

"A Historic Past"



"A Bright Future"

THE CITY OF DELAWARE CITY
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**CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 21-0315-02**

**ORDINANCE TO AMEND CHAPTERS 46 AND 54 OF THE CITY OF
DELAWARE CITY CODE TO ADD REQUIREMENTS FOR
RIPARIAN BUFFERS WITHIN THE HPR DISTRICT, STREETS AND
MAJOR SUBDIVISION AND SITE PLAN APPROVALS AND
TABLING MATTERS**

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, § 2-01 of the Charter, the Mayor and the City 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 the City Council desire to add requirements for riparian buffers within the Historical Preservation and Redevelopment District (the "HPR District"), streets and major subdivision and site plan approvals to, among other things, protect natural resources and ensure development consistent with the purposes of the Code; and

WHEREAS, the Mayor and the City Council desire to amend Chapters 46 and 54 of the Code by adding a Section 46-28(f), 46-113 and 56-35 and by amending Section 46-137, Section 54-9, Sections 54-28(D)(3), (F)(1) and (G)(3)(4) and (5), and Section 54-41, Article XVI, Section 3, Article XVIII, Section 1 and Article XIX, Sections 3, 4 and 5.

NOW THEREFORE, making the express finding that the below changes enhance and perpetuate the City of Delaware City's cultural, social, economic, religious, political or architectural history, as set forth in Chapter 49 of the Code, the Mayor and the City Council of the City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. The second Section 46-28(d) ("Subdivision Amenities") shall be corrected to refer to Section 46-28(e) ("Subdivision Amenities").

Section 2. A section 46-28(f) of the Code shall be added as follows:

(f) Riparian Buffer Area (RBA)

An RBA consists of land which forms a transition zone between existing, relocated, or proposed aquatic and terrestrial environments in the HPR District. RBA's include:

- A. One hundred (100) feet on either side of perennial and intermittent streams, lakes, canals, and tidal wetlands;
- B. All of a nontidal wetland greater than twenty thousand (20,000) square feet in area, plus an additional fifty (50) feet of adjacent land;
- C. All of any size nontidal wetland identified in the City of Delaware City Comprehensive Plan Update and designated by the Delaware Natural Heritage Program, a Division of DNREC, plus an additional fifty (50) feet of adjacent land.
- D. The RBA shall consist of two (2) zones:
 1. Zone 1 is the land within twenty-five (25) feet of the water body or wetland. It shall also include any contiguous area of slopes in excess of fifteen (15) percent and erosion-prone slopes contiguous to and draining toward a floodplain or watercourse upstream of an existing public water supply intake.
 2. Zone 2 is the remainder of the RBA.
 3. Identification and calculation.
 - i. Reserved.
 - ii. Initial identification of the watercourses/waterbodies shall be made using the National Hydrographic Dataset (NHD) utilized by the United States Geological Survey or more accurate information, as available. Field verification to determine evidence and location of channelized flow is required for a specific determination.
 - iii. Measurements for the Zone 1 boundary are to be made horizontally, perpendicular from the following reference points: top of bank of perennial streams, centerline of intermittent streams, and mean water level of lakes, ponds, and tidal wetlands. Measurements for the Zone 2 boundary are to be made horizontally, perpendicular from the boundary of the environmentally sensitive lands.

- iv. Measurements shall be made at appropriate intervals perpendicular to these reference points so as to accurately reflect the character of the adjacent land.
 - v. The width of existing impervious area such as roadways, parking lots, structures, sidewalks, etc. shall not count towards the RBA measurements.
 - vi. Final determination of the boundaries of the RBA shall be made by the City Engineer.
- E. Exceptions: An RBA shall not be designated along industrial ponds, sewage lagoons, man-made irrigation ditches, stormwater management basins and other artificial features with a similar water quality or storage function.
- F. All subdivisions and land development plans prepared for review and recording, and all right-of-way plans shall clearly:
- i. Show the extents of any RBA on the subject property.
 - ii. Label Zone 1 and Zone 2 of any RBA.
 - iii. Provide a note to reference any RBA stating: "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the City of Delaware City."
 - iv. Provide a note to reference any protective covenants governing RBA stating: "Any riparian buffer area shown hereon is subject to protective covenants that may be found in the land records and that restrict disturbance and use of these areas."
- G. The following practices and activities are prohibited in an RBA except as necessary for projects allowed under Section 46-28(f)(H):
- i. Clearing of existing vegetation.
 - ii. Soil disturbance by grading, stripping or other practices.
 - iii. Paving, filling or dumping.
 - iv. Drainage by ditching, underdrains or other systems.
 - v. Use, storage or application of pesticides, except for spot spraying of noxious weeds or non-native species.
 - vi. Storage or operation of motorized vehicles, except for emergency use.

H. The following structures, practices, and activities are permitted in an RBA upon issuance of requisite approvals by DNREC, the Corps of Engineers, and any other jurisdictional authority:

- i. Marinas including related ancillary structures and functions of marinas as defined in Section 7501 – Marina Regulations of Title 7 of the Delaware Administrative Code.
- ii. Boardwalks, bridges, paths, and utilities provided: (a) an analysis is conducted to ensure that no economically feasible alternative is available, (b) the width of crossings is the minimum needed to allow for maintenance access and installation, (c) the angle of the crossings are perpendicular to the stream or buffer in order to minimize clearing requirements, and (d) the minimum number of crossings is used.
- iii. Stormwater management provided: (a) an analysis is conducted to ensure that no economically feasible alternative is available and that the project is either necessary for flood control or significantly improves the water quality or habitat in the stream, (b) the area cleared will be limited to the area required for construction and adequate maintenance access (as may be specified in the Delaware Sediment and Stormwater Regulations), and (c) material dredged or otherwise removed from a BMP is deposited outside the buffer.
- iv. Stream restoration projects, facilities and activities.
- v. Water quality monitoring and stream gauging.
- vi. Removal of individual trees that are in danger of falling, causing damage to dwellings or other structures, or causing blockage of a stream.

This Section 46-28(f) shall not apply to properties that have been subdivided prior to the enactment of this Section.

Section 3. Chapter 46, Article XII of the Code is hereby amended by adding a Section 46-113 as follows:

Section 46-113 Tabling Matters

With respect to any matter that comes before the City Council or Planning Commission under this Chapter 46, the City Council and Planning Commission shall be permitted to table such matter one (1) time.

Section 4. The last paragraph of Section 46-137 of the Code is hereby amended by inserting the following underlined language:

Following affirmative referral by the City Council of the zoning classification change request to the Planning Commission for review and recommendation, at the request of the applicant, an ordinance to change the zoning classification shall be proposed for a first reading before the Council following receipt of the Planning Commission's recommendation. If the zoning classification change also requires an amendment to the City's comprehensive development plan, the Planning Commission shall not provide any recommendation to the City Council until after a public hearing, submission of the application to the Preliminary Land Use Service Review ("PLUS"), and the Planning Commission's consideration of written comments received from PLUS. In considering whether to recommend a petition for a zoning classification change, the Planning Commission shall consider all of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties. The applicant shall bear all costs and expenses incurred by the City for PLUS review. Upon recommendations of the Planning Commission, the application will be scheduled for a second reading, public hearing and vote by City Council in accordance with this Code and/or the City Charter. In voting whether to approve a zoning classification change, the City Council shall consider all of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties.

Section 5. Section 54-9 of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

The design and construction of streets, sidewalks, curbs and gutters shall be governed by the Delaware Department of Transportation Standards and Regulations for Subdivision Streets and State Highway Access, as may be amended from time to time and all other rules, laws and requirements of the Delaware Department of Transportation, ~~except that in the HPR District, road widths, road geometry, and right-of-way widths need not satisfy the Delaware Department of Transportation Standards.~~ A completion guarantee is required for all improvements. The foregoing notwithstanding, a completion guarantee shall not be required for streets, sidewalks, curbs and gutters constructed, owned and controlled by a public instrumentality of the State ~~of~~ or the City of Delaware City.

Section 6. Section 54-28(D)(3) of the Code is hereby amended by inserting the following underlined language:

Where a quorum is present, the Planning Commission shall take action within three regularly scheduled meetings following acceptance of the preliminary

subdivision plan application from the City Manager and following HPC and PLUS review (if applicable). The Planning Commission shall furnish a written statement to the applicant and City Council indicating the action taken with any and all recommendations. In considering whether a preliminary plan for major subdivision should be recommended or approved, all of the following factors should be considered: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties. The Planning Commission shall recommend approval of the plan, reject the plan for non-compliance with applicable laws or regulations, or recommend approval of the plan with conditions. If the plan is rejected for non-compliance with applicable laws and regulations, the applicant may resubmit a revised plan to the Planning Commission for further review.

Section 7. Section 54-28(F)(1) of the Code is hereby amended by inserting the following underlined language and deleting the following stricken language:

The purpose of final approval is to confirm and certify that all conditions of preliminary approval have been met, including, without limitation, consideration of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties, to prepare and/or execute all necessary agreements and to otherwise finalize the subdivision plan and related engineering drawings for official recordation and development. ~~Final subdivision approval is an administrative action, with the exception that the City Council shall confirm the certification of the City Manager and/or his/her designee or City representative and approve a major subdivision plan and/or any applicable agreements.~~

Section 8. Sections 54-28(G)(3), (4) and (5) of the Code are hereby amended by deleting the following stricken language and inserting the following underlined language:

3. ~~The City Council shall approve the final major subdivision plan or, upon a finding that the final major subdivision plan does not meet the requirements of the Delaware City Code, return the application for further review by the City Manager and/or his/her designee.~~ Intentionally omitted.

4. The City Manager and/or his/her designee or a City representative shall promptly notify the applicant of the action taken by the City Council on a final major subdivision plan.

5. If applicable, upon remand, the City Manager and/or his/her designee or a City representative shall review the final major subdivision plan for compliance with applicable law. If violations are found, the City Manager shall require the applicant to correct the violations and resubmit. If the City Manager and/or his/her designee or a City representative finds that the proposed major subdivision plan satisfies all requirements of the law, the City Manager shall resubmit the plan to the City Council, who shall ~~approve the plan at its next scheduled meeting~~ vote on the plan in accordance with this Code and/or the City Charter. In voting whether to approve a major subdivision plan, the City Council shall consider all of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties.

Section 9. Section 54-41, Article XVI, Section 3 of the Code is hereby amended by inserting the following underlined language:

Where a quorum is present, the Planning Commission shall take action within three regularly scheduled meetings following acceptance of the major site plan applications from the City Manager and following HPC and PLUS review (if applicable.) The Planning Commission shall furnish a written statement to the applicant and City Council indicating the action taken with any and all recommendations. In considering whether a preliminary plan for major site plan should be recommended or approved, all of the following factors should be considered: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties. The Planning Commission shall recommend approval of the plan, reject the plan for non-compliance with applicable laws and regulations, or recommend approval of the plan with conditions. If the plan is rejected for non-compliance with applicable laws and regulations, the applicant may resubmit a revised plan to the Planning Commission for further review.

Section 10. Section 54-41, Article XVIII, Section 1 of the Code is hereby amended by inserting the following underlined language and deleting the following stricken language:

The purpose of final approval is to confirm and certify that all conditions of preliminary approval have been met, including, without limitation, consideration of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted;

and (e) effect on nearby properties, to prepare and/or execute all necessary agreements and to otherwise finalize the site plan and related engineering drawings for official recordation and development. ~~Final site approval is an administrative action, with the exception that the City Council shall confirm the certification of the City Manager and/or his/her designee or City representative and approve a major site plan and/or any applicable agreements.~~

Section 11. Section 54-41, Article XIX, Sections 3, 4 and 5 of the Code are hereby amended by deleting the following stricken language and inserting the following underlined language:

3. ~~The City Council shall approve the final major site plan or, upon a finding that the final major site plan does not meet the requirements of the Delaware City Code, return the application for further review by the City Manager and/or his/her designee.~~ Intentionally omitted.

4. ~~The City Manager and/or his/her designee or a City representative shall promptly notify the applicant of the action taken by the City Council on a final major site plan.~~ Intentionally omitted.

5. ~~If applicable, upon remand,~~ ~~†~~The City Manager and/or his/her designee or a City representative shall review the final major site plan for compliance with applicable law. If violations are found, the City Manager shall require the applicant to correct the violations and resubmit. If the City Manager and/or his/her designee or a City representative finds that the proposed major site plan satisfies all requirements of the law, the City Manager shall resubmit the plan to the City Council, who shall ~~approve the plan at its next scheduled meeting~~ vote on the plan in accordance with this Code and/or the City Charter. In voting whether to approve a major site plan, the City Council shall consider all of the following factors: (a) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (b) consistency with the character of the neighborhood; (c) consistency with zoning and use of nearby properties; (d) suitability of the property for the uses for which it has been proposed or restricted; and (e) effect on nearby properties.

Section 12. Chapter 56 of the Code is hereby amended by adding an Article XV (Tabling Matters) as follows:

Article XV Tabling Matters

Section 54-35

With respect to any matter that comes before the City Council or Planning Commission under this Chapter 54, the City Council and Planning Commission shall be permitted to table such matter one (1) time.

Section 13. 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 the City Council's intent.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.

[Signature page follows]

ADOPTED BY THE MAYOR AND COUNCIL, this ____ day of _____ 2021.

ATTEST:

City Secretary

Mayor

APPROVED AS TO FORM:

Council Member

City Solicitor

Council Member

Council Member

Council Member

Council Member

First Reading on _____.

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