

MEMORANDUM

KENT COUNTY DEPARTMENT OF
PLANNING SERVICES
555 BAY ROAD
DOVER, DELAWARE 19901



TO: Regional Planning Commission

CC: Craig Eliassen, Esq.

FROM: Sarah E. Keifer, AICP, Director, Department of Planning Services

DATE: November 18, 2022

SUBJECT: LC22-23 Zoning Ordinance

Attached, please find Ordinance LC22-23 Zoning. For several years Planning Services has been working on a rewrite of the permitted use and bulk regulation portions of Chapter 205, Zoning. The intent of the project is to modernize the Code, make it easier to use, and amend some provisions that tend to result in an inordinate number of variance requests. In general, the first half of the Chapter has been reorganized and consolidated. The second half of the Chapter including parking and signage will be addressed separately.

Some specific revisions include:

1. Use Classifications:
 - a. P = Permitted by-right
 - b. PC = Permitted with conditions
 - c. PC/C = Permitted by-right unless a neighbor objects, then conditional use (e.g. accessory dwelling unit)
 - d. C = Conditional use not requiring site plan (public hearing required)
 - e. CSP – Conditional use requiring site plan (public hearing required)
2. The uses and zoning districts have been reorganized. We've tried to broaden and clarify the uses included and have cross referenced them with the North American Industry Classification System manual.
3. The BN-1 zoning district was deleted.

4. Definitions were added and use specific definitions were included in Article V, Permitted Uses.
5. Proposed provisions regarding recreational vehicles (cannot be used as permanent living units 205-24) and portable storage units (limit of 30 days 205-28).
6. Agricultural Use Changes
 - a. Clarified what qualifies as farming for land use purposes to match Delaware Code (\$1,000 in revenue and filing a Schedule F with the IRS).
 - b. Reclassified uses as permitted with conditions as opposed to conditional uses:
 - i. Aquaculture/Cranberry bogs (Agricultural Extractive Use)
 - ii. Blacksmiths
 - iii. Buggy Repair
 - iv. Commercial Stables/Horse Training
 - v. Farm Tenant Houses (must be located on active farm)
 - vi. Farm Machinery Repair and Service (BG, IL, and IG too)
 - vii. Hay, Grain & Feed Stores
 - viii. Roadside Stands (but no longer allowed as conditional use in RS1)
 - ix. Stockyard
 - x. Tack and Harness Shops (separated from Comm. Horse Training)
7. Residential Use Changes
 - a. Clarifying language regarding accessory cottages is proposed in response to questions and concerns expressed by applicants over the years they've been permitted (205-68.A.3).
 - i. Clarified that open floor plan pole buildings, outdoor kitchens, and pool houses are NOT ADU's.
 - ii. Accessory Apartments cannot be larger than 40% of the main home.
 1. No size restriction in finished basement.
 - iii. Accessory Cottages cannot be a manufactured home and total building size must be smaller than home.
 1. Must be on a numbered state or county road.
 2. Maximum of 800 sq. ft. of floor area.
 - a. No size restriction on second floor of a detached building.
 - b. ECHO units are no longer permitted in RS1, RS5, or RM.
 - c. Cluster Developments will no longer require a Conditional Use. They will be permitted with conditions.
 - d. Added short term rentals as a use (30 days)
 - e. Created new Home Office use permitted with conditions.

- f. Proposed changes to the Planned Unit Development provisions include reducing the minimum parcel size from 50 to 20 acres and permitting a 1 unit per acre increase in density if specific design criteria are satisfied. (205-68.J).
8. Institutional Uses
- a. Neighborhood and Regional Institutional – conditional use site plan in every district but Industrial. Includes uses like:
 - i. Day Care Centers
 - ii. Museums and Historical Sites
 - iii. Assembly and Worship
 - iv. Death Care Services
 - v. Services Organizations / Non-profits
 - b. Residential Institutional will be a conditional use in all districts but OC, IL, & IG. Includes uses like:
 - i. Nursing Homes and Care Facilities
 - ii. Assisted Living Facilities
 - iii. Halfway Homes or Orphanages
 - iv. Convents or Monasteries
 - v. Fraternity or Sorority housing.
 - vi. Rooming or Boarding homes.
 - vii. Protective Care (i.e. jails or prisons) no longer allowed in RMH, BN, RS5, RM, or RS1.
 - c. Schools
 - i. Colleges specifically called out as own use. Conditional use site plan in AC/AR and permitted in BG.
 - ii. All other schools are now permitted with conditions in all zoning districts.
 - iii. Previously Private and quasi-public schools required the conditional use process.
 - iv. The only time a public or private school would require a conditional use would be if there is on-site residential uses or dormitories.
9. Recreational Uses
- a. High Intensity –
 - i. Commercial in nature.
 - ii. Conditional use in AC, AR, and BN. permitted in BG
 - iii. Uses like indoor swimming pools, bowling alleys, driving ranges, paintball, laser tag, trampoline facilities, pool halls, amusement parks, etc.

- b. Low Intensity –
 - i. Open Space and passive recreation style uses
 - ii. permitted in AC, AR, BN, & BG
 - iii. Uses like nature areas, arboretums, tot-lots, country clubs, golf courses, outdoor swimming pools, playing fields, etc.
- c. Some of these uses were previously conditional use in AC & AR like country clubs, swimming pools, and Private Membership Recreation like tennis clubs.

10. Commercial Uses

- a. Auctions will now be permitted in BG. Previously conditional use.
- b. Banquet facilities no longer conditional use in RM, but now conditional use in AC/AR and permitted in BN. Minimum of 5 acres required in AC/AR.
- c. Bed-and-Breakfast now permitted in BN instead of conditional use but no longer allowed in RS1 or RM.
- d. Casinos now permitted in IL and BG as conditional use site plan
- e. All general retail and service are permitted in BG & BN. That means uses like banks and fast food will no longer require a conditional use.
- f. There is still a heavy commercial category that will require a conditional use for uses like freight services and lumberyards.
- g. All contractor establishments have become permitted with conditions in BG, IL, & IG
- h. All motor vehicle uses are now together. All are permitted with conditions in BG, IL and IG (except sales in industrial). This means motorcycle sales, car washes, repair in IG, will no longer be conditional.
- i. Created a new section for Drive-Through Establishments with specific conditions to address vehicle stacking
- j. Proposed a new “mixed use” development type to permit some flexibility in commercial and residential design in the RM, BN, BG, and OC zoning Districts (205-71.K).
- k. Shopping Centers less than 175,000 sq. ft. permitted by-right in BN and BG while those over 175,000 permitted as a conditional use in BG.

11. Industrial Uses

- a. Separated Heavy Industrial and Light Industrial categories. Heavy is only allowed in IG, while Light is allowed in both.
- b. Only potentially hazardous uses, recycling centers, and utilities are conditional uses.
- c. Outdoor storage lots and Warehouses have been made permitted with conditions.

12. Business/Industrial Parks (205-60 & 205-73.D)

- a. Accommodate a wide range of businesses that go beyond traditional industrial manufacturing and warehousing uses, a new use is created as permitted with conditions in BG, IL, & IG.
 - b. Would allow for light industrial and warehousing, but also recreational uses, offices, motor vehicle repair, contractors establishments, animal hospitals, breweries/distilleries, or agricultural support uses.
 - c. Response to apparent market demand.
13. Both Community and Utility Solar provisions match the ordinance adopted October 2022. Utility Wind provisions were added that match the limitation of Utility Solar.
14. Telecommunication towers are proposed to be permitted through administrative approval provided no objection is received from adjacent property owners. Provisions for small scale and stealth towers have also been included (205-73.L).
15. Area and Bulk Requirements
 - a. All of the area and bulk requirements have been consolidated into one article and simplified the categories. In addition, the impervious cover limitations and setbacks were altered in response to trends in variance applications.
 - b. Increased Impervious by 5% in AC/AR/RS1. Road frontages on county roads reduced.
 - c. Removed 75' front setback from major roads and simply state that all non-subdivision streets require a 40' front setback.
 - d. Outside Growth Zone:
 - i. Setbacks reduced to front 30', sides 15', rear 30'.
 - ii. Reduced setbacks in the non-residential districts.
 - iii. 75% impervious in all non-residential districts. An increase in all districts except BG.
16. Accessory Structures
 - a. Can be up to 10% larger than the home which includes attached garages and covered porches.
 - b. Front porches can go into the front setback by no more than 6 ft.
 - c. Handicap ramps no longer have a setback. Can go right to the lot lines.
17. New definitions of domestic pet and livestock
 - a. Livestock is a commodity
 - b. Eliminated limit of four (4) domestic pets.
 - c. Included standards for backyard chickens
 - i. 15,000 sq. ft. lot minimum
 - ii. Limit of 5 total
 - iii. Prohibition on roosters.

This ordinance is scheduled for public hearing on December 1, 2022. Please do not hesitate to contact me with any questions in advance of the hearing.

Thank you.