor area) of the lot area, and in no case in excess of 10,000 square feet.
9. An attached garage may be used for the home-based contractor's establishment; however, the garage size shall be limited to 40% of the total square footage of the dwelling unit. The size shall be based on the definition of floor area in this chapter.

D. Home Occupation (including family child care homes)

1. The owner/operator shall secure a zoning certificate of use for a home occupation from the Department of Planning Services, Division of Planning. The dwelling shall be the bona fide residence of the operator of the occupation.
2. The use shall not change the character of the dwelling unit or residential premise nor have any exterior evidence other than an identification sign as provided for in Article XVIII.
3. In the RS1, RS5 and RMH Districts, floor area developed to such use shall not exceed 25% of the dwelling unit (except licensed family day-care homes); if the occupation is located in a detached accessory structure, floor area shall be limited to 100% of the existing structure or 500 square feet, whichever is less. An accessory structure attached to the principal dwelling will be considered part of the dwelling for floor area calculations.
4. In the AC and AR Districts, floor area devoted to such use shall not exceed 25% of the dwelling unit (except licensed family day-care homes); if the occupation is located in a detached accessory structure, floor area shall be limited to 2,500 square feet, with up to an additional 1,000 square feet used for storage only. An accessory structure attached to the principal dwelling will be considered part of the dwelling floor area calculations.
5. If the home occupation is conducted in an accessory structure, the structure shall be located a minimum of 15 feet from the side and rear property lines.
6. There shall be no person engaged or employed other than members of the household residing on the premises.
7. Only equipment and facilities that are similar in nature, type and power to what would generally be used for domestic or household purposes shall be permitted.
8. The use of property shall not change the general character of the neighborhood.
9. The occupation shall create no noise, traffic, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any extent greater or more frequent than that usually experienced for an average residential use in the district wherein located.
10. The need for parking generated by such use shall be provided off street. There shall be two spaces required for the home occupation in addition to the spaces required for the residential



use.

11. Stock in trade, outdoor or open air storage, and storage or keeping of service vehicles on the premises shall be prohibited, except for what is permitted within the zoning district in which the use is located. Any enclosed storage shall be considered included as part of the total permitted square footage.
12. Sale or rental of goods, other than those produced on the premises by the home occupation, shall be prohibited.
13. Personal service activities such as beauty shops, barber shops and hairdressing establishments shall serve one client at a time, be limited to one chair and have only one operator who is a member of the household residing on the premises.
14. Wholesale auto sale offices shall maintain compliance with all applicable State of Delaware, Division of Motor Vehicles requirements. No storage of vehicles bought or sold as part of this use may be parked on the site.

#### E. Home Office

1. The owner/operator shall secure a zoning certificate of use for a home office from the Department of Planning Services, Division of Planning.
2. The dwelling shall be the bona fide residence of the practitioner of the business.
3. The use shall not change the character of the dwelling unit or residential premise nor have any exterior evidence. No signage is permitted as part of this use.
4. There shall be no increase in the amount of traffic coming to the site. The number of deliveries for the office shall be customary and typical of what would generally be experienced for a residential use.
5. The office shall have no employees and no customers or clients can visit the subject site.
6. No outdoor storage or display can occur as part of this use.
7. The use must be operated entirely indoors.
8. There shall be no increase in the use of any one or more utilities (water, sewer, electricity, telephone, refuse, etc.) to the extent that the combined total use for the office and dwelling exceeds that for an average residential use in the area.
9. The home office use shall create no noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any extent greater or more frequent than that usually experienced for an average residential use in the district where located.

#### F. Professional Office

1. The owner/operator shall secure a zoning certificate of use for a professional office from the Department of Planning Services, Division of Planning.
2. Such use shall be conducted entirely within a dwelling which is the bona fide residence of the principal practitioner, or in a detached accessory structure.
3. No detached accessory structure shall be used for a professional office unless it meets a 15 foot setback from the side and rear property lines and complies with the front setback of the zoning district.
4. Not more than 45% of the total floor area of the dwelling shall be devoted to office use; such use shall not alter the residential character or appearance of the dwelling or premise. If an accessory structure is used for a professional office, the square footage devoted to office use shall not

exceed 45% of the floor area of the principal dwelling.

5. There shall be no increase in the use of any one or more utilities (water, sewer, electricity, telephone, refuse, etc.) to the extent that the combined total use for the office and dwelling exceeds that for an average residential use in the area.
6. The professional office use shall create no noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any extent greater or more frequent than that usually experienced for an average residential use in the district where located.
7. Medical facilities shall have no more than two nonprofessional nonresidents employed to assist the principal practitioner. Nonmedical facilities shall have no more than one nonresident employed.
8. There shall be no display of as-bought goods or advertising of services on/from the premises, and the only exterior evidence of the use shall be an exterior sign as provided in Article **XVIII**.
9. The need for parking generated by such use shall be provided at one space per 200 square feet of use, located off-street, and in addition to the spaces required for the residential use.
10. The sale of goods not produced on the premises shall be prohibited.

G. (PUD) Planned unit development

1. The minimum development is proposed for a tract of at least 20 acres.
2. The maximum density of the zoning district in which the proposed PUD is located may be increased by up to 1.0 additional unit per acre if the following conditions are met:
  - a. Alleys are provided for all residential units except apartments.
  - b. Considerable consideration shall be given to public space. A space designed as a "focal point" for the community must be included. To promote walkability there shall be public open space provided around the community wherein there shall be no residential use that is further than ¼ mile from an area. Active open space shall be provided to be consistent with 187-66.
  - c. Architectural or urban design elements which link adjacent structures together, such as plazas, walkways, colonnades, or similar features shall be incorporated.
  - d. Sidewalks must be provided on both sides of all streets. Connections must continue to any non-residential use that is designed as part of the project. In all cases, sidewalks or other improved pedestrian pathways shall be installed to provide linkages to surrounding properties (whether improved or vacant).
  - e. Trees shall be planted in nonwoodland areas at a rate of one tree per 3,000 square feet of land area developed. For purposes of this subsection, the "land area developed" shall mean that nonwoodland portion of the site which is situated within the limits of disturbance as defined on the development plan. 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.
  - f. To promote a distinctive character of this community a build-to line shall be required instead of a building setback line. Commercial buildings shall be built no further than 10 feet off the required sidewalk along an interior road and 25 feet along a county road. Residential buildings shall be built no further than 20 feet off the sidewalk.

g. Architectural Design Standards:

- (1) Developments should be designed with architectural diversity and character in mind to provide a high level of design quality in the built environment.
  - (2) Large expanses of blank walls are to be avoided. The public facade shall incorporate windows and primary doorway entrances along the street frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.
  - (3) Proposed buildings on corner properties should reflect a public facade on both street frontages.
  - (4) 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. In addition, the buildings proportion, mass, and scale shall be considered in the project's concept.
  - (5) The building design should include variation in exterior architectural materials, vertical and horizontal relief in buildings, variation in house styles, and inclusion of front porches, projecting bays, vestibules.
  - (6) Single-family attached dwelling units containing more than two units in a row shall have facades, which alternate siding styles and patterns to provide visual distinction to each unit and be offset by at least three feet per unit in order to provide architectural relief.
  - (7) No more than six attached dwelling units in a row are permitted.
  - (8) Multifamily structures shall have a consistent proportion of window and door openings, provide at least two vertical off-sets for each of the long sides of each building equivalent to at least one-third of the long side building façade, incorporate horizontal elements such as masonry band courses, lintels, balcony projections, projecting eaves and cornices, and have an exterior that includes at least 30% masonry brick.
  - (9) Non-residential buildings shall meet the follow rules:
    - (a) Blank walls without functioning windows are prohibited. 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. Providing one or several small windows on a large elevation shall not constitute compliance with this section.
    - (b) The buildings shall have a primary entrance feature, such as a porch, portico, awning, or entrance walk.
    - (c) Landscaping integrated into the building design concept.
    - (d) 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.
3. Public utilities, including a public water supply and sewage disposal systems, must be utilized.
  4. In the AC, AR, RS1 and RMH Zoning Districts, at least 40% of the proposed housing units shall be single-family detached units. In all districts at least 2 distinct housing types shall be provided. If single-family detached units are proposed, at least 2 additional types shall be required.

5. Cluster subdivisions may also be created as part of a planned unit development, subject to all the requirements of Article XIX.
6. The submitted conceptual plan shall include the number and type of proposed housing units, the proposed site design, the proposed density, proposed types of utilities, general locations of specified housing space, community and commercial buildings as well as a designer's conceptual architectural drawing of the project.
7. 5% of the gross land area of the site may be devoted to commercial uses as long as the following conditions are met:
  - a. Convenient bicycle racks shall be provided at all commercial areas.
8. There may be one wall mount sign for each professional using the building, each sign not to exceed 10% of the building's façade. Only one detached sign may be allowed for the entire project and shall be no larger than 48 sq. ft. and taller than eight feet from grade.
9. Off-street parking is provided in accordance with requirements for each proposed use in Article XVII, Parking.
10. Parking shall not be located in front of any commercial building unless it is located on a corner, then one side of the building can have parking located in the front.
11. Buffering must be provided between the non-residential uses and residential uses, both on the subject site and on adjacent properties.
12. A minimum of 5% 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.
13. Following conditional approval of a PUD, the plan must be submitted and reviewed following procedures and regulations as specified in the Kent County Subdivision Ordinance. Construction may begin only after the final subdivision plan is approved and recorded in the Kent County Recorder of Deeds office.
14. In approving a PUD and accompanying final subdivision site plan, the Planning Commission shall recommend, and the governing body shall adopt, a schedule of construction. No permits for construction shall be issued except in accordance with an adopted schedule. In the case of mixed dwelling types, the schedule shall require that lower-density dwellings and higher-density dwellings be constructed concurrently. Where nonresidential uses are a part of the development, the schedule may require that a minimum percentage of residential construction be completed before construction on nonresidential uses is started.

#### H. Short Term Rentals

1. The structure rented must be a legal residential unit in the zoning district either as the principal dwelling, a room or area within said dwelling, or an approved accessory dwelling unit. In no case shall an ECHO unit, tent, RV, or travel trailer be used as a short term rental.
2. The primary unit shall remain owner occupied, unless the property is 5 acres or more.
3. Trash service requested from the property cannot be increased as part of this use.
4. A Short Term Rental cannot be located within 500 ft. of another short term rental.
5. No more than one listing can occur per property and must be habitable space as defined by this chapter.
6. The parking requirements in §205-226 for the residential dwelling must still be met with one (1) additional parking space required for the short term rental. These parking spaces must be

provided off street.

I. Temporary Emergency Residence

1. When a legal conforming or legal nonconforming dwelling has been damaged or destroyed by fire, wind, flood or other catastrophe to the extent that it is no longer habitable, the occupant of said dwelling may apply to the Division Head of Inspections and Enforcement for permission to place a temporary shelter for residential occupancy on the same lot occupied by the damaged or destroyed dwelling.
2. Location:
  - a. The temporary shelter shall be located on the same lot as a residence made uninhabitable by fire, flood or other natural disaster and occupied by the persons displaced by such disaster; or
  - b. Must be located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed; or
  - c. Must be located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site.
3. Application shall be made in writing on forms provided by the Division Head of Inspections and Enforcement and, among other things, shall include the nature and extent of the damages sustained, the type and size of temporary shelter and its location on the property, the location, size and area of the property and the source and nature of support utilities.
4. Upon receipt of a complete written application, the Division Head of Inspections and Enforcement shall:
  - a. Inspect the site within 24 hours.
  - b. Determine whether provision can be made for domestic water supply and wastewater discharge in accordance with existing County and state regulations.
  - c. Determine whether the property is large enough to accommodate the proposed temporary shelter.
  - d. Within 72 hours of receipt of a complete written application, the Division Head of Inspections and Enforcement shall make a determination whether or not to approve the application. The Division Head of Inspections and Enforcement shall have the authority to establish reasonable conditions to assure the health, safety and welfare of the applicant as well as adjacent property owners. These conditions shall be stated in writing to the applicant. Failure by the applicant to comply with these conditions shall void approval of the application

**§205-69. Institutional Uses**

A. Colleges

1. The principal access shall be by means of a numbered state or county road.

B. Institutional, Neighborhood and Regional, to include Assembly and Worship

1. All applicable state and local licenses and permits for such use have been attained.
2. The principal access shall be by means of a numbered state or county road.
3. For Day care centers the following rules apply:

- a. Outdoor play area per child shall be provided in accordance with the current regulations provided by the state department of childcare licensing, and the outdoor area shall be fenced or otherwise enclosed on all sides at a minimum of four feet high, and shall be completely separate from the parking area and also be suitable for children's active play use.
  - b. At least one parking space per adult attendant and one space per 10 children shall be provided in close proximity to the facility's entrance, and a circular or "t" drive shall be provided to permit safe ingress and egress from the site.
4. For Funeral Establishments the following rules apply:
- a. Accessory private garage space shall be provided on the lot to accommodate all vehicles used in the business and housed on the site.
  - b. A loading berth shall be provided for each 5,000 square feet of gross floor area or fraction thereof.
  - c. A landscaped screen a minimum of 10 feet in width shall be provided along rear and side lot lines contiguous to residentially zoned lots.
5. For cemeteries the following rules apply:
- a. Adequate space for the parking and maneuvering of funeral entourages shall be provided on the site.
  - b. No interment shall be permitted within 30 feet of any adjoining lot line.
6. Storage and/or display of merchandise shall be setback behind the building setback line.
- C. Institutional, Residential
1. No building so used shall be within 50 feet of any lot line.
  2. Such use is located on a lot of at least 10,000 square feet.
  3. On-site septic system to be sized for maximum occupancy.
  4. The structure must be in conformance with the Delaware State Housing Code.
- D. Hospitals
1. The principal access shall be by means of a major road.
- E. Protective Care
1. Adult or juvenile prisons, correctional institutions, reformatories and detention facilities are not permitted unless operated and administered by the County, a department or agency of the state or federal government or a private agency approved by and under contract with the State of Delaware or the appropriate agency or subdivision thereof.
  2. All protective care facilities shall have an emergency plan filed with the police, emergency services, and disaster and emergency agencies indicating that these facilities have plans to protect the adjoining communities.
  3. The facilities shall maintain a 500 foot setback from residential properties.
- F. Schools
1. The principal access shall be by means of a numbered state road.
  2. They are located so that they are not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions.
  3. The use is reasonably necessary or convenient to the neighborhood which it is proposed to serve.

4. On-site septic system shall be sized for maximum occupancy.

G. Emergency Shelter Facility

1. The lot on which a emergency shelter facility is located shall not be within 500 feet of a lot on which another emergency shelter facility or group home is located.
2. All state licenses and permits for such a facility have been obtained.
3. Septic system shall be sized to accommodate maximum occupancy.
4. No alteration, addition or other structural change to the exterior of any single-family building in which a temporary shelter facility is, or is proposed to be, located shall be permitted if such alterations, addition or other structural change would alter the essential single-family character of the building.

**§205-70. Recreation and Open Space**

A. Campgrounds

1. The lot for such a use shall be at least five acres in area.
2. The proposed water supply system and wastewater disposal system shall have been approved by the State Department of Natural Resources and Environmental Control.
3. All campsites, mobile homes and recreational vehicle sites shall be located at least 50 feet from all adjoining property lines.
4. Off-street parking is provided for any ancillary commercial or food/beverage service use in accordance with requirements for such uses in Article XVII, Parking.

B. Commercial Recreation (High Intensity Recreation)

1. Adequate screening is provided to shield adjacent properties from the glare of headlights.
2. It shall have frontage on a numbered state road.
3. Any outdoor firearms range is located at least 500 feet from any adjoining property line.
4. All improvements for the use are set back at least a distance equal to the principal structure setbacks for the district from all adjoining property lines.

C. Racetrack (Motorsports)

1. It shall have frontage on a major roadway.
2. No stables shall be located within 100 feet of any adjoining property line.
3. All licenses for operation of a racetrack have been obtained from the State Racing Commission.
4. All racing facilities including track and grandstands shall be setback a minimum of 100 feet from all property lines.
5. All lighting shall be downward directed so as not to negatively impact adjacent properties.
6. For motorsport uses, the following additional conditions shall also be satisfied:
  - a. Screening shall be provided along all property lines adjacent to the use. At minimum such screening shall consist of a 50 foot wide planted buffer and berm of sufficient opacity and height to achieve a substantial visual barrier as well as mitigate noise and dust.
  - b. Days and hours of operation shall be determined through the conditional use process.
  - c. The vehicles used in competition shall all contain noise dampening devices (mufflers).

Activities of this use shall be in compliance with Chapter 161, Noise of the Kent County Code.

- d. Adequate dust suppression measures shall be required to prevent the encroachment of dust onto adjoining properties. For facilities utilizing a dirt racing surface, suppression should include, but is not limited to, surface preparation using low dust producing materials and the timely application of water to the racing surface.

## **§205-71. Commercial Uses**

### **A. Adult Entertainment Establishments**

1. No such adult entertainment establishment shall be allowed within 1,500 feet of another existing adult entertainment establishment.
2. No such adult entertainment establishment shall be located within 2,800 feet of an existing school or place of worship.
3. No such adult entertainment establishment shall be located within 500 feet of the following zoning districts: AC, AR, RS1, RS5, RMH and RM.

### **B. Auction facilities**

1. In the event that the facilities are not enclosed within a building, the hours of operation shall be restricted to daylight hours (dawn to dusk).
2. No open or unenclosed storage of goods shall be permitted without proper visual screening consistent with the provisions of Chapter 187, Subdivision and Land Development.

### **C. Banquet or Gathering Facility.**

1. Any building, structure, or established area must be at least 75' from any adjoining lot line.
2. The minimum lot size for this use is 5 acres in the AC or AR district.
3. Parking must be provided off street at the rate required for a public assembly meeting establishment and must be screened from adjoining land uses by hedges and canopy trees.
4. The building or structure used for public assembly must be built to commercial standards of the most recently adopted IBC.

### **D. Bed & Breakfast/Commercial Hunting Lodge**

1. Parking must be provided off street and screened from adjoining land uses by hedges and canopy trees.

### **E. Contractors Establishments, Utilities (maintenance facilities), and Outdoor Storage**

1. All structures shall be set back at least 50 feet from any residentially zoned lot lines.
2. All fabricating and/or manufacturing shall take place within a building.
3. All outdoor storage visible from access streets and adjacent properties shall be screened from view or organized in an orderly manner on permanent racks, pads or other fixtures, and any equipment used to handle materials shall be stored within a building constructed for that purpose.
4. No storage of equipment or materials shall be stored within the front yard setback, in a parking or loading area or within 10 feet of a lot line.
5. Safety fences greater than four feet in height, but no more than seven feet in height, shall be



permitted in a required front or side setback, provided that the safety fence will be constructed of materials or in a manner which will not obstruct vision either from the primary structure or from any roadway, entrance or driveway.

#### F. Drive Through Facility

1. The drive through lane shall be setback 40 ft. from any residential lot line.
2. The entrance to the stacking lane shall not be oriented onto a public street and shall be integrated into the on-site circulation pattern.
3. Administrative site plan review will be required if the proposed use does not meet the requirements for formal site plan review.
4. The drive through lane queue length must meet the following minimum standards. Unless otherwise noted, the distance can be met in one lane or divided based on the number of total lanes provided. Measurement shall begin at the center of the last window or machine used for the service.
  - a. Standalone ATM, Car Wash at Gas Station or Dry Cleaners – 60 ft.
  - b. Pharmacies, Banks, Oil Change facilities or standalone Car Wash – 120 ft.
  - c. Restaurant, Fast Food, or Coffee Shop – 180 ft.

#### G. Gas Stations

1. The lot shall be located on a state road.
2. Gas pumps shall be located 50 from all front property lines and behind all other building setback lines. All state and/or local licenses or permits for such use have been obtained, and the pumps are installed so as to meet the requirements of the Fire Prevention Code of the National Board of Fire Underwriters.
3. Washing facilities shall be entirely enclosed within buildings and water disposal shall be in accordance with Delaware Department of Natural Resources and Environmental Control Regulation.
4. A solid fence, wall or landscape screen, a minimum of six feet in height, shall be erected along all property lines separating the site from any lot zoned for residential use.

#### H. Mini Storage/Warehousing

1. Mini-warehouse developments shall be limited to dead storage use only and no activity other than storage shall be permitted within a storage unit.
2. Except for recreational vehicle and boat storage, all storage on the property shall be within a completely enclosed building.
3. No activities, such as miscellaneous or garage sales, shall be conducted on the premises by any individual or group which leases storage space at the facility.
4. The servicing or repair of motor vehicles, boats, trailers, lawn mowers and other similar equipment shall not be conducted on the premises.
5. A mini-warehouse shall not be operated as part of a transfer and storage business where use of vehicles by the operator is part of such business.
6. The operator shall keep the premises free of trash and debris at all times.
7. Security fencing and screening or security walls shall be required around the perimeter of the project, said fence or wall to be not less than seven feet in height and constructed of finished

masonry or durable metal protected from corrosion.

8. All driveways, parking, loading and vehicle circulation areas shall be hard compacted dust free surfaces or paved with concrete, asphalt or asphaltic concrete.
9. All operation and use of the facility shall be in accordance with all applicable codes and regulations.
10. The operator and/or owner shall be responsible for controlling access to the site and to individual storage units.
11. Off-street parking shall be provided in the following ratio:
  - a. One space for each employee; and
  - b. One space for every 25 storage units, with adequate provision for transfer of goods from parking areas to storage units.

I. Heavy Commercial

1. There is no storage of dismantled automobiles and/or mobile homes (auto graveyard).
2. Outdoor storage of spoiled product is prohibited.
3. All manufacturing and repair is conducted within a completely enclosed building.
4. All display and storage of products are set back behind the front building setback line for the district.
5. All building or other structures are set back from any residentially zoned property line at least 50 feet.
6. All outdoor storage visible from access streets and adjacent properties shall be screened from view or organized in an orderly manner on permanent racks, pads or other fixtures, and any equipment used to handle materials shall be stored within a building constructed for that purpose.
7. Buildings shall be noise insulated/attenuated per the Occupational Safety and Health Act.

J. Motor Vehicle Sales, Service, Storage, Rental, and Repair

1. The lot shall be located on a state road.
2. The operation shall be conducted at least 20 feet from any adjacent property line.
3. The minimum distance of any building from a residential district or residential property line shall be 50 feet.
4. Hydraulic hoists, pits and all lubricating, greasing, washing and repair facilities shall be entirely enclosed within buildings, in accordance with Delaware Department of Natural Resources and Environmental Control Regulation.
5. A solid fence, wall or landscape screen, a minimum of six feet in height, shall be erected along all property lines separating the site from any lot zoned for residential use.
6. Buildings used for service shall be noise insulated/attenuated per the Occupational Safety and Health Act of 1970.
7. Vehicles shall be stored in a neat and orderly fashion with adequate separation distance and drive aisles. The vehicles may only be stored in double rows and may not be "blocked" by other stored vehicles or structures. After each head-to-head row a drive aisled sized per Article XXVII Parking must be provided.
8. No salvage of used parts shall be conducted on-site.
9. No junk shall be stored on site.

10. No sales or rental shall be permitted in the IL or IG districts.

K. Mixed Use

1. These uses must be in the Growth Zone Overlay District and on central water and central sewer.
2. The residential housing types permitted shall be apartments or multiplexes that have a commercial component integrated into the structure. No standalone residential units shall be allowed.
3. Bicycle parking must be provided on the site. At least one standard rack must be incorporated into the design. Indoor storage may be used within the apartment area, but an outdoor parking rack must still be provided for the commercial uses.
4. To promote a distinctive character of this community, a build-to line shall be required instead of a building setback line. Buildings shall not be placed behind the build to line.
5. Parking shall not be located in front of any commercial building unless it is located on a corner, then one side of the building can have parking located in the front that meets the required parking setback.
6. There shall be substantial consideration given to public space within the development. A space designed as a “focal point” for the community must be included. This may include things like a fountain, public art, unique landscaping, bandstand, or similar feature that encourage citizens to gather. Seating in the form of benches or tables must be provided around this space. Refuse containers shall also be provided. Full cut-off lighting shall also be provided throughout this space.
7. To promote walkability there shall be public open space provided around the community wherein there shall be no residential use that is further than ¼ mile from an area.
8. To promote alternative modes of transportation, sidewalks must be provided on both sides of all streets, along the county road frontage of the parcel, and along the frontages of all non-residential buildings. In all cases, sidewalks or other improved pedestrian pathways shall be installed to provide linkages to surrounding properties (whether improved or vacant).
9. There may be one wall mount sign for each business using the building, each sign not to exceed 10% of the building’s façade. Only one detached sign advertising the project may be built. If an alternate signage concept is proposed for the project, the mixed use application may also include a comprehensive signage plan for review as part of this application. That plan shall follow the provisions of §205-231.1.
10. Permitted non-residential uses shall be limited to those that support the local community such as retail, professional offices, restaurants, local services, and studios. Live-work opportunities are highly encouraged.
11. Architectural design of buildings
  - a. 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.
  - b. In designing new buildings, consideration should be given to the dominant architectural features of existing buildings in the immediate vicinity, as applicable. Existing architecture should be utilized as a frame of reference for proposed architecture, but should not be the sole design template in every instance.

- c. Large expanses of blank walls are to be avoided. The public facade shall incorporate windows and primary doorway entrances along the street frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.
- d. The design 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.
- e. 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.
- f. 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 section.
- g. 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.
- h. 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.

12. The following are the bulk and area requirements for such projects:

	RM Zoning Districts	BN and OC Zoning Districts	BG Zoning District
Minimum Lot Area	2 acres	4 acres	2 acres
Front Build To Line	30 ft.	40 ft.	30 ft.

Side Setback	30 ft.	20 ft.	30 ft.
Rear Setback	20 ft.	20 ft.	20 ft.
Maximum Impervious Cover	80%	75%	80%
Maximum Height	3 floors	3 floors	4 floors
Minimum Road Frontage	150 ft.	200 ft.	150 ft.
Active Recreation Area	500 sq. ft. per dwelling unit	400 sq. ft. per dwelling unit	300 sq. ft. per dwelling unit
Passive Open Space	Up to 25% of total dwelling unit floor area may be required	Up to 20% of total dwelling unit floor area may be required	Up to 15% of total dwelling unit floor area may be required

13. Parking shall be provided in accordance with Article XVII, Parking

14. Unless otherwise provided, mixed use developments shall be subject to the design and required improvement requirements included within Chapter 187, Subdivision and Land Development.

L. Regional Shopping Center

1. An architectural review of the proposed buildings and signage shall be required. Architectural renderings of proposed buildings and signage shall be submitted with the preliminary site plan.
2. If multiple lots are proposed as part of the development plan, a separate subdivision application is not required. The site plan may be recorded with all required parcel data to create the parcels. Adequate road frontage for the district must be maintained for each parcel either by public or private streets.

M. Sports Medicine Facility

1. No building so used shall be within 50 feet of any lot line.

**§205-72. Industrial Uses**

A. Extractive Uses

1. Purpose. The purpose of this section is to regulate sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials (hereinafter referred to as "borrow"). "Extractive use" is defined as the surface and subsurface mining/excavation of borrow materials. This Kent County ordinance does not supersede or replace any State of Delaware and/or federal regulations that may be applicable to any of the three levels of extraction regulated by this section.

2. Exemptions. The following activities are exempt from the provisions of this section.
  - a. Excavations whose sole purpose is to determine the nature or extent of mineral resources. It is accomplished by hand sampling, test boring, or other methods which create minimal disturbance. Test holes shall be filled in immediately after use.
  - b. The removal of sand, gravel or loam from a site is an exempt activity if it is undertaken as part of an approved on-site construction project and is within the footprint of the constructed item (road, building or structure); or the sand, gravel or loam is being moved to a contiguous site having the same ownership or is being used by the owner for their use.
  - c. Excavation or grading which is undertaken as part of any approved construction project such as a subdivision, permitted structure or road.
  
3. Agricultural extractions (Level One Extractive Use). These extractions are for agricultural purposes only. The owner or operator (with written permission from the owner) of a farm at least 10 acres in size may utilize an extractive use to create alternative uses for his/her farm. Some of these uses can include but are not limited to cranberry bogs, aquatic farming or any other uses defined as "agricultural" in Delaware. The extractive material may be removed from property for sale. No more than 10% (at one time or cumulatively) of the total farm acreage may be utilized for agricultural extractions. Should more than 10% of total farm acreage be extracted, Level Two Extractive Use measures shall be applied. All of the following requirements must be met prior to commencement of any agricultural extractive operation:
  - a. The filing of an application for conditional use that contains the following items:
    - (1) Letters of approval from DNREC, Delaware Department of Agriculture and Kent Conservation District.
    - (2) Topographical map with two-foot contours indicating current elevation and proposed extractive depth limit.
    - (3) Description of how the extractive material will be managed.
  
4. Extractive commercial uses (Level Two Extractive Use). These extractions are for commercial uses regarding the excavation of sand, clay, gravel, stone, and/or other earth material where no material is processed or mixed. In addition, should any farmer utilizing the agricultural extractions exceed 10% of his/her total farm, they must adhere to the requirements of extractive commercial uses. There is no size limitation on the property utilizing Level Two Extractive Use. There is no requirement to keep excavated material on the property for extractive commercial uses. All of the preceding requirements of Subsection **3** must be complied with, as well as the following:
  - a. The following requirements shall be applicable to extractive operations that meet the definition for "Extractive Commercial Uses":
    - (1) A performance bond shall be posted in favor of Kent County in the amount of \$2,500 per extractive acre or part thereof for every active acre during the life of the extractive activity or until reclamation is complete.
    - (2) Direct illumination resulting from the operation shall not fall on any land not covered by the application.

- (3) The "permanent roads," defined as those to be used in excess of one year, within the extractive site shall be surfaced with a dust-free material, such as soil cement, bituminous concrete or Portland Cement concrete.
  - (4) Roads other than permanent roads shall be treated with dust inhibitors which will reduce to a minimum dust generation from the road surfaces as a result of wind or vehicle action.
  - (5) Where the proposed extraction shall take place within 300 feet of a dwelling, school, church, hospital, public building and/or public land, security and safety measures shall be installed.
  - (6) Noncommercial by-products shall not be created to a height more than 30 feet above the original contour and shall be graded so that the vertical slope shall not exceed the material's natural angle of repose.
  - (7) Use of borrow pits for fill disposal shall constitute an incompatible use and shall be regulated as sanitary landfills.
  - (8) A list of credit references and the identification of any previous extractive operations in Delaware or any other state shall be submitted as part of the conditional use application.
  - (9) Evidence of notification by the applicant to the applicable federal and state agencies regarding the proposed extractive operation.
  - (10) Describe the proposed operations and hours of operations.
  - (11) All requirements and regulations of the Development Advisory Committee shall be satisfied, and recommendations submitted by any agency member of the Development Advisory Committee shall be considered.
  - (12) The reviewing body may impose any other appropriate or more stringent conditions it deems necessary to protect the health, safety and welfare of the neighborhood.
  - (13) All Level Two (extractive commercial uses) and Three (Extractive Commercial Uses with Processing) operations shall maintain liability and workers comprehensive insurance.
- b. An operations plan, rehabilitation plan and environmental study containing information as required by the Department of Planning Services, Division of Planning, shall be submitted as part of the application for a conditional use permit.
- (1) The operations plan shall include:
    - (a) An existing features and mining map at a scale of not less than one inch equals 200 feet shall be submitted showing the following:
      - i. The applicant's name, address and telephone number.
      - ii. Topographic features with two-foot contours before extraction of the site and locations of all soil borings and test excavations.
      - iii. Monumentation and bench marks for proposed limits of mining.
      - iv. Vehicle access, existing and proposed.
      - v. Zoning district boundaries and adjacent districts.
      - vi. Setback limits.
      - vii. All existing occupied and/or unoccupied structures located within 1,000 feet of the limits of the extraction operations.
      - viii. The location and names of all streams, roads and railroads on or immediately

- adjacent to the area.
- ix. Acreage to be mined.
  - x. The location and details of groundwater monitoring wells.
  - xi. The location and details of sediment control facilities, including but not limited to ponds, berms and ditches.
  - xii. Proposed measures to protect both surface and groundwater resources.
  - xiii. A mining schedule.
  - xiv. Methods of compliance with Delaware State air and water pollution standards.
  - xv. Method to manage hazardous materials if stored on site (petroleum products, etc.) and disposal of mining refuse.
  - xvi. Hours of operation.

(b) The reclamation plan shall include:

- i. The manner in which the topsoil and subsoil are to be restored and, if conditions do not permit the restoration of all or part of the topsoil, a full explanation of the conditions and alternative procedures proposed.
- ii. The specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment.
- iii. The manner and type of revegetation or other surface treatment of the affected areas.
- iv. A reclamation schedule. This part of the plan must identify how the operation schedule will be phased in concert with the reclamation schedule. There can be no more than 30% of the total proposed borrow area in operation without the start of reclamation and/or not to exceed 25 acres in excavation operation.
- v. Topography with two-foot contours on the site after reclamation of the site.
- vi. The method for rehabilitation of settling ponds.
- vii. The method of restoring or establishing stream channels and stream banks to a condition minimizing erosion, siltation and other pollution.
- viii. Provisions for the final slopes of soil, gravel and sand to be consistent with future land use.

(c) The environmental study. This study will outline the proposed action by the applicant, existing natural resources (forest coverage, wildlife, streams, ponds and wetlands) and cultural resources (historic buildings, known archaeological sites) of the proposed site. Once the study is documented, a legal notice shall be published by the applicant outlining the proposed action, location of action and where the study document can be reviewed (located at the local public library nearest the proposed site and the Department of Planning Services, Division of Planning) for public comment. The study shall be maintained at the Dover Public Library and Kent County Department of Planning Services, Division of Planning, for no less than 30 days from the legal notification date. Any public comment shall be noted by the applicant and submitted with his/her application for conditional use. The outline of the Environmental Study



shall include the following:

- i. Description of the proposed extractive operation (the who, what, when, where and why).
  - ii. Affected environment (description of the current environmental condition of the extractive operation area).
  - iii. Impacts to the affected environment (air quality, water quality, waste disposal, noise, transportation, prehistoric and historic cultural resources, utilities, vegetation, wildlife, construction effects, hazardous materials and permits required).
  - iv. List of agencies and persons consulted.
5. Extractive commercial uses with processing (Level Three Extractive Use). These extractions are for commercial uses with the additional function of processing the borrow/extracted material. If the applicant wanted to create a processing site without extractive operations at a site, this same process would apply. The applicant shall comply with all of Level One (agricultural extractions) and Two (extractive commercial uses) set out above and the following:
- a. Extractive commercial uses with processing shall only occur within the I-G - General Industrial Zoning Districts.
  - b. If not previously provided pursuant to subsection 3 or 4 above, a site plan shall be submitted that would outline where proposed equipment would be constructed, stored and/or utilized for the processing of borrow; lighting structures; entrances and exits; proposed screening material, sediment and/or water ponds; and height of processed material. In addition, hours of operations, estimated number of trucks in and out of site and number of employees shall be submitted.

B. Potentially Hazardous Uses

1. All operational activity is conducted within a completely enclosed building (other than landfills or septage processing as mentioned below). Incidental outdoor non-active storage is permitted as long as no hazardous material is included and is screened from view of all adjacent properties.
2. For any waste transfer station, trash compaction, or waste management facility, vehicle stored on site shall be emptied of all waste.
3. Where retail sales of products are conducted on the premises, off-street parking shall be provided in accordance with requirements for retail and service uses in Article XVII, Parking.
4. All buildings shall be set back at least 100 feet from any residentially zoned lot lines.
5. Sanitary landfills have these specific conditions:
  - a. An operations plan and a rehabilitation plan, containing information as required by the Kent County Department of Planning Services, Division of Planning, shall be submitted as part of the application for a conditional use permit.
  - b. The permanent roads, defined as those to be used in excess of one year, within the landfill site shall be surfaced with a dust-free material, such as soil cement, bituminous concrete or portland cement concrete.
  - c. Roads, other than permanent roads, shall be treated with dust inhibitors which will reduce to

a minimum the generation of dust from the road surfaces as a result of wind or vehicular action.

- d. A security fence at least six feet in height shall be installed around the complete perimeter of the landfill site.

6. Septage processing and storage has these specific conditions:

- a. A project development report, as required by the Delaware Department of Natural Resources and Environmental Control (DNREC), and containing any additional information as required by the Department of Planning Services, Division of Planning, shall be submitted as part of the application for a conditional use permit.
- b. Septage processing and storage shall be for material to be applied in accordance with DNREC's requirement for agricultural utilization only. Septage shall be managed on a net annual balance. Long term storage of septage, in excess of one year, shall not be allowed.
- c. All operations of the septage processing and storage facility shall be performed in conformance with applicable permits issued by DNREC. Revocation of the DNREC permit shall result in revocation of the conditional use permit.
- d. All septage processing and storage facilities shall be set back at least 300 feet from all adjacent property lines.
- e. The septage processing and storage shall be in conjunction with, or accessory to, both a septage pumping/hauling business and an agricultural operation. The septage handled by the facility shall be discharged by the referenced pumping/hauling business only, and any change therein shall require reconsideration and approval by the Regional Planning Commission.
- f. The septage processing and storage facility shall not emit odors so as to cause a condition of air pollution as defined by Delaware's Regulations Governing the Control of Air Pollution.
- g. The land shall be returned to its original condition or natural state within 90 days if the septage processing facility ceases to operate.
- h. All septage processing facilities shall be at least 2,500 from any municipal boundary.
- i. Approvals from the Department of Natural Resources and Environmental Control shall be required. Periodic (not less than twice a year) testing of the soil and groundwater shall be required as long as the septage processing facility is in operation to ensure a safe and healthy environment.

C. Recycling and Storage

1. Additional screening, beyond what is required in the general provisions, of outside storage may be required depending on the use being requested. This may include building a berm with landscaping and fencing of a height and size to be determined through the review process.
2. No permanent outdoor storage of any materials shall be allowed. Although the location of any specific product may remain the same, the product within that location must have constant turnover, so that no area will have the same material permanently stored without removal.
3. All storage and parking must be behind the building setback lines.

D. Sawmills and Mulching Operations

1. Minimum property size shall be at least 10 acres.
2. Materials to be processed shall be limited to only tree parts (stumps, branches, etc.) and natural

wood pallets.

3. Any storage of raw materials (tree stumps, branches, natural wood pallets, uncut logs, finished lumber, etc.) and finished product (mulch) shall be set back at least 50 feet from any adjoining property line and shall be confined to an area delineated on the plot plan/site plan for the project.
4. All unprocessed material shall be disposed of in an approved manner. Burning or burial of any material is prohibited.
5. Operation of the facility shall be limited to daylight hours.
6. Unpaved roads shall be treated with dust inhibitors to minimize dust generating as a result of wind or vehicular action.
7. Air and noise emissions shall be compliance with the Occupational Safety and Health Act of 1970, as amended, the regulations of the Delaware Department of Natural Resources and Environmental Control, and the Kent County Noise Ordinance, whichever is most restrictive.
8. All required state and local licenses and/or permits for such use shall have been obtained prior to commencement of the operation.

E. Utilities, minor

1. Any principal part of a tower, excluding guy cables, shall be set back from the street line or any other lot line of the lot on which it is located a distance of not less than the height of such tower, and any blinking or rotating light thereon shall be placed so as not to throw its light below the horizontal plane in which it is installed.
2. Any storage of materials or trucks, maintenance and repair facilities and housing of repair crews shall be contained within a building.

F. Utilities, major

1. Any principal part of a tower, excluding guy cables, shall be set back from the street line or any other lot line of the lot on which it is located a distance of not less than the height of such tower, and any blinking or rotating light thereon shall be placed so as not to throw its light below the horizontal plane in which it is installed.

G. Warehouses

1. No outdoor storage is allowed.
2. If the combined square footage of the warehouse building(s) is 75,000 sq. ft. or larger, a conditional use will be required.

**§205-73. Other Uses**

A. Accessory Small Scale Solar and Wind Energy Systems

1. Small scale solar energy systems
  - a. Roof mounted solar systems shall comply with the building height of the zoning district where the system is installed as well as applicable provisions of the International Residential Code.
  - b. Ground mounted solar systems shall:
    - (1) Only be located within the side or rear yards unless the structure(s) is located at least 100

- feet from the front property line and/or side street line;
- (2) Be located a minimum of five (5) feet from the side and rear property lines.
- (3) Not exceed the height of 20 ft.
- (4) Have all of the exterior electrical and/or plumbing lines buried below the surface and placed in a conduit.
- (5) Not be the principal use of the subject property.

2. Small scale wind energy systems

- a. Small scale wind energy systems shall be set back 1.0 times the turbine height from adjoining property lines. Turbine height means the height of the tower plus the length of one blade. The maximum height shall be that of a principal non-residential structure in the district.
- b. The aggregate noise or audible sound of a small wind system shall not exceed five (5) decibels above the existing average noise level of the surrounding area and shall be restricted to a maximum of sixty (60) decibels measured at any location along the property line to the parcel where the small wind energy system is located.
- c. Small scale wind energy systems shall be free from signage, advertising, flags, streamers, decorative items, or any item not related to the operation of the wind turbine.
- d. Electric wiring for the turbines shall be placed underground for nonbuilding integrated systems.
- e. Any small scale wind energy system shall be visually screened to a height of six feet by either an opaque fence or a dense vegetative screen from any properties or structures included on the National Register of Historic Places.

3. Abandonment. Solar energy systems and/or small wind energy systems must be maintained and kept in a state suitable for immediate operation. When it can be demonstrated that a solar energy system or small wind energy system, as approved in accordance with this section, is in a state of disrepair and is not suitable for immediate operation, that system shall be removed and the accessory use terminated within 90 days after the property owner has been notified.

B. Airports / Airstrips / Airfields / Heliports / Helipads

- 1. All requirements of the FAA for this use must be obtained, including but not limited to compliance with airfield reference points, approach zones, and turning zones.
- 2. A notice of landing area proposal (FAA Form 7480-1) shall be filed by the applicant with the nearest Federal Aviation Administration (FAA) Airports District Office or Regional Office.
- 3. The following uses and services are permitted as accessory to airports.
  - a. Aircraft fuel and sales.
  - b. Aircraft flight instruction.
  - c. Aircraft rental and sales.
  - d. Aircraft tie-down and hangaring.
  - e. Retail sales of aircraft parts (parts manufactured elsewhere).
  - f. Aircraft repair/restoration.
  - g. Aircraft inspections necessary to return aircraft to service.
  - h. Fabrication of parts to return existing aircraft to service.
  - i. Aircraft avionics maintenance.

4. All construction is noise insulated/attenuated per Part 51, Title 24, of the Code of Federal Regulation.
5. The end of the runways shall be at least 500 feet from an adjoining property line.
6. Any helipad shall be at least 200 feet from any dwelling or other residential use and, except for emergency, shall be operated only during daylight hours.

C. Billboard (Off-premise Advertising)

1. If an on-premises sign is located on an individual parcel in a BG - General Business District, no off-premises sign (billboard) is permitted.
2. All billboards must be set back 25 feet from the street right-of-way.
3. Billboards shall not exceed 288 square feet in area.
4. No more than one double-faced billboard is permitted per parcel, with no more than one advertisement per side.
5. Billboards shall be no more than 35 feet in height.
6. No billboard shall be closer than a one-thousand-two-hundred-foot radius from another billboard, except that the Levy Court may approve a lesser distance in cases of existing nonconforming billboards seeking conditional use approval; however, for static message billboards a minimum five-hundred-foot separation distance shall be maintained on controlled access highways and a minimum three-hundred-foot separation distance shall be maintained on non-controlled access roads, and for electronic variable message billboards, a separation distance of 2,500 feet shall be maintained from another electronic variable message billboard, and a separation distance of 500 feet shall be maintained from a static message billboard.

D. Business/Industrial Parks

1. If multiple lots are proposed as part of the development plan, a separate subdivision application is not required. The site plan may be recorded with all required parcel data to create the parcels.
2. Adequate road frontage for the district must be maintained for each parcel either by public or private streets.
3. Access must be located on a lot having direct legal vehicular access onto a numbered state or county road.
4. Compliance with design criteria of Chapter 187 is required.
5. Associated retail uses in conjunction with and accessory to a permitted use shall not occupy more than 30 percent of the gross floor area of the building or group of buildings on a lot. Parking shall be provided at a rate of one parking space per 300 square feet of retail space in addition to the parking requirements for a particular use.

E. Off-premise Monument Signs

1. No more than one double-faced off-premises monument sign is permitted per parcel, with no more than one advertisement per side.
2. Off-premises monument signs shall not be permitted within a major subdivision.
3. Off-premises monument signs shall only be permitted on roads classified as principal or minor arterials and major collectors according to DelDOT's Functional Classification Map.
4. If an on-premises sign is located on an individual parcel, no off-premises sign is permitted.
5. Off-premises monument signs shall not exceed 32 square feet in area.

6. Off-premises monument signs shall be no more than six feet in height.
7. Off-premises monument signs shall be set back a minimum of 25 feet from the street right-of-way.
8. No off-premises monument sign shall be closer than a five-hundred-foot radius to another off-premises monument sign or billboard.

#### F. Outdoor Storage

1. All items shall be stored and maintained in a neat and orderly manner and as compactly as practicable
2. All storage visible from access streets and adjacent properties shall be screened from view. Fencing, if used as screening, shall be high enough so that all stored materials are effectively screened from view at, and points within, the street right-of-way not higher than five feet above its surface. Landscaping used for screening shall provide for a complete year-round opaque screen at least six feet high.
3. No storage shall be permitted between the building setback line and frontage streets.
4. All outdoor refuse collection areas shall be screened from view from access streets and adjacent properties by a complete opaque screen.

#### G. Park and Ride Facility

1. All parking must follow the parking setbacks for the district it is located in.
2. To encourage multiple modes of transportation, a public transit shelter shall be located within the parking area and a bike rack shall be provided with space enough for bikes numbered at 10% of the total parking spaces.
3. To ensure security of facility, 24-hour lighting and surveillance shall be provide as part of the use. The lighting shall not be directed towards adjacent properties or passing motorists.

#### H. Public Interest and Special Events (Temporary Activity)

1. A plan for the dismantling and return of the site to its original condition, including trash and waste removal, has been submitted to, and approved by, the Department of Planning Services.
2. A temporary certificate of occupancy permit for off-site parking shall comply with the following: the owner shall submit a plan to the Department of Planning Services delineating the proposed parking area, number of parking spaces and any other pertinent information deemed appropriate for the permit. Example: size of area to be utilized, number of days, date, etc. The fee for this use shall be as set from time to time by ordinance of the Levy Court.
3. Certificates of approval by additional agencies including, but not limited to, Department of Public Safety, State Police, Public Health, and DelDOT may be requires. Upon issuance of the temporary certificate of occupancy permit the Building Official shall enforce any and all provisions attached to the permit. The department shall close out the permit 10 days after the expiration of the permit issued.

#### I. School Bus Parking

1. All such parking or storage shall be located behind the building setback line.
2. Incidental repair is limited to minor work, not to include engine and drive train repairs.

## J. Telecommunications Facility

### 1. Telecommunications Tower or Monopole

- a. The location is the subject parcel where a tower is located or proposed to be located. Broadcasting and telecommunications towers conforming to all applicable provision of the code shall be allowed only in the following locations:
  - (1) Church sites, when camouflaged as a steeple or bell tower, not as flagpoles
  - (2) Park sites, when compatible with a nature park.
  - (3) Government, school, utility, or institutional sites.
  - (4) Parcels of such size that the proposed tower will be able to meet the setback requirements of §205-73.I.1.b.
  - (5) Alternative sites which are used primarily for purposes other than to support antennas such as water towers, buildings, billboards, electric or light poles, and other utility structures.
- b. Siting. Broadcasting and telecommunications towers shall be sited in the following manner:
  - (1) Two hundred feet from any property line or the height of the tower, whichever is lesser; and
  - (2) Five hundred feet from the nearest dwelling not on the parcel on which the tower is to be placed.
- c. The maximum height for a tower is 200 feet.
- d. District height requirements do not apply to these towers but any other structures must still adhere to the height requirements of each district.
- e. Documentation. Documentation acceptable to the Department for a new tower or monopole must show that no existing building, site or structure, including other towers/monopoles within a one (1) mile radius of the proposed new location are available for co-location. The documentation shall include one (1) or more of the following:
  - (1) Evidence that no existing facilities are located within the area targeted to be served and which meet the applicant's engineering requirement.
  - (2) Evidence that existing facilities do not have sufficient height or cannot be increased to a height at a reasonable cost to meet the applicant's engineering requirements.
  - (3) Evidence that existing facilities do not have sufficient structural strength or space to support the proposed antenna and related equipment and that those existing facilities cannot be reinforced at a reasonable cost to accommodate new equipment.
  - (4) Evidence that applicant's antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
  - (5) Evidence of non-cooperation of landowners for alternative sites that might have been a better location.
- f. Shared facilities.
  - (1) All new or replacement towers/monopoles one hundred and fifty (150) feet or less in height, not including lighting rod, shall be designed to accommodate at least one (1) additional personal communication services (PCS)/cellular platform. All new or replacement towers/monopoles in excess of one hundred and fifty (150) feet in height shall be designed to accommodate at least two (2) additional PCS/cellular platforms.

- g. Landscaping. Pad sites, ground equipment structures and guy wire locations shall be surrounded by a minimum six (6) foot tall opaque fence and/or landscaping.
  - h. Requirements. The tower and accessory equipment must meet all requirements of the Federal Communications Commission and Federal Aviation Administration.
  - i. Signs and lighting. No sign shall be permitted on the tower. Any blinking or rotating light thereon shall be screened so as not to throw its light below the horizontal plane on which it is located, except as required by the Federal Aviation Administration.
  - j. Abandonment. Any tower/monopole that is not operated for a continuous period of six (6) months shall be considered abandoned and the owner of such tower shall remove the same within ninety (90) days of a receipt of notice from County Council notifying the owner of such abandonment. If such tower is not removed within ninety (90) days, the County may remove the tower at the owner's expense.
2. Small Cell Telecommunications Facility
- a. An antenna may be installed on streetlight or mast arms mounted on pre-existing poles, including utility and street light poles or other pre-existing exterior Support Structures, but the installation of taller poles or new overhead wiring to accommodate the antennae will not be permitted.
  - b. An antenna may be installed at least twenty (20) feet from the ground in a residential zone or on an existing residential Support Structure or Support Structure on privately owned land, or fifteen (15) feet from the ground in a commercial zone or on an existing commercial structure or support structure on privately owned land. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least twenty (20) feet in a residential zone or when mounted on a residential building, or fifteen (15) feet in a commercial zone or when mounted to a commercial building.
  - c. An antenna shall not be installed on or within sixty (60) feet of or on the façade of a single-family (detached or attached) dwelling unit.
  - d. Cable connecting the antennae to the equipment box shall be contained inside the pole or Support Structure or shall be flush mounted and covered with a metal, plastic or similar material cap matching the color of the pole or structure on which it is installed, properly secured and maintained by the applicant.
  - e. Related unstaffed equipment cabinets may be located within a building, an equipment cabinet outside a building, an equipment cabinet on a rooftop, or an equipment room within a building.
    - (1) Such related equipment shall have a maximum square footage of ten (10) square feet with a maximum height of two (2) feet, and must be so located and installed in accordance with the applicable setback and other requirements of the zone in which the property is classified.
    - (2) A related unstaffed equipment cabinet may be installed on a rooftop of a building on privately owned land which is at least fifteen (15) feet in height, provided it and all other roof structures do not occupy more than twenty-five (25) percent of the roof area.
  - f. The applicant shall provide proof that it is a licensed provider and will comply with all applicable federal, state and County laws and regulations, including those regarding wireless communications services.



- g. An antenna and equipment box must be installed as a Stealth Telecommunications Facilities on a property designated by the County or the State Historic Preservation Office as a historic resource.
  - h. Public property.
    - (1) A private small cell telecommunications antenna may be located on the exterior of public property or attached to an existing Support Structure owned or operated by Kent County and shall be a permitted use in all zones. The use of any property owned or operated by the county shall be at the discretion of the Levy Court.
    - (2) A private small cell telecommunications antenna may be located on the exterior of public property or attached to an existing Support Structure owned or operated by a county, state, federal or other non-city governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.
  - i. All such small cell telecommunications antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
  - j. No signs are permitted in connection with any small cell telecommunications antenna.
  - k. No more than one building, pole or other support structure containing a small cell telecommunications facility or co-located facility is permitted on a lot or parcel of land, or for parcels larger than a half-acre, per half-acre of land. A variance to permit the location of more than one building, pole or other structure containing small cell telecommunications facilities on a lot or parcel or half-acre may only be approved by the Board of Adjustment if the applicant establishes that existing small cell telecommunications facilities serving the same service area have no additional capacity to include the applicant's facility. Any such application must comply with all of the other standards and requirements for small cell telecommunications facilities.
3. Stealth Telecommunications Facility
- Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
- a. Stealth facilities in residential zoning districts areas shall not exceed sixty (60) feet in height.
  - b. Antennas must be enclosed, camouflaged, screened, obscured and otherwise not readily apparent to a casual observer.
  - c. Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, lights, flagpoles, cupolas, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
  - d. Setbacks for Stealth Facilities that utilize a new structure shall be governed by the setback requirements of the underlying zoning district.
4. Removal.
- a. Every free standing monopole or support structure and support equipment, building, or cabinet associated with a telecommunications tower shall be removed at the cost of the owner of the facility when the telecommunications facility is no longer in use by any telecommunications carrier.

K. Transportation Shelters (Bus, Taxi, etc).

1. The shelter is permitted within the minimum required front yard.
2. The shelter is erected at a size no larger than seven feet by nine feet by eight feet in height (not including safety pennant).
3. The shelter is enclosed only on three sides.
4. There are no more than two advertisement signs, not to exceed 32 square feet each, and they shall not face in the same direction. The advertisement must contain public service safety slogans or messages, which shall occupy not less than 50% of the area of the sign.
5. It does not impair visibility at any access to a public street.
6. It does not occupy more than 5% of the minimum required front yard.
7. A permit must be obtained with approval from the Department of Transportation.
8. Validation is required from the transportation officer for each school district, if applicable.

§205-74. Reserved

§205-75. Reserved

§205-76. Reserved

§205-77. Reserved

§205-78. Reserved

§205-79. Reserved

§205-80. Reserved

**Article VII**

**Area and Bulk Requirements**

**§205-81. Residential Principal Structure Requirements – Inside Growth Zone Overlay District**

A. Area Requirements (with public sewer)

		<b>SFD</b>	<b>Duplex</b>	<b>Townhouse</b>	<b>Multiplex<sup>^</sup></b>	<b>Apartment<sup>^</sup></b>	<b>MHP<sup>^</sup></b>
<b>AC</b>	<b>Lot Size</b>	10000 ft. <sup>2</sup>	-	-	-	-	-
	<b>Frontage*</b>	75 ft.	-	-	-	-	-
	<b>Lot Width</b>	75 ft.	-	-	-	-	-
	<b>Density<sup>~</sup></b>	3 units/acre	-	-	-	-	-
	<b>Maximum Impervious Cover</b>	40%	-	-	-	-	-
<b>AR</b>	<b>Lot Size</b>	8000 ft. <sup>2</sup>	-	-	-	-	-
	<b>Frontage*</b>	70 ft.	-	-	-	-	-
	<b>Lot Width</b>	70 ft.	-	-	-	-	-
	<b>Density<sup>~</sup></b>	3	-	-	-	-	-

		units/acre					
	<b>Maximum Impervious Cover</b>	40%	-	-	-	-	-
<b>RS1</b>	<b>Lot Size</b>	7500 ft. <sup>2</sup>	5000 ft. <sup>2</sup>	-	-	-	-
	<b>Frontage*</b>	65 ft.	45 ft.	-	-	-	-
	<b>Lot Width</b>	65 ft.	45 ft.	-	-	-	-
	<b>Density~</b>	3.5 units/acre	3.5 units/acre	-	-	-	-
	<b>Maximum Impervious Cover</b>	40%	40%	-	-	-	-
<b>RMH</b>	<b>Lot Size</b>	6000 ft. <sup>2</sup>	5000 ft. <sup>2</sup>	-	-	-	3000 ft. <sup>2</sup> berthing space
	<b>Frontage*</b>	65 ft.	45 ft.	-	-	-	
	<b>Lot Width</b>	60 ft.	45 ft.	-	-	-	
	<b>Density~</b>	6 units/acre	6 units/acre	-	-	-	8 units/acre
	<b>Maximum Impervious Cover</b>	40%	40%	-	-	-	40%
<b>RS5</b>	<b>Lot Size</b>	6000 ft. <sup>2</sup>	4000 ft. <sup>2</sup>	1600 ft. <sup>2</sup>	-	-	-
	<b>Frontage*</b>	65 ft.	40 ft.	16 ft.	-	-	-
	<b>Lot Width</b>	60 ft.	40 ft.	16 ft.	-	-	-
	<b>Density~</b>	6 units/acre	6 units/acre	6 units/acre	6 units/acre	6 units/acre	-
	<b>Maximum Impervious Cover</b>	60%	60%	60%	60%	60%	-
<b>RM</b>	<b>Lot Size</b>	6000 ft. <sup>2</sup>	4000 ft. <sup>2</sup>	1600 ft. <sup>2</sup>	-	-	3000 ft. <sup>2</sup> berthing space
	<b>Frontage*</b>	60 ft.	40 ft.	16 ft.	-	-	-
	<b>Lot Width</b>	50 ft.	40 ft.	16 ft.	-	-	-
	<b>Density~</b>	10 units/acre	10 units/acre	10 units/acre	10 units/acre	10 units/acre	10 units/acre

<b>Maximum Impervious Cover</b>	80%	80%	80%	80%	80%	80%
<p>* Minimum frontage of 100 feet on any non-subdivision street  ^ Minimum parcel size of 5 acres  ~ Areas partially within the Growth Zone with central sewer and water shall be a calculated number of dwelling units per acre based on the formula below:</p> <p>(Area within Growth Zone x permitted density) + (Area outside overlay zone x permitted density) = Total Dwelling Units Permitted</p> <p>Total Dwelling Units Permitted/Total Site Area = Site Density</p>						

**B. Development Without Public Sewer Service**

1. 0.5 acre minimum lot size in all zoning districts
2. 150 foot minimum road frontage
3. 25% maximum impervious cover

**C. Setbacks**

1. AC, AR, RS1, RS5, RMH Zoning Districts
  - a. 25 foot front
  - b. 10 foot side
  - c. 25 foot rear
2. RM Zoning District
  - a. 20 foot front
  - b. 10 foot side
  - c. 20 foot rear
3. Front Setbacks from Non-subdivision Streets shall be 40 foot
4. For major subdivision and land development applications, the Regional Planning Commission, upon the request of an applicant, may authorize a reduction in the required front yard setback to achieve an overall neighborhood design objective, provided that alleys are proposed. Two off street parking spaces per unit will still be required.
5. Principal nonresidential structures must also meet the setbacks of this section (D.4).

**D. Height Limits**

1. AC, AR, RS1, RS5, RMH Zoning Districts
  - a. 35 feet maximum height
2. RM Zoning District
  - a. 50 feet maximum height
3. Maximum height may be increased above the limitation of Subsection D(1) and D(2) of this

section for elevation required by the National Flood Insurance Program.

4. Principal nonresidential structures

- a. Shall have all yard and setback requirements increased to be equal to the highest part of the structure when exceeding the height limits of a principal structure listed above.
- b. AC, AR
  - (1) 80 ft. maximum height
- c. RS1, RMH
  - (1) 35 ft. maximum height
- d. RS5, RM
  - (1) 60 ft. maximum height

**§205-82. Residential Principal Structure Requirements – Outside Growth Zone Overlay District**

A. Area Requirements

<b>AC/AR</b>	Frontage	200 ft.
	Lot Width	150 ft.
	Maximum Impervious Cover	25%
<b>RS1</b>	Frontage	150 ft.
	Lot Width	100 ft.
	Maximum Impervious Cover	30%
<b>RMH</b>	Frontage	150 ft.
	Lot Width	100 ft.
	Maximum Impervious Cover	30%
<b>RS5</b>	Frontage	150 ft.
	Lot Width	100 ft.
	Maximum Impervious Cover	60%
<b>RM</b>	Frontage	150 ft.
	Lot Width	100 ft.
	Maximum	80%

	Impervious Cover	
Maximum Density and Minimum Lot Size as provided in Chapter 187, Subdivision and Land Development, Section 187-53, D(8) Table X-2* *Minor subdivision follows same		

B. Setbacks

1. 30 foot front (subdivision street)
2. 15 foot side
3. 30 foot rear

C. Front Setbacks from Non-subdivision Streets shall be 40 foot.

D. Height Limits

1. AC, AR, RS1, RS5, RMH Zoning Districts
  - a. 35 feet
2. RM Zoning District
  - a. 50 feet
3. Maximum height may be increased above the limitation of Subsection D(1) and D(2) of this section for elevation required by the National Flood Insurance Program.
4. Principal nonresidential structures
  - a. Shall have all yard and setback requirements increased to be equal to the highest part of the structure when exceeding the height limits of a principal structure listed above..
  - b. AC, AR
    - (1) 80 ft. maximum height
  - c. RS1, RMH
    - (1) 35 ft. maximum height
  - d. RS5, RM
    - (1) 60 ft. maximum height

**§205-83. Nonresidential Structure Requirements**

A. Area Requirements

<b>BN/OC</b>	<b>Setbacks</b>	Front - 40 ft. Side -10 ft. Rear -25 ft.
	<b>Lot Size</b>	No

		Minimum with sewer
		0.5 acre without public sewer
	<b>Frontage</b>	100 ft.
	<b>Lot Width</b>	100 ft.
	<b>Maximum Height</b>	35 ft.
<hr/>		
<b>BG</b>	<b>Setbacks</b>	Front - 40 ft. Side - 20 ft. Rear - 40 ft.
	<b>Lot Size</b>	N/A
	<b>Frontage</b>	150 ft.
	<b>Lot Width</b>	150 ft.
	<b>Maximum Height</b>	35 ft.
<b>IL</b>	<b>Setbacks</b>	Front - 40 ft. Side - 25 ft. Rear - 40 ft. 75 ft. from residential dwellings on adjacent parcels
	<b>Lot Size</b>	1 acre
	<b>Frontage</b>	100 ft.
	<b>Lot Width</b>	100 ft.
	<b>Maximum Height</b>	75 ft.
<b>IG</b>	<b>Setbacks</b>	Front – 60 ft. Side – 50 ft. Rear - 50 ft. 100 feet from residential dwellings on adjacent parcels

<b>Lot Size</b>	1 acre
<b>Frontage</b>	150 ft.
<b>Lot Width</b>	150 ft.
<b>Maximum Height</b>	75 ft.
<b>All Districts:</b>	
75% Maximum Impervious Surface Coverage	
Maximum height may be increased above the limitation of this section for elevation required by the National Flood Insurance Program	

**§205-84. Agricultural Structures**

A. Setbacks

	<b>AC, AR,</b>		<b>RS-1, RS-5, RM, RMH</b>	
	Side/Rear Setback*	Setback from Dwelling not on the Premises	Side/Rear Setback*	Setback from Dwelling not on the Premises
An accessory structure, enclosure, coop or run used to house or shelter a domestic (pet) animal or domestic fowl	25 ft.	50 ft.	25 ft.	50 ft.
An accessory structure, enclosure, coop or run used to house or shelter or sell livestock other than a domestic (pet) animal^	50 ft.^	100 ft.^	50 ft.^	100 ft.^
Chicken houses	100 ft. (front, side, & rear)^	300 ft.^	100 ft. (front, side, & rear) ^	300 ft. (front, side, & rear) ^
Manure Storage	100 ft. (front, side, & rear)^	200 ft.^	100 ft. (front, side, & rear) ^	200 ft. (front, side, & rear) ^
^ Must be in association with a bona fide farm				
* Not permitted within the front setback				



## **§205-85. Residential Accessory Structures**

- A. Except as otherwise provided by this chapter, an accessory structure shall not be located in the front yard or front setback of any parcel (as defined by this chapter) unless the accessory structure is located at least 100 feet from the front property line and/or side street line.
- B. An accessory structure may be located no closer than five feet from the side or rear property line of any conforming or legal nonconforming parcel.
- C. The regulations set forth in Subsections A and B above shall not apply to manufactured home parks, school bus shelters, telephone booths or structures housing water well pumps which are used exclusively for farming operations.
- D. Temporary fencing used primarily for construction projects and soil erosion protection shall not be used for permanent residential or commercial fencing. This type fencing includes, but is not limited to, such fencing as the bright fluorescent orange fencing and the solid black fencing.
- E. Height Limits
  - 1. AC, AR, RS1, RS5, RM, RMH
    - a. 20 ft.

## **§205-86. Bulk and Area General Provisions**

- A. Accessory Structures
  - 1. Accessory structures or accessory uses shall be limited and located on the same lot with the principal structure or use to which they are necessary.
  - 2. Any accessory structure attached to a principal structure, including attachment by means of a breezeway or roof passage, shall comply with the requirements of this chapter concerning principal structures. All other accessory structures shall conform to the requirements for accessory structures in the District in which they are located.
  - 3. In an AC, AR, RMH, RM, RS5, or RSI Residential District, an accessory structure on the same lot with a residential use may not be used for residential purposes except properly approved ECHO housing or a properly approved accessory dwelling unit.
  - 4. An accessory structure shall not dominate in area the principal use or structure by more than 10 percent. The area of the principal structure shall be calculated using the definition of floor area in this chapter with the inclusion of attached garages and covered porches.
  - 5. A noncommercial antenna structure or satellite dish may be authorized as an accessory structure in any residential district, provided that:
    - a. The height of the structure does not exceed the lesser of:
      - (1) The width or depth of the property as determined by a line bisecting the structure and measured from one side of the property line to the other or from the front property line to the rear at the shortest distance there-between; or
      - (2) One hundred feet.
    - b. The setback for the central vertical portion of the antenna structure is at least 10 feet from each property line for a structure up to 35 feet high, and 10 feet plus one additional foot for each three feet in excess of 35 feet for a structure over 35 feet high; and
    - c. Each rigid radiating element of an antenna structure is set back at least 10 feet from any property line; and

- d. The construction is of a type required by the Division of Inspections and Enforcement to form a safe and durable structure.

#### B. Street Frontage

1. No lot may be created without adequate street frontage and such lots shall be determined to be unbuildable.
2. Except as provided in a specific zoning district, a structure may not be used in whole or in part for residential purposes unless the lot in which it is located:
  - a. Abuts for at least 18 feet on a public street; or
  - b. Has an unobstructed easement for ingress and egress to a public street and the easement is at least 18 feet wide.
  - c. No more than one structure used in whole or in part for residential purposes shall be permitted for each frontage or easement, except that a common easement of access measuring at least 40 feet wide may be provided for two or more structures
3. On a corner lot, the front street shall be the street with the shorter street frontage.

#### C. Setbacks

1. Any setback or other open space allocated to a structure shall be located on the same lot as the structure.
2. Except as provided in this subsection, required setback and open space shall be unobstructed and open to the sky.
3. Architectural features for principal structures such as windows, sills, chimneys, bilco doors, egress windows, cornices, eaves or bay windows may project no more than three feet into a required yard area and no closer than five feet from any lot line. The sum of the bay window projections on a wall may not exceed 1/4 of the length of the wall.
4. An open unenclosed porch, patio, or deck may project into required side and rear setback areas, provided that all such structures shall observe a minimum setback of 10 feet from all side and rear property lines, or may extend into the required front yard setback no more than 40% of the required front yard setback, and no closer than 15 feet to the right-of-way line. Furthermore, if a nonconforming front yard setback exists, created by the lawful construction of the principal structure, the 40% shall be determined based on the legal nonconforming front yard setback. This section does not extend to properties where variances were granted for relief of the front yard setback. All open unenclosed porches, patios, and decks that project into the required setback shall be constructed at grade or at the first-floor level of the building. Any enclosed porch, patio, or deck, or porch having a roof and capable of being enclosed, shall be considered a part of the structure in the determination of the size of the setback or the amount of lot coverage, except that a porch, patio, or deck with only a roof and no walls of any type may project into the required front setback by a distance of not more than 6 feet. Any porch, patio, or deck both enclosed and unenclosed shall not occupy more than 30% of the minimum required side or rear yard setback area.
5. Notwithstanding any provision to the contrary, if the average front yard setback of structures located on either side of a lot differs from the minimum setback required by this chapter, the setback shall approximate the average setback of the next nearest structures.
6. Handicapped ramps open, unenclosed and not covered by a roof or canopy may extend into the

required front, side and, rear yard setbacks, but in no case can any portion of the ramp extend into the right-of-way or onto a side or rear property line.

7. Fences, walls, and hedges

- a. The setback requirements of this chapter do not prohibit an otherwise lawful fence or wall, if the fence or wall does not impair visibility at any access to a public road and does not conflict with the provisions of this section.
- b. Except for patio homes, an ornamental fence or wall not more than four feet in height may project into or enclose any required front or side setback to a depth from the street line equal to the required depth of the front setback. Ornamental fences or walls may project into or enclose other required setbacks, provided that such fences and walls do not exceed a height of seven feet.
- c. A structure, fence, wall, hedge or planting more than two feet high as measured above the street surface at the nearest edge of the pavement may not be erected, placed or maintained on a corner lot within a triangular area formed by the intersecting street lines. The sides of the triangular area shall measure 25 feet from the point where the street lines will intersect if extended to the apex. The provisions of this subsection do not apply to trees more than six feet apart or to existing trees, provided that all branches are located at least six feet above the ground

8. Recreation Facilities (residential and nonresidential)

- a. A private recreational facility such as a tennis court, basketball court, aboveground swimming pool, or at-grade swimming pool that is permitted as an accessory use on a residential lot for a single-family or two-family use shall be located so that the edge of the facility, including any deck or patio is at least 10 feet from each lot line.
- b. Each community recreational facility such as a tennis court, basketball court or at-grade swimming pool shall be located at least 30 feet from each lot line, structure or dwelling unit, 25 feet from any right-of-way, and shall be screened in accordance with the provisions of this chapter.

D. Height Requirements and Exemptions

1. Except within an Airport Approach Zone, the height limitations specified in this chapter do not apply to:
  - a. Flag poles
  - b. Church spires
  - c. Belfries
  - d. Cupolas
  - e. Domes not used for human occupancy
  - f. Chimneys, ventilators, sky lights, water tanks, windmills, solar collectors or similar roof features
  - g. Lightning rods
  - h. The features enumerated above shall be created only to a height necessary to accomplish the purpose intended and in no event more than 15 feet above the lowest point of contact with the roof.
2. Roof features such as water tanks, cooling towers, air-conditioning units, elevator shafts and bulkheads shall be enclosed within the walls of the structure and designed in harmony with the

main walls of the structure on which they are located.

3. A public governmental building, place of worship or hospital may be erected to a greater height than otherwise permitted, provided that the front, side and rear setbacks are increased not less than one foot for each foot by which the structure exceeds the height limitation established for the district in which the structure is located.
4. Unless otherwise provided in this section, a parapet wall may extend not more than five feet above the height limit for the district in which it is located.

E. Slope Development

1. Slopes with a grade of 15% or greater may not be developed unless:
  - a. The development will facilitate the stabilization of the slope.
  - b. The principal structure is designed to be constructed on piers or pilings.
  - c. All slope development is first approved by the Department of Planning Services, Division of Planning, and the Kent Conservation District.
2. A fifty-foot planted buffer area shall be located and maintained between the principal structure and the crest of slopes with a grade of 25% or greater.
3. Drainage for structures and lots may not be channelized toward any slope of a fifteen-percent grade or greater.

Article VIII  
**Reserved**

Article IX  
**Reserved**

Article X  
**Reserved**

Article XI  
**Reserved**

Article XII  
**Reserved**

Article XII  
**Reserved**

Article XIIA  
**Reserved**

Article XIV  
**Reserved**

Article XV  
**Reserved**

Article XIX  
**Reserved**

Article XXI  
**Reserved**

Article XXII  
**Reserved**

Article XXIII  
**Reserved**

Article XXVIA

§ 205-397.2 **Growth Zone Overlay District.**

A. Purpose and intent.

- (1) The Growth Zone Overlay District encompasses an area that Kent County has determined new development should be encouraged. To that end, incentives such as area and bulk requirement reductions are provided to encourage development within the zone rather than in the more rural areas of the County.
- (2) The Growth Zone Overlay District is an area identified by Kent County where infrastructure such as water, sewer, and transportation facilities exists or is planned to serve development.

B. Growth Zone boundary. The geographic area of the district is delineated in the Kent County Comprehensive Plan, as well as on the Official Zoning Map, as amended.

§ 205-397.3 **Reserved**

§ 205-397.6 **Reserved**

§ 205-397.7 **Reserved**

Article XXIX

## § 205-423 **Administrative Approval of Conditional Uses**

Uses that are identified as “PC/C” in the Permitted Use Table shall be subject to the following review process:

### A. Submission Requirements

1. All applications shall provide a plot/site plan showing the following:
  - a. Lot boundaries and dimensions
  - b. Zoning district
  - c. Tax Map Identification number
  - d. Date of plan
  - e. Property owner with deed reference
  - f. Lot area
  - g. Location and setback of all buildings
  - h. Rights-of-way, public and private
  - i. All easements
  - j. Street names
  - k. Water and sewerage facilities
  - l. Off-street parking spaces
  - m. Location and nature of existing and proposed fencing and/or screening and general landscaping
  - n. Any other information that may be required to be shown on the site plan by the Director of Planning Services or designee to determine that the application is in compliance with the codes and ordinances of the County.
2. Applications for home occupations/professional office/home based contractors/school bus parking/campgrounds shall also include:
  - a. Description of proposed use
  - b. Floor plan, depicting the building area devoted to the home occupation or contractor. Campgrounds shall include a floor plan of any permanent buildings or structures.

c. Location, size, and height of any existing or proposed signage

3. Applications for Campgrounds shall require a formal site plan in compliance with Chapter 187, Subdivision and Land Development, if impervious cover is proposed to be greater than 5,000 square feet.

#### B. Adjacent Property Owner Notification

1. The applicant shall notify all property owners within 200 feet of the limits of the subject property of the proposal by certified mail. Receipts of the certified mailing shall be provided to the Department before the application will be considered complete.
2. A mailing list of all property owners within 200 feet of the subject property shall be supplied to the applicant by the Department based upon the most current Board of Assessment records.
3. The written notice shall be provided by certified mail to all property owners within 200 feet of the subject property on a standardized form letter provided by the Department to the applicant for this purpose.
4. If a letter of objection is received by the Department, the application will then be processed as a conditional use application (not requiring formal site plan review), requiring approval from the Kent County Levy Court and meeting all applicable conditions of this chapter.
5. If no letters of objection are received within 30 days, it shall be presumed that no adjacent property owner has an objection to the application

#### C. Approval Procedure

1. Within 30 working days after an application is submitted and accepted, the Director or designee shall approve, conditionally approve, or deny such application. The Department shall inform the applicant in writing of the conditions, if any, for approval or the reasons for disapproval. Such written notice shall also describe the process of appeals. A copy of the written notice shall be kept in the permanent records of the Department
2. Should the Director or designee deny an application, the applicant may file an application for conditional use (not requiring formal site plan review), requiring approval from the Kent County Levy Court and meeting all applicable conditions of this chapter.
3. An applicant who receives an administrative approval for an ECHO housing unit shall file with the planning staff on an annual basis (as near to the date of the administrative approval as possible) a verification of the continuing need for the ECHO housing unit. Staff may inspect the property for compliance when reviewing verification of continuing need.
4. The filing fee for administration review shall be as set from time to time by ordinance of the Levy Court

Article XXX  
Legal Status Provisions and Effective Date

§ 205-430 **Conflict with other laws.**

Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted statutes, rules, regulations or ordinances, the most restrictive, or that imposing higher standards, shall govern.

§ 205-431 **Severability.**

Each phrase, sentence, paragraph, section or other provision of this chapter is severable from all other such phrases, sentences, paragraphs, sections and provisions. Should any phrase, sentence, paragraph, section or provision of this chapter be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other portion or provision of this chapter.

§ 205-432 Reserved. [ ]§ 205-433 **Repealer.**

This ordinance constitutes a plan of zoning, and all prior zoning ordinances are hereby superseded and repealed.

§ 205-434 **Effective date.**

This chapter shall take effect upon adoption, and be in force from and after publication and adoption as required by law.

**Section 29. Severability.**

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.

**Section 30. Effective Date.**

This Ordinance shall be effective upon the date of adoption.

ADOPTED BY THE LEVY COURT OF KENT COUNTY, DELAWARE

---

President, Kent County Levy Court



This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST: \_\_\_\_\_

Clerk of the Peace

**Synopsis:** This ordinance reorganizes Chapter 205, eliminates the BN-1 zoning district, deleted the overturned Coastal Zone Protection Overlay, establishes revised permitted and conditional uses, revises the conditions of approval for various uses, and establishes new and revised area and bulk regulations.