"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
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CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 14 – 0915-02

OMNIBUS ORDINANCE TO AMEND, ALTER, AND OR REPEAL (AS APPLICABLE) CITY CODE SECTIONS 3-16, 7-1, 7-2, 23-1, 23-2, 23-3, 46-3, 46-4, 46-16, 46-20, 46-28, 46-50, 46-81, 46-106, 46-107, 46-108, 46-109, 46-118, 46-121, 4-135, 46-147, 46-148, 149, AND 49-6 FOR THE PURPOSE OF, AMONG OTHER THINGS, ADOPTING A HPR ZONING CLASSIFICATION, TO ALLOW FOR ADOPTION OF STANDARDS AND ENFORCEMENT PROCEDURES FOR BUILDING, SUBDIVISION, MECHANICAL AND OTHER CODES, TO ESTABLISH AN AMENDED FEE SCHEDULE, TO ESTABLISH A BENEFICIAL USE APPEAL PROCEDURE, TO ESTABLISH A GOOD STANDING REQUIREMENT, AND TO AMEND THE CODE AS REQUIRED TO IMPLEMENT THESE OBJECTIVES

The City of Delaware City

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-1 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code");

WHEREAS, the Mayor and City Council desire to amend, alter, and or appeal (as applicable) Code Sections 3-16, 7-1, 7-2, 23-1, 23-2, 23-3, 46-3, 46-4, 46-16, 46-20, 46-28, 46-50, 46-81, 46-106, 46-107, 46-108, 46-109, 46-118, 46-121, 4-135, 46-147, 46-148, 149, and 49-6 ("Proposed Code Sections");

WHEREAS, the City Council of the City of Delaware City intends to adopt additional ordinances, contemporaneously herewith, which establish other standards and requirements for building and subdivision among others, and through this Ordinance, seek to adopt fee schedules for various new code requirements;

WHEREAS, the revisions to the Proposed Code Sections have been reviewed by the Planning Commission at a public hearing noticed fifteen (15) days in advance;

WHEREAS, the Planning Commission has provided its recommendations to the Council;

WHEREAS, the City Council has also held a public hearing, noticed fifteen (15) days in advance, regarding the amendment to the Proposed Code Sections;

WHEREAS, the City Council has reviewed the amendments to the Proposed Code Sections and finds that they are consistent with the City's Comprehensive Development Plan (as amended);

WHEREAS, the City Council desires to adopt and create a HPR district, as defined herein, and further seeks to amend the Code, as necessary, to incorporate the HPR district;

WHEREAS, the City Council further desires to create an independent code enforcement, review and inspection mechanism for buildings and subdivisions with other ordinances, and desires to amend the Code to amend some existing code language through this Ordinance to implement this vision;

WHEREAS, the City Council further desires to implement certain standards, including, but not limited to, beneficial use appeals, good standing requirements, and other necessary Code revisions as outlined herein;

WHEREAS, in addition to the notice provided above, under Article V, Section 5-02(B) of the Charter, the Proposed Code Sections were introduced at a regular meeting, duly read in full or in abstract, and prominently posted for seven (7) days in The City of Delaware City.

NOW, THEREFORE, making the express finding that the Proposed Code Sections outlined herein are for and enhance the health, safety, and welfare of the City of Delaware City, the Mayor and the City Council of The City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1 – Amend Section 3-16 of the City Code of the City of Delaware City by deleting the phrase "The City and/or New Castle County" where it exists in this section and replacing it with phrase "The City".

Section 2 – Delete Sections 7-1 and 7-2 of the City Code of the City of Delaware City and replace those sections as follows:

Section 7-1 (Grant of Franchise)

(a) The City Council may contract and provide the exclusive right, franchise and privilege of using the streets, alleys and other public ways in the City for the collection of solid waste from all R-1, R-2, R-3, C-1 commercial (retail) properties, and single family residences in the HPR district for a specific term of years. The terms of such franchise shall be set forth in a written instrument executed by Grantee and the City Manager and approved by City Council. During the term of Grantee's franchise, no owner, tenant or occupant of R-1, R-2, R-3, C-1 commercial (retail) properties (and single family residences in the HPR district) shall be permitted to retain the services of any other solid waste disposal service for purposes of collecting solid waste. Upon the expiration of Grantee's franchise, City Council shall be empowered to grant further franchises for the right to collect solid waste in the City to either

Grantee, or such other qualified parties upon such terms and conditions as may be deemed appropriate by Council. City Council shall further be empowered to adopt by resolution reasonable rules and regulations applicable to the collection of solid waste by Grantee or any subsequent franchisee with such rules and regulations to be enforced jointly or separately the City Manager or his or her designee and the Board of Health.

(b) A separate trash cart and recycling cart is required for each dwelling unit. If multiple dwelling units are located on a single parcel, a separate trash cart and recycling cart fee shall be charged for each additional cart required.

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Section 7-2 (Commercial Properties)

The owners, tenants and occupants of properties used for properties outside the R-1, R-2, R-3, and C-1, districts and single family residences in the HPR district, shall be jointly and severally responsible for contracting privately for the collection and disposal of solid wastes from such properties so as to keep such properties in full compliance with this Article and all other applicable state, federal or municipal health and sanitation codes, statues, ordinances, rules and regulations. All private solid waste collection service organizations servicing properties in the City used to collect waste for properties outside the R-1, R-2, R-3, and C-1 districts and single family residences in the HPR district, must at all times be registered with and licensed by the City in order to provide such services. The Board of Health and the City Manager may promulgate rules and regulations pertaining to the issuance of licenses for the collection of garbage and solid waste in the City.

Section 3 - Amend Chapter 23 of the City Code of the City of Delaware City by deleting Sections 23-1, 23-2, and 23-3 in their entirety, and by also deleting footnote 23.

Section 4 – Amend Section 46-3 of the City Code of Delaware City by amending the definition of "Certificate of Occupancy" by deleting the word "county" from the definition.

Section 5 – Amend Section 46-3 by adding the following definition:

> Payday/title loan establishment. Any establishment which advances or lends a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds or (iv) title of a motor vehicle.

Section 6 - Amend Section 46-3 of the City Code of Delaware City by amending the definition of "Manufactured Home" by deleting the words "New Castle County" from the definition.

Section 7 – Amend Section 46-4 of the City Code of the City of Delaware City by deleting the word "nine" in the first sentence and replacing it with the word "ten" and by adding "HPR District - Historic Preservation and Redevelopment" at the end of list of enumerated zoning districts.

Section 8 - Amend Section 46-16 of the City Code of Delaware City by deleting, in all instances, the phrase "New Castle County" and replacing it with the phrase "Delaware City".

Section 9 – Amend Section 46-20(t) an (u) of the City Code of Delaware City by striking the words "(as now or hereafter defined by the state of Delaware Unit Property Act, 25 Del. C. § 2202)" and replacing it with "(as now or hereafter defined by the Delaware Uniform Common Interest Ownership Act, 22 *Del. C.* § 81-101 et seq.)".

Section 10 – Add a new Section 46-28, which shall read as follows:

Section 46-28 – HPR District (Historic Preservation and Redevelopment).

(a) In an HPR district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the following uses.

(1) Historic uses and uses dedicated to historic preservation.

(2) Laboratories and related facilities for research, basic and applied.

(3) Hospitals, medical clinics, pharmacies, and drug stores.

(4) Offices for professional services and administrative activities, including but not limited to, such uses as conference and corporate training centers, financial institutions and banks, personal services, and supply and storage facilities.

(5) Technologically dependent or computer based facilities that are dedicated to the processing of data or the analysis of information.

(6) Daycare centers with the following special requirements:

a. At least 100 square feet of outdoor play space per child shall be provided.

b. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or lands unsuited by other usage or natural features for children's active play space, fencing or other enclosures shall be a minimum height of four feet.

c. Thirty-five square feet of indoor area shall be provided per child, not including toilet rooms, kitchens, offices, storage spaces, hallways, and mechanical rooms, and other areas not used by children for sleep or play on a routine basis; the minimum lot area for such uses shall not be less than 10,000 square feet.

d. This use shall be primarily intended to serve the uses permitted in this district.

(7) Restaurants, including cafeteria style and delicatessens, which do not have drive through service capabilities.

(8) Recreation facilities, indoor and outdoor, incidental to and intended primarily to serve uses permitted in this district.

(9) Conference facilities.

(10) Utility distribution and transmission lines, substation, electric, gas and telephone central office.

(11) Public transportation facilities, including bus or transit stops for the loading and unloading of passengers, stations and depots.

(12) Accessory uses and accessory buildings, pursuant to the standards and definitions set forth in Section 46-16(q).

(13) All residential uses permitted by Section 46-16(a).

(14) Retail and retail food stores up to 75,000 square feet in maximum floor area.

(15) Playgrounds, parks, and buildings operated for recreational purposes.

(16) Libraries, museums, art galleries.

(17) Police and fire stations, municipal office and service buildings.

(18) Public or private schools and public or private colleges and universities.

(19) Nursing homes, rest homes, adult daycare and other uses outlined by Section 46-16(j) under the standards set forth therein.

(20) One and two family residential dwellings permitted in the R-2 District, as set forth in Section 46-17 (b), (c), and (d).

(21) Multi-family residential units permitted in the R-3 district, as set forth in Section 46-18 (e), (f), (g), (h), and (j).

(22) Recreation center, community.

(23) Railway, bus or passenger station.

(24) Building for instruction of dramatics, musical, or cultural activities.

(25) Post offices and similar package delivery services.

(26) Condominium units, as set forth in Section 46-20 (t)-(u).

(27) Marinas and marine uses permitted in the C-1M district, as set forth in Section 46-22 (c)-(j).

(28) Veterinary hospitals.

(29) Laboratory, dental and medical.

(30) Armories for meeting and training of Federal and State military and emergency personnel.

(31) Motel, motor court, hotel.

(32) Gas stations and convenience stores.

(33) All uses permitted in the Open Space Recreation (OS-R) District, and park uses.

(34) All uses permitted in the Open Space and Buffer Area (OS-BA) District.

(35) Uses defined by the following NAICS Codes: 311811, 42 (except 4231, 4233, 4235, 4238, 4246, 4247), 441222, 442, 443, 444 (except 44411, 44419), 445, 446, 447, 448, 451, 452, 453 (except 45393), 487, 491, 492, 51, 52, 53 (except 5321, 5324), 54, 55, 56

(except 562), 61, 62 (except 624221), 71 (except 7132), 72 (except 72112), 81 (except 811), 92 (except 92214).

(36) Bed and Breakfast Facility/Tourist Home.

(37) Churches and places of worship.

(38) Banks and financial institutions, excluding Payday/title loan establishments.

(39) Any combination of permitted uses on or within a given lot, parcel, structure or area.

(40) Installation or operation of any communications tower owned or operated by a federal or state governmental entity and utilized, at least in part, for military, emergency, or law enforcement purposes. Government towers authorized by this section are not subject to the special use requirements of Section 46-21 (b)(1) and are not subject to applicable height limits in the HPR district.

(b) The following uses require special use permits approved by the Board of Adjustment:

(1) Tower, broadcasting and telecommunications, subject to the following special requirements:

a. Tower applications shall be accompanied by a professional engineer's report containing the following:

1. A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed tower.

2. A technical evaluation of the feasibility of attaching the tower or antenna to existing buildings.

3. Written certification of compliance with Federal Communications Commission Safety Standards for exposure to nonionizing electromagnetic radiation.

4. Copies of all applicable state and federal permits.

b. Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line of a church, library, school, nursing home, hospital, historic or residential lot not less than three times the height of the tower or 350 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use.

c. No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.

d. Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.

e. Towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.

f. Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least ten feet high. The landscaping shall consist of a minimum 25-foot wide planting strip with ground cover and/or grass, including at least one row of six-foot high evergreen trees providing a solid screen adjacent or proximate to

the fence, and 15-foot high, two-inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Board of Adjustment approval. Towers located on top of buildings three stories or more in height and telecommunication antennas located on existing buildings shall be exempt from this subsection, except that a six-foot high solid evergreen screen shall be required between any telecommunications antenna or tower accessory building and adjoining properties. A ten-foot high security fence and an adjoining six-foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires for guyed towers.

g. No outdoor storage shall be permitted at the tower site.

h. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection.

i. A tower shall be located so as not to encroach into any established public or private airport approach as established by the Federal Aviation Administration.

j. Towers higher than 100 feet must be a minimum of 500 feet from the nearest similar tower, measured from the base of the towers.

k. New telecommunication facilities may be attached to an approved tower without applying for an additional special use permit so long as the new facility is in compliance with the requirements and standards of this section.

l. No interference with existing television, cable television, radio signals, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.

m. If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the city shall arrange to have the facility dismantled and will assess the landowner all costs associated with the removal of the tower. If the full amount due the city is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the city, the city shall cause a special assessment to be recorded. The recordation of such special assessment shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.

n. That the owner of such tower shall provide proof to the city that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower. If structural deterioration is found to be present, and such deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the building code inspector.

o. In addition, the operator of such tower shall provide annual proof to the city that the tower has undergone field measurements to ensure compliance with all

applicable Federal Communication Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the city, shall be conducted upon start up of the facility and annually thereafter; except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are to be performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the city.

p. The owner of such tower shall give proof to the city that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.

(c) Area regulations and other special requirements.

(1) Height of buildings. In no case shall building height exceed the height of seventy (70) feet.

(2) Building setback lines. Except as otherwise specified herein, each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be governed by the setback requirements set forth in Section 46-31 and shall be determined by the use proposed. For example, if the use proposed is one family detached residential housing, the dimensional standards for the R-1 district shall apply.

(3) Parking. Off-street parking requirements and loading space requirements shall be determined in accordance with the minimum standards for the proposed use as set forth in Sections 46-96 - 46-99. Off parcel parking within the Fort DuPont complex, as defined by 7 *Del. C.* § 4732(5), may be used to satisfy parking requirements for a use on an individual parcel or lot.

(4) Building design. Regarding building design, the following standards shall apply:

a. Detailed elevation drawings of all proposed buildings shall be submitted including all signage; building materials; building height; the location, height and material of landscaping and screening walls and fences; outdoor trash and recyclable material storage areas; and electrical, mechanical and gas metering equipment.

b. To maintain a high standard of construction and appearance and to provide architectural unified and interesting design the exterior walls of each building are to be constructed of durable, permanent materials, (including, but not limited to, appropriately selected brick, treated concrete, glass, and other architectural panels). Buildings should complement and harmonize with the overall design of the HPR District.

c. Signage, intended to guide motorists and pedestrians from perimeter streets, shall correspond to the overall design, color and finishing of the buildings upon which they are displayed; that is, signage shall be designed as integral architectural elements of proposed architecture.

(5) Site design. Regarding site design, except as otherwise specified herein, the following special regulations shall apply:

a. Sidewalk and pathways shall be installed and designed to enhance the pedestrian experience; off road bicycle circulation paths shall be designed to complement pedestrian ways.

b. Building sites and roadways shall be designed to facilitate way finding through the district.

c. Exterior and interior lighting features shall be integrated to help provide visual understanding of the building's composition and function based on the following guidelines:

1. Use lighting fixtures primarily for important building elements such as entries.

2. Favor the use of defused lighting system over those generating a strong point source of lighting.

3. Enhance the visibility of interior building lighting to the exterior giving a sense of light emanating from the building.

4. Avoid dramatic changes of illumination levels which can produce glare and disorientation.

5. Enhance the illumination, where appropriate, of landscape features.

6. Lighting shall be designed to limit impact on adjacent properties.

d. Landscaping or screening shall be installed to screen parking areas, mechanical equipment, refuse storage areas and related appurtenances and to enhance the visual appeal of the buildings and facilities in the district.

e. New utility lines and related appurtenances shall be installed underground unless a variance is granted by the Board of Adjustment.

(6) Review of plans to determine compliance with the provisions of subsection (c) herein shall be performed by designated officials of the City of Delaware City in accordance with the standards of the Delaware City Subdivision Code, which shall issue approvals upon satisfaction that all such provisions, and other applicable provisions of the Delaware City Code have been met. Applications for subdivisions for the purposes of establishing lot and/or lease lines for real estate taxation and related purposes shall be subject to the procedural requirements of the Delaware City Code. All permitted uses in the HPR district shall be subject to applicable City and State Code requirements, standards, and procedural requirements (including, but not limited to, building, zoning, sidewalk, plumbing, mechanical, and subdivision standards).

(7) It is anticipated that the Ft. DuPont Redevelopment and Preservation Corporation will adopt its own use, design and construction standards, which may be more restrictive than the standards of the Delaware City Code. In case of conflict between the use, design and construction standards of the Ft. DuPont Redevelopment and Preservation Corporation and Delaware City standards, the stricter or more specific of the two standards shall govern.

(d) For the avoidance of doubt, the following uses are expressly prohibited in the HPR District:

(1) Manufacture of corrosive acids, gelatin, paint, oils, fertilizer, linoleum, cork products, bleaching compounds or soap; tanning or curing of hides; crude oil refining; rubber treatment or manufacture; ore smelting; blast furnace, garbage of offal reduction or

dumping; payday/title loan establishments; asphalt manufacture or refining; abattoir; junk storage; automobile wrecking; animal rendering; oil storage; except for the exclusion of distribution or warehouse operations, unless such operations are incidental to and intended primarily to serve uses permitted in this district.

(2) Any use prohibited by the Delaware Coastal Zone Act, industrial, manufacturing, and institutional uses not expressly authorized herein, fossil fuel fired power plants, trash to steam plants, concrete crushing, rock crushing, hot mix plants, drive through restaurants, and other similar uses.

(3) Any use determined by the Ft. DuPont Redevelopment and Preservation Corporation to be inconsistent with the Master Plan for Ft. DuPont and/or any use inconsistent with the purposes and requirements of Title 7, Chapter 47, Subsection II of the Delaware Code as may be amended from time to time.

(4) Uses not expressly authorized by Sections (a) and (b) above.

Section 11 – Amend reservation of section numbers in Section 46 of City Code of the City of Delaware City by deleting the phrase "Sections 46-28 to 46-30 Reserved" and replacing it with the phrase "Sections 46-29 to 46-30 Reserved."

Section 12 – Amend Section 46-50 of the City Code of Delaware City by deleting the phrase "the New Castle County Department of Development and Licensing" and replacing it with the phrase "authorized official of the City of Delaware City."

Section 13- Amend the title of Section 46-81 of the City Code of the City of Delaware City to read "R1- District (Single Family Residential), R-2 District (One and Two Family Residential); C-1L (Commercial Low Impact) and HPR (Historic Preservation and Redevelopment)."

Section 14 – Further amend Section 46-81 (k) of the City Code of the City of Delaware City to read "Identification signs, in conjunction with residential useage or a C1-L area or a HPR area . . ."

Section 15 – Amend Section 46-106 of the City Code of Delaware City by deleting the phrase "New Castle County" and replacing it with the phrase "or other applicable laws".

Section 16 - Amend the first paragraph of Section 46-107 of the City Code of the City of Delaware City to strike the phrase "New Castle County Department of Development and Licensing" and replace it with the phrase "the City of Delaware City."

Section 17 – Delete Section 46-108 of the City Code of the City of Delaware City in its entirety and mark such section "Reserved."

Section 18 - Delete Section 46-109 of the City Code of the City of Delaware City in its entirety and mark such section "Reserved."

Section 19 - Amend Section 46-118 of the City Code of the City of Delaware City by deleting the phrase "of the New Castle County Department of Development and Licensing" and replacing it with the phrase "relating to zoning, subdivision, building or other construction."

Section 20 - Amend Section 46-121(c)(9) of the City Code of the City of Delaware City by deleting the phrase "the New Castle County Department of Planning."

Section 21 - Amend Section 46-121(e) of the City Code of the City of Delaware City by deleting the phrase "the New Castle County Department of Development and Licensing" and substituting the phrase "from applicable Delaware City plan review designees."

Section 22 - Amend Section 46-135 of the City Code of Delaware City to strike the phrase "New Castle County Department of Planning" and replace it in each instance with the phrase "the City of Delaware City."

Section 23 – Amend Section 46-147 of the City Code of Delaware City entitled "Schedule of Fees", by deleting the initial paragraph and replacing it as follows:

> "No permit, special exception, variance, hookup, review, or approval shall be issued unless or until such costs, charges, fees or expenses listed below have been paid in full, nor shall any action be taken by the applicable official, the applicable board, the City, or the Mayor and Council, unless or until required charges and fees have been paid in full."

Section 24 – Further amend Section 46-147 of the City Code of Delaware City, entitled "Schedule of Fees", to delete the existing schedule of fees under the heading "Payable to City of Delaware City" and to replace it with the following:

Fee Type	**Fee**
Property Maintenance Code Appeal	$100
Property Maintenance Code Show Cause Hearing	$100
Application for Building Permit	3% of anticipated costs of construction
Demolition Permit (addition, deck, porch)	$50
Demolition Permit	$150
Reinspection Fee	$100
Dimensional Variance for existing residential structure	$350
Rezoning Application	$500
Special Exception	$350
Special Use Permit	$35
Water Impact Fee	$750 per dwelling unit
Water connection/hook-up fee	Fee charged by administrator (pass through)
Floodplain Review	$300 plus outside technical or engineering costs, if any.
Floodplain Certificate Application	$500 plus outside technical or engineering costs, if any.
Floodplain Appeal	$500 plus outside technical or engineering costs, if any.
Floodplain Inspection (required or	$50

requested by Owner)	
Floodplain Reinspection	$50
Certificate of Occupancy	$200
Floodplain Map Interpretation	$100
Floodplain Variance Application	$250
Preliminary Major Subdivision Plan Application	$250 per lot, plus outside technical or engineering costs, if any.
Concept Subdivision Plan Application	$100
Resubdivision/Minor Subdivision Plan Application	$250 per lot, plus outside technical or engineering costs, if any.
Final Subdivision Plan Application	$500 plus outside technical or engineering costs, if any.
Resubmission of Subdivision Application	$100
Determination Letter for Zoning or Non-Conforming Status	$300
All other Variances or Appeals	$500
Other Appeals, Beneficial Use Appeals, Special Hearings or required fees not otherwise specifically enumerated	$500, plus outside technical or engineering costs, if any, and actual legal, advertising and mailing costs, if any.

Section 24 – Add a new Section 46-148 of the City Code of Delaware City entitled "Beneficial Use Appeals" which shall read as follows:

A. Definition. A "beneficial use appeal" is a process by which the City of Delaware City evaluates an allegation that no beneficial use remains in a property and determines that some level of relief from the provisions of the Delaware City Code is warranted.

B. Who may apply. A landowner who alleges that the application of this chapter or any provision of the Delaware City Code denies all, or substantially all, economically viable use of property may apply for relief after exhausting all other available avenues of appeal (including variance requests) to the Board of Adjustment.

C. Application submission.

(1) Filing. Applications shall be filed with the Administrative Official or the City Manager in the Office of the Board of Adjustment. The Board, the City Manager, or the Administrative Official may provide forms to facilitate application processing.

(2) Fee. The City Council shall establish a fee schedule in an amount significant enough to cover all publication and other administrative costs, as set forth in Section 46-147.

(3) Content. Applications shall be made in writing and shall provide the following information:

(a) Information about the owner and applicant;

(b) Documentation of the purchase date and price of the property;

(c) A description of the physical features of the property, total acreage, and present use, the use of the property and any known prior uses;

(d) A description of the specific portions of the Delaware City Code that allegedly eliminate all or substantially all economically viable use of the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the City related to the property;

(e) A description of the use that the landowner believes represents the minimum beneficial use of the property and all documentation, studies, and other evidence supporting that position;

(f) If the property has been listed for sale, originals or copies of all bids, offers to purchase, and other correspondence regarding the sale of such property;

(g) Plans or drawings that support or clarify the relief or permission requested; and

(h) Other information requested by the Board of Adjustment, including, but not limited to, survey information.

(4) Incomplete applications.

(a) No application is complete until all required items are received.

(b) Incomplete applications may be rejected.

D. Burden of proof on applicant. Every applicant shall have the burden of presenting the information needed by the Board of Adjustment to make a beneficial determination use.

E. Board of Adjustment hearing.

(1) Scheduling. The Board of Adjustment shall schedule a public hearing.

(2) Public notice.

(a) Newspaper notice. The City shall advertise the public hearing in a newspaper of general circulation. The notice shall appear at least 15 calendar days prior to the public hearing date and shall contain the following information:

[1] The type of application;

[2] A short description of the proposed action;

[3] A description of the parcel and the approximate street location or address;

[4] The location, date, and time of the public hearing; and

[5] Information on where full details of the application may be obtained, including the hours of availability and phone number.

(b) Notice to owner/applicant. The City shall notify by mail the owner and/or applicant of the time and place of the hearing.

(3) Public hearing. The hearing shall take place no fewer than 15 days following publication of the legal notice.

F. Deprivation standards. In determining if a landowner has been deprived of the beneficial use of property, the Board of Adjustment shall take into account the following factors:

(1) Diminution in value. The property value shall be compared to the property value with the regulations as applied. A mere decrease in value does not deprive the landowner of all or substantially all beneficial use of property. The diminution in value must be such that it effectively deprives the landowner of all or substantially all viable use or enjoyment of the property;

(2) Common land uses. A use common to the City and/or the area of the subject site, although it may not involve further development of the land, may be considered a beneficial use. Attention shall also be given to land uses considered to be the lowest intensity in the City or adjoining areas, but which uses still provide for occupation and living by the landowner;

(3) Subsidy. A minimum beneficial use of the land may be a use where a governmental subsidy is provided. If such a subsidy exists, its value should be reflected in the considered minimum beneficial use on a valuation basis. The cumulative public costs of a subsidy should be considered payment to the landowner for the restriction on the property if the annual subsidy enhances the economic return of the existing use to the landowner. The value of the proposed use shall be adjusted to reflect the degree to which a subsidy enhances the property value by determining the value of the use without the subsidy;

(4) Adverse impacts. The extent to which this code protects users, future users, or neighbors from threats to health, safety or general welfare shall be considered. A use that seriously threatens the health, safety or general welfare of current or future residents or neighbors shall not be considered a use the property owner is entitled to enjoy and shall not, when restricted by this code, constitutes a denial of all or substantially all economic viable use of the property;

(5) Expectations. Expectations shall, in general, not be considered. Only expectations backed by reasonable investments made prior to the adoption date of the regulations in question may be considered;

(6) Nuisances. In no case shall a use that is a nuisance per se, or a use that in that particular location constitutes a nuisance, constitute grounds for relief; and

(7) Other. The Board of Adjustment may also take into account any factors that have been considered by a federal court or a Delaware court in determining whether all, or substantially all, economic use of a property has been denied a landowner who has made a takings claim pursuant to the Federal or State Constitution.

G. Granting relief.

(1) If the finding is that a landowner has been denied all or substantially all economic viable use of the property, the Board of Adjustment shall grant relief. In the alternative, the Board of Adjustment may also find that some beneficial use of the property remains. The Board of Adjustment shall grant only that level of relief necessary to provide for a beneficial use of the property.

(2) Minimum increase. In granting relief, the landowner shall be given the minimum increase in use intensity or other possible concessions to permit a beneficial use of the land. The following guidelines shall be used to determine the minimum beneficial use of the property:

(a) The reality of limited development potential, given the natural condition of the property, shall not be attributed to the regulations applied to the property; and

(b) The potential for damages to either future residents or property shall be assessed in determining a beneficial use. Conditions shall be placed on sites where damage from hazardous

conditions is likely. The conditions may include location restrictions, size limitations, and increased building standards.

Section 26 – Add a new Section 46- 149 of the City Code of Delaware City, entitled "Good Standing", which shall state as follows:

(a) No land use application, subdivision, zoning, building or other approvals shall be granted by any board, official, department, manager, or the City Council if any of the following parties, having an interest in the application or the property the application is filed for, are not in good standing with Delaware City:

1. Applicant;
2. Property owner;
3. Equitable owner;
4. Permit holder; and
5. Any individual with a controlling interest in the property (controlling interest means the acquisition of sufficient dominance to determine the operational and financial policies, including disposition of its assets, of any legal entity that is a party listed Subsections 1 through 4, but excluding mortgage holders).

(b) Not in good standing means that at the time of the request, any of the above enumerated parties are delinquent in the payment of monies owed to the City or have been found to be in violation of the City Code or have failed to pay taxes and/or fees owed after notice and an opportunity to be heard. If a board, official, department, manager, or the City Council denies an application or approval based upon the fact that a party/parties is not in good standing, such

decision must be sent to the party/parties in writing outlining the basis for the conclusion within ten (10) days. Such decision may be appealed to the Board of Adjustment within thirty (30) days of the written conclusion.

Section 27- Amend Section 49-6 of the City Code of Delaware City to delete the phrase "New Castle County Building Code (Section 124 of the BOCA Basic Building Code, 1984, as amended)" and substitute the phrase "applicable provisions and Codes of the City of Delaware City."

Section 28. Inconsistent Ordinances and Resolutions Repealed. All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed.

Section 29. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

Section 30. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.

ADOPTED BY THE MAYOR AND COUNCIL, this _____ day of _____, 2014.

ATTEST:

_____
City Secretary

_____
Mayor

APPROVED AS TO FORM:

_____
Council Member

_____
City Solicitor

_____
Council Member

_____
Council Member

_____
Council Member

_____
Council Member

First Reading on _____,

Date of Publication _____.

Second Reading, Public Hearing, and Final Passage on _____.