

CHAPTER 5

ZONING AND LAND DEVELOPMENT: OVERVIEW OF THE PROCESS

(added to The Guide, September 2021)

It is common that the first official notice of a project that raises environmental concerns happens in the context of a developer or facility owner seeking some kind of local zoning approval. Indeed, some state programs require that the applicant have secured local zoning approval before DNREC will even consider an application for state approval. This makes sense—why should DNREC spend time and effort on a project if local zoning will bar the construction? Thus, it is often the case that the details of a project first appear in the context of proceedings at the local level. It is also common that persons concerned about the environmental impacts of a project want to voice their concerns at those local proceedings.

This Chapter is designed to explain in general terms two distinct but interrelated topics: Zoning (which, as we will see, relates to the use of land) and Land Development (which relates to how land is developed into residential or business developments). Zoning and Development approval are separate, complex processes, and the ordinances governing those processes are quite long and detailed. This chapter does not get into all those details; instead, it seeks to provide you with an overview that can guide the deep dive that occurs with a particular project. There is, however, an important caveat when it comes to Zoning or Development and environmental concerns: the Zoning and Development processes serve a specific and limited purpose; as a result, only certain issues matter in that process, while many others (including, often, environmental issues) do not. Thus, effective environmental advocacy requires an understanding of what those local processes do, what issues matter in those processes, and how they fit into the broader regulatory structure so that the right issues can be raised in the right forum.

5-1: What Is The Purpose Of Zoning And Land Development Regulation?

At its most basic level, Zoning is about giving the zoning authority (usually, the county or municipal government) the ability to control how land is *used*. What

lands should be primarily used for residential purposes? Commercial purposes? Industrial purposes? In theory, Zoning helps to separate these different uses so that, in a given area, uses are compatible with each other because incompatible uses are excluded. For example, when making zoning decisions about new projects, it generally is not a good idea for heavy industry uses and residential uses to be mixed together; the pollution, traffic, and other impacts of heavy industry pose risks and quality of life issues for residences, and by separating the uses into different areas (or “zones”) we can avoid those risks and issues.¹ The purpose of zoning, therefore, is to control uses of land so that these incompatibilities are minimized.

Development, on the other hand, governs the details of a new use that is permitted under Zoning. A parcel might be zoned for residential use under Zoning, and now the owner wants to subdivide it so that a number of houses can be built on the parcel. Development is a municipal process that governs how that development will be built. Are there enough streets? Parks? Open space? How will the impacts of the new houses or businesses affect the community and how can the adverse effects be minimized? The Development ordinance articulates rules and procedures to answer those types of questions.

What is important to recognize, however, is that, while things like traffic and pollution might be among the reasons for keeping heavy industry uses away from residential uses in the context of zoning, or traffic might be a factor considered in the Development process, the Zoning and Development processes themselves do not always seek to regulate those impacts. The fact that a heavy industry use takes place in a zone designated for heavy industry is the end of the zoning inquiry; the fact that it may pollute is often regulated by other laws. As a result (and this can be frustrating for most citizens) the persons wielding the zoning power (like Zoning Officers, Planning Commissions, Boards of Adjustment, and even County Boards) might not consider those environmental impacts in a pure Zoning or Development context *unless the governing ordinance makes those impacts a factor*

¹ Not that such incompatible uses never mix. Sometimes, the mixing occurred before zoning powers were available to separate them, and as we shall see with Nonconforming Uses, are therefore still allowed to be together. Other times, they reflect historic patterns and prejudices that are difficult for zoning authorities to undo.

in the zoning or development decision. Thus, the Zoning and Development processes may not be the place to raise issues unless the issue is something that the ordinance requires the authority to consider.

5-2: The Basic Structure of Zoning And Development Regulation

There are three distinct yet interrelated sets of rules governing the Zoning and Development processes. These are:

- The Comprehensive Plan
- The Zoning Ordinance
- The Subdivision and Land Development Ordinance

A general word about each of these important documents.

The Comprehensive Plan is a document designed to create a plan for how land use should be governed over the next period of years (often, ten years is the planning period). The Comprehensive Plan (sometimes called the “Comp Plan” for short) seeks to impose guidelines that can affect both the Zoning and Development processes. In the Zoning context, the Comp Plan identifies how land should be used in the planning area. Where do we want new industry to go? New commercial areas? New residential areas? While it cannot kick out what is already there (for reasons discussed later in this Chapter), it can propose what types of changes should take place in areas as old uses end and new uses seek to begin. This is especially relevant to the Zoning process because it drives what the zoning ordinance will say, given that zoning must be done in compliance with the Comp Plan. In the Development context, the Comp Plan can specify guidance that will affect how important impacts from development should be handled. Thus, the Comprehensive Planning Process develops a vision for the future of the area to which it applies, and the Zoning and Development processes are guided and controlled by the Comp Plan. Here are links² to the current County Comp Plans:

² These links are current as of August 2021.

Sussex County: <https://sussexcountyde.gov/comprehensive-plan>

Kent County: <https://www.kentcounty.com/planning/compplan>

New Castle County: <https://www.nccde.org/350/Comprehensive-Plan>

The Zoning Ordinance is a law passed by the County or municipality that governs the rules for Zoning. Following the Comp Plan, it designates zoning for parcels of land under the zoning authority’s jurisdiction. It designates the uses allowed within each zoning district, the rules that govern those uses (for example, setbacks from property lines and limits on how much area of a parcel can be built vs. open space), and processes for how these rules are to be enforced and how they can be changed. The Zoning Ordinance is the work horse of the zoning power.

Here are links³ to the County zoning ordinances in Delaware:

Sussex County: The County Zoning provisions are found in Chapter 115 of the Sussex County Code. Here is a link to the table of contents of the Ordinance: <https://ecode360.com/8883716>

Kent County: The County Zoning provisions are found in Chapter 205 of the Kent County Code. Here is the link to the table of contents of the Ordinance: <https://www.ecode360.com/7601989>

New Castle County: The County Zoning provisions are found in Chapter 40 of the County’s Code of Ordinances. Chapter 40 is also called the Uniform Development Code (“UDC”). Here is the link to the table of contents for the UDC: https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO

Note that some Delaware municipalities (like Wilmington and Newark) have their own zoning ordinances that would control zoning within the municipality. When

³ These links are current as of August 2021.

the local municipality has its own zoning ordinance, it is the local ordinance—not the County ordinance—which governs zoning of a parcel located within the municipality.

The Development Ordinance governs the Development process. Development ordinances go by different names. Sussex County calls it the “Subdivision Ordinance of Sussex County, Delaware;”⁴ Kent County calls it the “Subdivision and Land Development Ordinance of Kent County, Delaware;”⁵ New Castle County calls it the “New Castle County Uniform Development Code.”⁶ Non-Delaware sources sometimes refer to Development ordinances by reference to the acronym “SALDO” (from “**S**ubdivision **A**nd **L**and **D**evelopment **O**rdinance”). Whatever it is called, a Development ordinance exists to set rules for how properly-zoned land will be developed. When a developer wants to build, say, a 200-home subdivision, the land must be zoned to allow the single family or other types of residential units that will make up the subdivision as specified by the zoning ordinance. Generally, the Development ordinance comes into play when a property owner or developer wants to split or subdivide one parcel into multiple parcels (think of a 300 acre parcel that the developer wants to develop into a 200-home subdivision—the developer owns one parcel and wants to divide into the 200 lots that will be sold). What the Development ordinance does (separate from the zoning ordinance) is impose additional requirements—things like density (how many housing units per unit of area), open space, traffic control, streets and other amenities—that the developer must include as part of the subdivision. Development ordinances usually create a process (often starting at a Planning Commission and ending with a City or County Council) which must approve the subdivision plan under the terms of the Development ordinance.

Here are links⁷ to various Development ordinances in Delaware:

⁴ Sussex County Code, § 99-1.

⁵ Kent County Code § 187-1.

⁶ New Castle County Code § 40.01.000.

⁷ These links are current as of August 2021.

Sussex County: The County Subdivision of Land provisions are found in Chapter 99 of the Sussex County Code. Here is a link to the table of contents of the Ordinance: <https://ecode360.com/8882536>

Kent County: The County Subdivision and Land Development provisions are found in Chapter 187 of the Kent County Code. Here is the link to the table of contents of the Ordinance: <https://ecode360.com/7600505>

New Castle County: The County Zoning provisions are found within the UDC. Here is the link to the table of contents for the UDC: https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO

Because Zoning ordinances are different from Development ordinances, it is important to know which law applies because the governing law will dictate the issues that are relevant to the approval being sought (as well as to governmental board that will decide the issue).

5-3: A More-Detailed Look At Zoning Ordinances

Zoning Ordinances start with the concept of zones (usually called “districts”) in which certain uses of the land are allowed (and certain uses are prohibited). While one might think of the general categories of uses along the lines of residential, commercial, agricultural, and industry, zoning ordinances tend to be much more granular and specific. For example, there are many different types of residential uses—single family homes, different-sized buildings that are condominiums or apartments, and even high-rise buildings of apartments or condos. These different types of residential uses pose different issues—apartments or condos in a building likely mean there are more people living in the same amount of land space than if there was a single-family home on the parcel, which in turn creates traffic and parking issues. As a result, zoning ordinances tend to have multiple types of residential, commercial, and industrial zones.⁸ Sometimes,

⁸ For example, Sussex County’s Zoning Ordinance recognizes seven different kinds of residential districts: AR-1 and AR-2 Agricultural/Residential; MR Medium-Density Residential; GR General Residential; and HR-1 and HR-2 High-Density Residential; UR Urban Residential; RPC Residential Planned Community; VRP Vacation-Retirement-

different uses are combined into one district; in Sussex County, for example, there are Agricultural/Residential districts—likely reflective of the rural nature of certain parts of the county.

5-3.1: The Notion of “Uses”

Regardless of the title or category of use for a particular zone, most zoning ordinances operate by specifying the particular uses allowed or permitted in the zone. For example, the Sussex County Zoning Ordinance says the following about the Agricultural/Residential AR-1 districts:

§ 115-20 Permitted uses.

A. A building or land shall be used only for the following purposes:

(1) Detached single-family dwellings on individual lots. A manufactured home may be used as a detached single-family dwelling on an individual lot, provided that it conforms to the following restrictions:

(a) The lot is not within a major subdivision created prior to the effective date of this section.

(b) There is a minimum width along any exterior front, side or rear elevation of 24 linear feet, exclusive of any garage area or other attached accessory structures .

(c) It is permanently mounted on a solid foundation or pier foundation system and anchored and, in each case, in accordance with the manufacturer's installation instructions.

(d) All wheels, axles, transportation lights and removable towing apparatus, if any, shall be removed from the manufactured home when it is placed on the foundation in accordance with Subsection A(1)(c) above.

(e) All utilities shall be permanently connected in accordance with applicable Sussex County Code provisions.

(f) The siding of all manufactured homes shall be continuous so as to enclose any joining of two or more sections.

(g) It complies with all pertinent provisions of the Housing Code of Sussex County and the Fire and Health Codes of the State of Delaware.

(h) All multisectional manufactured homes, initially placed pursuant to the provisions of this section, shall be not more than 10 years old. All replacement multisectional manufactured homes shall not be of an older model than the manufactured home being replaced and shall conform to this section. Any other manufactured home which, at the

Residential-Park. Kent County recognizes five: AR Agricultural Residential; RS1 Single-Family Residential; RS5 Medium-Density Residential, RM Multi-family Residential; and RMH Residential Manufactured Home. You will also find multiple commercial and industrial types of districts.

effective date of this section, does not conform to the requirements of this section, may be replaced with a manufactured home which is not of an older or smaller model than the manufactured home being replaced. A single section manufactured home may be replaced by a single section manufactured home; a single section manufactured home may be replaced by a multisectional manufactured home; a multisectional manufactured home may be replaced by a multisectional manufactured home; a multisectional manufactured home shall not be replaced by a single section manufactured home.

(i) In addition to the requirements herein, a manufactured home shall comply in all respects with the design and technical requirements of § 115-187.

(2) On a property of less than five acres, any farm, truck garden, orchard or nursery uses.

(3) Temporary removable stands for not over six months' use per year, for seasonal sales of products raised on the premises and products raised on other lands in Sussex County owned or leased by the owner of the premises on which the stand is located, and no business office or store is to be permanently maintained on the premises, except as provided in § 115-22 regarding stores or shops for sale of farm products, farm supplies, groceries, beverages, drugs, food and similar stores and shops.

(4) Churches, rectories, parish houses, convents and monasteries, temples and synagogues.

(5) Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges and similar activities operated as a business, but including a building for a golf pro shop, locker room and snack bar as an accessory use to a permitted golf course, provided that no such building is located closer than 100 feet to adjoining property lines. Practice greens and tees may accompany a standard nine-hole or eighteen-hole golf course occupying at least 75 acres.

(6) Public parks, public and private forests, wildlife reservations and similar conservation projects.

(7) Recreational uses such as tennis courts, swimming pools and other similar activities operated exclusively for the use of private membership and not for commercial purposes, provided that no such use, structure or accessory use is located closer than 50 feet to any adjoining property line, unless such property line fronts a public street or waterway with rights-of-way not less than 25 feet, in which instance the required setback need not exceed 25 feet, and provided further that all such facilities must be located on a site having a minimum of two acres.

(8) Stable structures or feed lots, private, or keeping and feeding of horses, ponies, cattle, sheep, goats, hogs or poultry for personal enjoyment and not as a business, provided that any building for keeping of animals shall be located at least 50 feet from any lot lines and 100 feet from any dwelling not on the premises.

(9) Greenhouses, commercial, provided that the lot area shall be five acres or more.

(10) Swimming pools, game courts, picnic grounds, boat basins, lakes or similar activities in a development or subdivision when such facilities are situated on a separate lot or parcel within said development or subdivision for use of the residents and their guests and not commercially

operated, may be on less than two acres. Such facilities will be subject to a site plan review, and setbacks will be determined by the Commission.

(11) Transmission lines and their supporting elements.

(12) Open space as defined in § 115-4.

(13) Special events.

(a) special events held outdoors or within a temporary structure for a purpose different from the permitted use and usual occupancy of a premises or site that are administratively approved by the Director or his or her designee, when the event: will not impair the purpose and intent of the Zoning Ordinance; is not so recurring in nature as to constitute a permanent use not otherwise permitted in the district; and will not significantly affect the surrounding properties. Events that are consistent with the permitted use and usual occupancy of a site or that occur on land owned by the United States of America, the State of Delaware, Sussex County, municipalities and educational institutions are permitted. "Special events" include circuses, carnivals, midways, promotional and tent sales events, fairs, festivals, concerts, rodeos, shows, races/walks or any other event or mass gathering.

(b) No more than three special events shall be approved for the same property or premises during a calendar year. Each special event shall be counted as one calendar day, not including reasonable set up and removal time when the event is not otherwise underway.

(c) In determining whether to administratively approve a special event, the Director or his or her designee shall consider the following:

- [1] The estimated number of attendees;
- [2] The size of the parcel where the special event is to be located;
- [3] The parking requirements of the special event;
- [4] Roads and traffic patterns providing access to the special event;
- [5] Prior events conducted by the applicant;
- [6] Noise, light, odor, and dust generated by the special event;
- [7] Proposed hours of operation and number of consecutive days; and
- [8] Such other considerations that may be applicable to the requested event.

(d) The Director or his or her designee may impose conditions upon an administrative approval.

(e) All special events, regardless of size, location, use or duration, shall be subject to the requirements of the Sussex County Special Event and Public Safety Services Policies and Procedures. Failure to abide by the Sussex County Special Event and Public Safety Services Policies and Procedures may result in the termination of the special event's administrative approval.

(f) Special events that do not meet these requirements or which are not administratively approved shall require a conditional use.

(14) Use of a manufactured home as a single-family dwelling to meet an emergency or hardship situation that is administratively approved by the Director or his or her designee and subject to the following:

- (a) The applicant must provide an affidavit from a doctor confirming the existence of the emergency or hardship situation.
- (b) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.
- (c) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the proposed manufactured home.
- (d) The Director shall give written notice to adjacent property owners of the requested manufactured home and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.
- (e) The Director shall consider factors, including whether the manufactured home will have a substantially adverse effect on neighboring properties.
- (f) Within 30 working days after the request is submitted, the Director or his or her designee may approve the manufactured home or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.
- (g) Such an approval shall not exceed two years. The Director may grant an extension for an emergency or hardship situation upon receipt of a subsequent affidavit from a doctor stating that the emergency or hardship situation still exists. Such an extension may be granted annually as long as the emergency or hardship still exists.

(15) Garage/studio apartment with at least one parking space for the exclusive use of the tenant included on the premises that is administratively approved by the Director or his or her designee, and subject to the following:

- (a) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.
- (b) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the garage/studio apartment.
- (c) The Director shall give written notice to adjacent property owners of the requested garage/studio apartment and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.
- (d) The Director shall consider factors including whether the garage/studio apartment will have a substantially adverse effect on neighboring properties.

(e) Within 30 working days after the request is submitted, the Director or his or her designee may approve the garage/studio apartment or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.

(16) Use of a manufactured-home-type structure for any business, commercial or industrial use that is administratively approved by the Director or his or her designee, and subject to the following:

(a) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.

(b) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the manufactured-home-type structure.

(c) The Director shall give written notice to adjacent property owners of the requested manufactured-home-type structure and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.

(d) The Director shall consider factors including whether the manufactured-home-type structure will have a substantially adverse effect on neighboring properties.

(e) Within 30 working days after the request is submitted, the Director or his or her designee may approve the manufactured-home-type structure or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.

B. On a farm of five acres or more, a building or land may be used for the following additional purposes:

(1) Agriculture, including horticultural, hydroponic, chemical or general farming, truck gardens, cultivating of field crops, orchards, groves or nurseries for growing or propagation of plants, trees and shrubs, forest use (tree farming), including use of heavy cultivating machinery, spray planes or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds or poultry and including structures for processing and sale of products raised on the premises, provided that:

(a) Any commercial grain drier shall be located at least 300 feet from any boundary of the premises on which such use is located, and any noncommercial drier shall be located at least 100 feet from any boundary.

(b) Any feed lot or structure used for the commercial feeding and housing of cattle, sheep and hogs or structure for storage of animal manure or animal waste composting shall be located at least 100 feet from all boundary lines of the premises on which such use is located and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.

(c) Structures for commercial poultry raising, structures for storage of poultry manure and structures for poultry product composting shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.

(d) Commercial slaughtering and processing of large animals such as horses, cows, pigs, sheep or goats shall not be conducted on the premises.

(e) Structures for commercial aquaculture, fish and frog farming, structures for storage of fish or frog waste and structures for fish or frog product composting shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises. Farm ponds utilized for aquaculture, fish or frog farming shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.

(2) Dog kennels, commercial, provided that any open pens, runs, cages or kennels shall be located at least 200 feet from any lot lines.

(3) Grain storage structures.

(4) Hospitals or clinics for large or small animals, provided that all buildings, structures, pens or open kennels shall be located at least 200 feet from any lot lines.

(5) Stables, public, provided that any building for keeping of animals shall be located at least 200 feet from any lot lines.

Several things should jump out from this text. First, there is a wide variety of uses that are “permitted” in AR-1 districts. While some are what one would consider to be traditional “agricultural” or “residential” uses, many are not—churches, golf courses, wildlife reservations, swimming pools and tennis courts, and outdoor “special events.” However disparate they may be from the concept of “agricultural” or “residential,” because they are listed in the section, they are allowed. In other words, if it is on the list in the section, the owner of a property zoned AR-1 can do any of the listed uses. Some people refer to this as a “by right” use—because it is listed, the owner can use the land by the right granted as a result of being on the list in the ordinance.

Second, the language of this section—though inclusive of a wide variety of different uses—is also exclusive. Note the language at the very beginning of the section: “A building or land shall be used *only* for the following purposes” (emphasis supplied). In other words, if a use is not on the list, it is not allowed. Thus, building a factory or other heavy industry use cannot be done in an AR-1

district because that type of use is not identified as a permissible use on property so zoned. Sussex County makes this point very clear in Sussex County Code § 115-15:

For the purpose of this chapter, permitted uses are listed for the various districts. **Unless the contrary is clear from the context of the lists or other regulations of this chapter, uses not specifically listed are prohibited.** The Commission shall have the authority to determine whether a use shall be permitted because it is clear from the context of the lists or other regulations that it should be permitted due to its similarity to those uses that are listed as permitted. (Emphasis supplied).⁹

Third, this inclusive-exclusive dynamic is found in every zoning district description. As a result, the wide variety of different uses listed in the ordinance means that the title of the zone (Agricultural/Residential) matters less than the list of allowed uses. In other words, the title tells you where to look in the ordinance, but the list tells you what is allowed in that type of district.

Even this long list of “by right” uses does not exhaust the possibilities. Zoning ordinances usually recognize three additional categories of uses within each zoning district: accessory uses, conditional uses, and special uses.

Accessory Uses are additional uses that are customarily incidental and subordinate to the main permitted use.¹⁰ For example, it is customary for a residence to have a separate garage building for the cars of residents, and it is incidental and subordinate to the residential use to have garages that serve the residence (at least in areas where the lot has enough room for a separate garage). Thus, the separate garage building might well be recognized as an accessory use for parcels zoned residential. Some zoning ordinances list out accessory uses; others will allow a use to be considered accessory if it is “incidental and customary to” the main permitted use. Generally, Accessory Uses are considered to be “by right” because they are linked to the “by right” permitted use.

⁹ Note, however, that the section also appears to empower the Planning Commission in some cases to find a use is permitted based on a “similarity” to uses listed as permitted.

¹⁰ The three county Zoning Ordinances use this customarily incidental and subordinate concept in defining accessory uses. See Sussex County Code § 115-4(B); Kent County Code § 205-6; UDC § 40.33.300.

Conditional Uses are certain specified types of uses allowed on a parcel but require approval by the zoning authority. In other words, the types of conditional uses allowed in a particular district are generally considered to be permissible, but the zoning authority wants to make sure (usually through conditions imposed at the time of approval) that the use will be appropriate. Because this need for approval means that they cannot take place automatically, Conditional Uses are not “by right.” Conditional Uses are often permanent in the sense that, once approved, the uses can continue to take place (as long as the terms of the approval are followed). Notice that the concept of Conditional Use allows for the zoning authority to place conditions on the approval of the use; to the extent that the zoning ordinance grants this power (and most do), seeking conditions during the approval process is one way for citizens to reduce effects caused by the proposed use.

Special Uses are other specified types of uses allowed upon a parcel that require approval by the zoning authority. Like Conditional Uses, the uses allowed in the particular district are considered permissible, but the zoning authority wants to make sure the use will be appropriate. Unlike Conditional Uses (which tend to be permanent in use and approval), Special Uses include uses that are temporary in nature, and so might come with time limits¹¹—though other Special Uses might appear to be more permanent in nature.¹² The process and criteria for approval of Special Uses tends to be different from that used for Conditional Uses. The ordinance may allow for conditions to be placed on the approval; like conditional uses, seeking conditions to reduce effects of the proposed special use may be available to citizens.

Finally, in addition to specifying which uses are allowed (and, therefore, which uses are prohibited) in a particular zoned district, zoning ordinances will typically impose various requirements on the how the uses will be done on a parcel. For example, in a residential district, the ordinance may specify such things as minimum size of the use (by area in square feet, width, and/or depth),

¹¹ See e.g., Sussex County Code § 115-23(A) (allowing certain uses “for a period not to exceed five years”).

¹² See Sussex County Code § 115-23(C) (allowing, among other things, pet cemeteries, bed & breakfast inns, and cell or telephone towers in AR-1 and AR-2 districts).

how far from the property line the use must be set (often referred to as “setback” requirements), how much area of a parcel must be kept open or not built upon (often referred to as “open space” or, in residential districts, front, back, or side yard requirements), how high the building or structures can be (often called “height requirements” or “height restrictions”), and how wide buffers around the property (if any) need to be. Even with a “by right” use, the property owner must still comply with these requirements. Oftentimes, these requirements are found in or near the sections describing the districts themselves, though some more general requirements (like parking restrictions that apply to several different types of districts) might be found in a different section or article of the zoning ordinance.¹³

It is worth noting that, generally, the description of and restrictions on uses within a district tend to speak in non-environmental terms. That underscores the different focus of zoning on the *use* of a parcel of land as opposed to the *impact* of that use on the parcel or neighboring land.

5-3.2: The Notion of Avoiding Zoning Requirements: Nonconforming Uses, Variances, and Waivers

While zoning ordinances can impose limits on and requirements for the types of uses allowed in a district, there are three concepts in zoning law which make it possible that the terms of the ordinance will not apply to a particular use.

Nonconforming Uses are uses that were allowed but, because of a change in the ordinance, no longer conform to or comply with the ordinance. The use existed before the ordinance was passed making that use not allowed. These are sometimes called “pre-existing uses.” Think of an already-existing store located in an area that is zoned residential for the first time. Prior to the ordinance change, the store was in compliance because there was no zoning restriction, but after the change is now not in compliance with the designated residential uses in the new zoning district. It did not violate the zoning law before the change, but does

¹³ In Sussex County, for example, one can find specific Height, Area, and Bulk requirements for AR-1 and AR-2 districts in Sussex County Code § 115-25, while more general requirements concerning front and side yards can be found in §§ 115-182, 183.

violate it (that is, it no longer “conforms” with the ordinance) after the change. This was a common occurrence when zoning laws are first drafted and imposed; uses that were not prohibited before suddenly are prohibited. This can also occur after a change in the Comprehensive Plan requires zoning in a particular area to be changed.

The issue with Nonconforming Uses is what to do about their new noncompliance with the zoning law. Ordering the owner to bring the use into compliance (in our example above, stop operating a store and convert it to a residence) deprives the owner of the value that the store brought and therefore risks the owner suing for a “taking” of the owner’s property. To avoid such potential takings claims, many zoning ordinances allow nonconforming uses to continue to exist and operate in their nonconforming way until some specified event in the future (such as the destruction or abandonment of the use). In other words, the use is allowed to continue to operate under the old rules—what some people call being “grandfathered”—for potentially a long period of time. While nonconforming uses allow the governmental unit exercising zoning power to avoid potential “takings” liability, it also results in the presence of uses that are inconsistent with the new zoning designation and which property owners could not build after the zoning change. The effect of recognizing Nonconforming Uses in this way is to have uses that avoid the requirements of the zoning ordinance.

Variations involve changes to the zoning requirements for a particular parcel. Many variations involve by right uses that need some relief from a particular requirement imposed on that use. For example, the zoning ordinance may impose setback requirements for a residence (that the house must be a certain number of feet from the property line). A property owner may find that, because of the shape or size of the parcel, the setback cannot be met (or will have adverse impacts on the use the property owner has a right to build). The property owner may then request a variance from the setback requirement to change (or vary) the setback requirement. Generally, to obtain a variance the property owner will need to show certain requirements are met.¹⁴ The zoning ordinance will spell out what

¹⁴ Standards governing variances can be found in Sussex County Code § 115-221; Kent County Code § 205-400(B); UDC § 40.31.451.

the owner must show to obtain a variance and the criteria by which the authority hearing the request (Board of Adjustment or other designated authority) must judge whether to grant the variance.

Waivers are powers granted to the zoning authority to waive certain requirements of the zoning ordinance for a particular project. For example, zoning ordinances often contain requirements for the number of parking spaces that must be provided with certain types of developments. A developer might want to reduce the number of parking spaces in order to reduce the footprint of a building. Some zoning ordinances might allow the zoning authority the right to waive those requirements. The ability to obtain and the process for obtaining a waiver must be spelled out in the ordinance. The effect of a waiver is to have uses that avoid particular requirements of the zoning ordinance.

5-4: A More-Detailed Look At Development Ordinances

While Zoning defines the types of uses allowed on a particular parcel of land (as well as some requirements like setbacks), Development ordinances focus on what is necessary to break up (or subdivide) one parcel into many parcels. For example, a developer owns two hundred acres as a single parcel and wants to subdivide it into 150 parcels that will each have a residence located on it. Precisely because the developer wants approval for what will likely be a lucrative conversion of the property into smaller parcels, land use authorities have traditionally used the Development ordinance requirements to demand and get additional concerns addressed. Thus, from the regulatory perspective, the Development process involves requirements that go beyond merely how the lot will be split into multiple lots. Where will streets be located? Will there be parks and open space? Thinking about those issues before the development is approved creates opportunities for the regulatory authority to impose requirements to make the development achieve goals of the community. As a result, land development authorities tend to think of the Development process in broader terms: Consider this statement of the purpose for the SALDO found in Kent County's code:

This chapter is enacted for purposes which are to provide for and accomplish the following:

- A. To guide and coordinate the harmonious development of the unincorporated area of Kent County;
- B. To preserve, in accordance with present and future needs, the health, safety, order, convenience, prosperity, and general welfare of the citizens of the County;
- C. To ensure that the arrangement and design of subdivisions and land developments conform to the Comprehensive Plan, Chapter 205, Zoning, the Delaware Code, and all other ordinances, codes, regulations, plans and maps adopted in furtherance thereof;
- D. To assure sites suitable for building purposes and human habitation and use;
- E. To provide adequate open spaces for recreation, light, and air;
- F. To minimize any adverse impacts of land use and whenever possible produce positive environmental outcomes;
- G. To provide for convenient distribution of population and traffic;
- H. To facilitate and accommodate prospective pedestrian and vehicular movement, fire protection, and the rendition of other essential services through a coordinated system and design of streets;
- I. To ensure the coordination and conformity of subdivision and/or land development plans with the public improvement plans of the County regarding such facilities as streets, sewers, and other facilities and improvements;
- J. To establish conservation design as a tool to help protect interconnected networks of open space, and to help establish buffers along boundaries with scenic roadways, existing protected land, and active farmland;
- K. To establish a uniform and equitable procedure for the review and processing of subdivision and/or land development plans;
- L. To establish standards to ensure that developments are environmentally sound by requiring preservation of existing natural features, including groundwater recharge areas, wellhead protection areas, wetlands, riparian corridors, and watersheds to the greatest possible extent in areas affected through excavation, construction, or other land development activities;
- M. To minimize or avoid any adverse environmental impacts associated with the degradation of waters throughout the County and be consistent with all provisions of the Federal Clean Water Act and the State of Delaware's Tidal Wetland Act;
- N. To establish minimum standards for the design and construction of improvements which aid in the use and enjoyment of land, such as streets, sidewalks, adequate drainage and water and sewage facilities, and which would aid in precluding adverse environmental effects, such as sedimentation, soil erosion, flooding, and water pollution; and
- O. To establish standards for the administration of this chapter.

Kent County Code § 187-3.¹⁵ Note that several of the purposes expressly reference environmental and conservation-type issues and impacts. To the extent that the regulatory authority wants to address those concerns, the Development ordinance will articulate standards that the proposed development must meet in order to obtain approval from the land development authority. Those standards can provide an important vehicle to raise environmental concerns within the process.

The Development process involves multiple submissions, reviews, and approvals. For major developments,¹⁶ a sketch plan, preliminary plan, final plan, and a plat of subdivision will likely need to be submitted and approved. The Plat (or Plan) of Subdivision is recorded in the public land records to put present and future owners on notice of various restrictions in the final approved plan. Approvals generally involve review by a Planning Commission or Department, with ultimate approval by the County Council (or in Kent County, the Levy Court). This suggests two different places where citizens might be able to make their views known to decisionmakers before a subdivision is finalized and goes forward.

5-5: A Unique Delaware Twist: PLUS Review

In addition to the local zoning processes, Delaware has created a unique state-level review process for certain development projects. Outlined in Chapter 92 of Title 29 in the Delaware Code,¹⁷ these Preliminary Land Use Service, or

¹⁵ Sussex County's SALDO statement of purpose is much more modest: "This chapter is established to promote and protect the health, safety, convenience, orderly growth and welfare of the citizens of the county; to assist in the proper development, conservation of property values and use of land in the county; to encourage the preservation and conservation of farmland; and to assure that future schools and other public buildings, community facilities, residential developments and commercial and industrial areas will be conveniently and properly located." Sussex County Code § 99-3(A). New Castle County's statement of purpose is similar to Sussex County's. See New Castle County UDC 40.01.010.

¹⁶ The Counties have different approaches to what constitutes a "major" vs. "minor" development. Kent County views "major" as a subdivision of five or more lots, Kent County Code § 187-5. Sussex defines "major" in terms of whether the development will require a new street, Sussex Code § 99-5. New Castle County defines it as either of these (plus a few additional categories). New Castle County UDC 40.33-300.

¹⁷ 29 Del. C. §9201 *et seq.*

PLUS, Reviews, are conducted through the Office of State Planning Coordination (OSPC).

The purposes behind the PLUS Review Process are to coordinate land use decisions so as to achieve efficient, effective, and timely use of finite resources, and to streamline the various state review processes required to development.¹⁸

Only certain local land use planning activities are subject to the PLUS Review Process. Here is the list:

- (1) Major residential subdivisions with internal road networks and more than 50 units, excluding previously recorded residential subdivisions of any size which have not been sunsetted.¹⁹
- (2) Any nonresidential subdivision involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded non-residential subdivision regardless of floor area size, or any site plan review involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded non-residential site plan review regardless of floor area size.
- (3) Rezoning, conditional uses, site plan reviews and/or subdivisions, within environmentally sensitive areas, as identified within any local jurisdiction's comprehensive plan as certified under § 9103 of this title.
- (4) Annexations inconsistent with the local jurisdiction's comprehensive plan as certified under § 9103 of this title.
- (5) Applications for rezoning if not in compliance with the local jurisdiction's comprehensive plan as certified under § 9103 of this title.
- (6) Any other project which is required to be referred to the State for pre-application review by local jurisdiction regulations.
- (7) Any local land use regulation, ordinance or requirement referred to the Office of State Planning Coordination by a local jurisdiction for the purpose of providing the jurisdiction with advisory comments. The land use regulations, ordinances or requirements that are to be referred to the Office of

¹⁸ 29 Del. C. §9201.

¹⁹ In this context, the exclusion appears to apply to a previously recorded subdivision plan that can still be built; some plans can "sunset" because of a time limit built into the approval of the plan.

State Planning Coordination may be specified in a jurisdiction's Memorandum of Understanding.

(8) County and municipal comprehensive plans as required by Titles 9 and 22.²⁰

If the project falls within one of these categories, then a pre-application review (i.e., the PLUS Review Process) gets triggered.

The PLUS review process occurs prior to the formal submission of any documents required by the local ordinance to any local jurisdiction land use review (including "preliminary" or "sketch" plans) and the applicant is responsible for requesting the review.²¹ The OSPC is responsible for developing the procedures for the review, scheduling a publicly-noticed "pre-application review meeting," gathering comments from state agencies, and furnishing a written compilation of all the comments received at the meeting to the local jurisdiction and the applicant.²² The OSPC can request other state agencies to participate in the review process. The purpose of the State's comments are that the applicant is required to provide the Office and the local jurisdiction a written response to the comments, specifically addressing whether or not the comments were incorporated into the project design or not, along with an explanation as to why.²³

This PLUS Review Process is subject to important time limits. The pre-application review meeting must take place within 45 days of receipt of request from the applicant, and must provide the written compilation of comments within 20 business days of the pre-application review meeting.²⁴ Failure to meet the 20-day deadline "will result in the State forfeiting the opportunity to comment on the local land use planning action," unless the applicant consents to additional time.²⁵ In special circumstances, the State may waive the pre-application requirements.²⁶

²⁰ 29 Del. C. §9203(a). A Developer could also voluntarily seek PLUS Review. *Id.* at § 9302(b).

²¹ 29 Del. C. §9204(a).

²² *Id.* at §9204(b), (c).

²³ *Id.* at §9204(d).

²⁴ *Id.* at § 9204(b), (c).

²⁵ *Id.* at § 9204(c).

²⁶ 29 Del. C. §9205(b).

While the PLUS review allows the Office of State Planning Commission to review and make comments on the plan—thus bringing a state perspective to local land use decisions—it is also limited in its impact. The statute makes clear that the local jurisdiction has the final decision-making authority over proposed land use planning actions.²⁷ This means that a local land use authority has the discretion to approve a plan the State had objections to or may disapprove a plan to which the State had no objections.²⁸ The Delaware Chancery Court has recognized that the Plus Review is not binding on the zoning authority,²⁹ and that approval over objection of the State does not prove in and of itself that the county’s decision was unreasonable or irrational.³⁰ As a result, the state’s approval or disapproval does not carry much weight in challenging the local decision. Nevertheless, it can bring a needed external (and state-level) view to the zoning process.

One important limit on the PLUS Review Process: The intended beneficiary of the PLUS Review statute is the government, and not private plaintiffs.³¹ The text of the statute creates a right only in the divisions of government that are to receive the required reports, and not for private plaintiffs.³² Thus, private citizens cannot sue over the PLUS Review (though they can try to use the State’s letter as part of (but not the sole) proof of defect in the zoning authority’s decision.

5-6: The Processes For Zoning And Development Decisions And Opportunities For Public Participation

²⁷ 29 Del. C. §9206(a).

²⁸ *Id.*

²⁹ *Concerned Citizens of Cedar Neck v. Sussex County Council*, No. 1893-S, 1998 Del. Ch. LEXIS 174 at *1, *20 (August 14, 1998). This case involved a zoning change from residential to commercial. The Superior Court has adopted the same position. *See Golf Course Assoc., LLC v. New Castle Cnty.*, No. 15A-02-007 JAP, 2016 Del. Super. Ct. LEXIS 125 at *20, *29 (March 28, 2016) (holding that State’s letter of No Objection was advisory and that the county retained the authority to reject the plan because of concerns about traffic congestion).

³⁰ *Citizens’ Coalition, Inc. v. Sussex County Council*, No. 2218-S, 2004 Del. Ch. LEXIS 52 at *23 (April 30, 2004); *Concerned Citizens of Cedar Neck*, 1998 Del. Ch. LEXIS 174 at *20.

³¹ *Id.* at 49.

³² *Id.*

As noted at the beginning of this Chapter, the Zoning and Development processes are quite complex and can be intimidating to the average citizen. Nevertheless, there are opportunities within the process for citizens to express their concerns about a particular action.

On the Zoning side, some “by right” actions are considered routine and do not have a public process. A person who wants to build a single-family house on a parcel zoned for that use will not need to get zoning approval that triggers public hearings and comment periods. Generally, public hearing and comment opportunities will arise when a property owner seeks things like Conditional or Special Use approvals, variances, or waivers. In Sussex County, for example, the Planning and Zoning Commission provides input to the County Council on proposed zoning ordinances and conditional use application. The County Council then makes the final decision. This creates opportunities to raise issues both before the Planning Commission and County Council. In Sussex, the Board of Adjustments exists to hear requests for special use approvals, variances, and appeals of decisions by zoning officials.

On the Development side, major subdivisions will require multiple submissions and approvals. A public hearing is required for approval of preliminary and final plats or plans.³³ Such hearings require public notice and public comment, thereby creating opportunities before each approval authority (Planning Commission, County Council) to raise issues of concern.

Whether in the context of Zoning or Development, the key focus for any public comment should be compliance with the requirements of the governing ordinance. For example, SALDOs often require that the development have a plan that addresses stormwater runoff from the development. Thus—separate and apart from state approval that will likely be needed for the stormwater management system³⁴—whether or not the proposed stormwater management system will work

³³ See 9 Del C. § 6812 and Sussex County Code 99-39(A); 9 Del. C. § 4908 and Kent County Code 187-21; UDC § 40.31.340.

³⁴ Generally, stormwater that will impact a water of the state of Delaware needs a stormwater management plan that governs both during and post-construction. Such approval will come from DNREC. This need for approval can create a separate opportunity to raise issues of concern

can be an issue before the Planning Commission and County Council. Whatever the issue—stormwater, traffic, etc.—effective public comment should focus on showing what the ordinance requires and how the proposed plan does not satisfy those requirements. As Chapter 3 articulates, this means digging into the ordinance, finding the provisions that apply to the issue of concern, and then comparing what the proposal does against what the ordinance requires the proposal to do. Pointing out a proposal’s failure to meet such a legal requirement can be a very effective way to raise your concern and either (a) prevent approval of the proposal, or (b) get changes to the proposal or conditions to the approval that address the issue of concern. The Chapter 3 Checklists and approaches can be helpful in organizing and raising important environmental issues in these proceedings.

5-7. Roadmaps Through County Zoning And Development Ordinances

To facilitate navigation of the County ordinances, here is a roadmap highlighting key provisions:

SUSSEX COUNTY

Zoning Ordinance (Sussex County Code §§ 115-1 – 115-229; all citations are to the County Code sections within Chapter 115)

Definitions - § 115-4

Permitted Uses

AR-1 and AR-2 Agricultural/Residential Districts - §§ 115-19 – 115-27

Permitted Uses - §115-20

Conditional Uses - § 115-22

Special Use Exceptions - § 115-23

MR Medium Density Residential Districts - §§ 115-28 – 115-35

Permitted Uses - §115-29

about stormwater by commenting to DNREC. The focus in that separate, state-level proceeding would be whether the plan complies with *state* regulatory requirements.

Conditional Uses - § 115-31

Special Use Exceptions - § 115-32

GR General Residential Districts - §§ 115-36 – 115-43

Permitted Uses - §115-37

Conditional Uses - § 115-39

Special Use Exceptions - § 115-40

HR-1 and HR-2 High-Density Residential Districts - §§ 115-44 – 115-51

Permitted Uses - §115-45

Conditional Uses - § 115-47

Special Use Exceptions - § 115-48

UR Urban Residential Districts - §§ 115-52 – 115-59

Permitted Uses - §115-53

Conditional Uses - § 115-55

Special Use Exceptions - § 115-56

UB Urban Business Districts - §§ 115-60 – 115-67

Permitted Uses - §115-61

Conditional Uses - § 115-63

Special Use Exceptions - § 115-64

B-1 Neighborhood Business Districts - §§ 115-68 – 115-75

Permitted Uses - §115-69

Conditional Uses - § 115-71

Special Use Exceptions - § 115-72

B-2 Business Community Districts - §§ 115-75.1 – 115-75.7

Permitted Uses - §115-75.2

Special Use Exceptions - § 115-75.4

B-3 Business Research Districts - §§ 115-75.8 – 115-75.13

Permitted Uses - §115-75.9

Special Use Exceptions - § 115-75.11

C-1 General Commercial Districts - §§ 115-76 – 115-83

Permitted Uses - §115-77

Conditional Uses - § 115-79

Special Use Exceptions - § 115-80

CR-1 Commercial Residential Districts - §§ 115-83.1 – 115-83.9

Permitted Uses - §115-83.2

Conditional Uses - § 115-83.5

Special Use Exceptions - § 115-83.6

C-2 Medium Commercial Districts - §§ 115-83.10 – 115-83.16

Permitted Uses - §115-83.11

Special Use Exceptions - § 115-83.13

C-3 Heavy Commercial Districts - §§ 115-83.17 – 115-83.23

Permitted Uses - §115-83.18

Special Use Exceptions - § 115-83.20

C-4 Planned Commercial Districts - §§ 115-83.24 – 115-83.31

Permitted Uses - §115-83.26

Special Use Exceptions - § 115-83.28

C-5 Planned Commercial Districts - §§ 115-83.32 – 115-83.38

Permitted Uses - §115-83.33

Special Use Exceptions - § 115-83.35

I-1 Institutional Districts - §§ 115-83.39 – 115-83.45

Permitted Uses - §115-83.40

Special Use Exceptions - § 115-83.42

M Marine Districts - §§ 115-84 – 115-91

Permitted Uses - §115-85

Conditional Uses - § 115-87

Special Use Exceptions - § 115-88

LI-1 Limited Industrial Districts - §§ 115-92 – 115-100

Permitted Uses - §115-94

Conditional Uses - § 115-96

Special Use Exceptions - § 115-97

LI-2 Light Industrial Districts - §§ 115-101 – 115-108

Permitted Uses - §115-102

Conditional Uses - § 115-104

Special Use Exceptions - § 115-105

HI-1 Heavy Industrial Districts - §§ 115-109 – 115-117

Permitted Uses - §115-110

Conditional Uses - § 115-113

Special Use Exceptions - § 115-114

RPC Residential Planned Community Districts - §§ 115-118 – 115-131

Permitted Uses - §115-119

Conditional Use Process - §§ 115-171 – 115-176

Supplemental Regulations (applicable to all districts) - §§ 115-177 – 115-194.4

Nonconforming Uses - §§ 115-195 – 115-206

Board of Adjustment Powers and Procedures - §§ 115-207 – 115-215

Special Exceptions - § 115-210

Variances - § 115-211

Administration and Enforcement - §§ 115-216 – 115-229

Subdivision Ordinance (Sussex County Code §§ 99-1 – 99-40; all citations are to the County Code sections within Chapter 99)

Definitions - § 99-5

Subdivision Plan General Procedures - §§ 99-7 – 99-14

General Design Requirements and Standards - §§ 99-15 – 99-21

Preliminary Plat Requirements - §§ 99-22 – 99-24

Final Plat Requirements - §§ 99-25 – 99-27

Improvements (including guaranties of required improvements) - §§ 99-28 – 99-32

Enforcement and Appeals - §§ 99-36 – 99-40

Appeals - § 99-39

KENT COUNTY

Zoning Ordinance (Kent County Code §§ 205-1 – 205-434; all references are to Chapter 205)

Definitions - § 205-6

Permitted Uses

 AC Agricultural Conservation Districts - §§ 205-44 – 205-59

Permitted Uses - § 205-47

Conditional Uses - § 205-48

AR Agricultural Residential Districts - §§ 205-60 – 205-75

Permitted Uses - § 205-63

Conditional Uses - § 205-64

RS1 Single-Family Residential Districts - §§ 205-76 – 205-90

Permitted Uses - § 205-79

Conditional Uses - § 205-80

RS5 Medium-Density Residential Districts - §§ 205-91 – 205-105

Permitted Uses - § 205-94

Conditional Uses - § 205-95

RM Multifamily Residential Districts - §§ 205-106 – 205-120

Permitted Uses - § 205-109

Conditional Uses - § 205-110

RMH Residential Manufactured Home Districts - §§ 205-121 – 205-135

Permitted Uses - § 205-124

Conditional Uses - § 205-125

BN Neighborhood Business Districts - §§ 205-136 – 205-150

Permitted Uses - § 205-139

Conditional Uses - § 205-140

BN-1 Neighborhood Business Districts - §§ 205-151 – 205-165

Permitted Uses - § 205-154

Conditional Uses - § 205-155

BG General Business Districts - §§ 205-166 – 205-180

Permitted Uses - § 205-169

Conditional Uses - § 205-170

OC Office/Office Complex Districts - §§ 205-180.1 – 205-180.15

Permitted Uses - § 205-180.4

Conditional Uses - § 205-180.5

IL Limited Industrial Districts - §§ 205-181 – 205-195

Permitted Uses - § 205-184

Conditional Uses - § 205-185

IG General Industrial Districts - §§ 205-196 – 205-211

Permitted Uses - § 205-199

Conditional Uses - § 205-200

Nonconforming Uses - §§ 205-212 – 205-219

Conditional Use Process - §§ 205-251 – 205-365

Historic Preservation - §§ 205-377 – 205-393

Board of Adjustment Powers and Procedures - §§ 205-398 – 205-405

Variances - § 205-405

Administration and Enforcement - §§ 205-415 – 205-429

Subdivision and Land Development Ordinance (Kent County Code §§ 187-1 – 187-90.4; all citations are to the County Code sections within Chapter 187)

Definitions - § 187-5

Subdivision Plan General Procedures - §§ 187-6 – 187-16

Sketch Plan and Preliminary Conference – §§ 187-17 – 187-19

Preliminary Plan Requirements - §§ 187-20 – 187-23

Final Plan Requirements - §§ 187-24 – 187-27

General Process and Procedure - §§ 187-34 – 187-48

Improvements (including guaranties of required improvements) - §§ 187-52 – 187-55

Design Requirements - §§ 187-56 – 187-79.2

Enforcement and Appeals - §§ 187-83 – 187-85

NEW CASTLE COUNTY

Zoning Ordinance (Chapter 40 in the New Castle County Code of Ordinances, known as the Uniform Development Code, or UDC))

NOTE: The UDC is structured very differently from the zoning ordinances in Sussex and Kent Counties. The UDC covers both Zoning and Development. The UDC utilizes tables that combine information about several different types of districts. For example, in lieu of listing permitted uses in each type of Zoning district, the UDC has a table for all districts that shows which uses are permitted in each type of district. *See* New Castle County Code § 40.03.110. Thus, one way to navigate through the UDC is to pay attention to the titles of the Articles in the Code, as they can help focus the search and ultimately lead to the tables or information about that topic. Here are the relevant article titles:

- Article 1 - Title and Applicability (starting UDC § 40.01.000)
- Article 2 - Establishment of Zoning Districts (starting UDC § 40.02.000)
- Article 3 - Use Regulations (starting UDC § 40.03.000)
- Article 4 - District Intensity and Bulk Standards (starting UDC § 40.04.000)
- Article 5 - Site Capacity and Concurrency Regulations (starting UDC § 40.05.000)
- Article 6 - Sign Regulations (starting UDC § 40.06.000)
- Article 7 - Transfer of Development Rights and Other Incentives and Bonuses (starting UDC § 40.07.000)
- Article 8 - Nonconforming Standards (starting UDC § 40.08.000)

Zoning and Development processes and procedures are also combined in the UDC. Thus, for example, the UDC uses a table (UDC § 40.30.110) to show which County entity (Planning Board, Board of Adjustment, County Council) will handle different Zoning or Development processes and decisions. The procedures are laid out in Article 31 (UDC § 40.31.000).

Subdivision Ordinance

As with Zoning, the various parts of the Development Process are set forth in Articles of the UDC. The relevant articles are:

- Article 10 - Environmental Standards (starting UDC § 40.10.000)
- Article 11 - Transportation Impact (starting UDC § 40.11.000)
- Article 12 - Sewer and Water Impact (starting UDC § 40.12.000)
- Article 14 - Impact Fees (starting UDC § 40.14.000)
- Article 20 - Subdivision and Land Development Design Principles (starting UDC § 40.20.000)
- Article 21 - Improvement and Design Standards (starting UDC § 40.21.000)
- Article 22 - Drainage, Utilities, Septic Systems, Parking, Loading and Lighting (starting UDC § 40.22.000)
- Article 23 - Landscaping, Trees, Plant Maintenance, and Erosion and Sediment Control (starting UDC § 40.23.000)

Article 27 - Maintenance Organizations, Open Space, and Common Facilities
(starting UDC § 40.27.000)

As with Zoning, Articles 30 and 31 provide the processes and procedures applicable to the Development process.