

CITY OF DOVER
STAFF SUBSTITUTE #1 TO ORDINANCE #2010-25

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 11 – Environmental protection of the Dover Code be amended to read as follows:

Section 11. Environmental protection.

11.1 *Purpose.* The purpose of this section is to protect public health and safety by ensuring that environmental standards for water, air, and soil in the city of Dover adequately address current practices in the realm of environmental protection. Further, it is the intent of this section to protect environmentally sensitive land as well as the plants and animals that reside on that land.

11.2 *Environmentally sensitive areas and scarce resources.* All land areas which contain one of the following natural features or combination of these features shall be considered to be an environmentally sensitive area or an area of scarce resources subject to specific requirements for environmental protection and conservation: flood hazard areas, steep slopes, water bodies and wetlands, wet soils, woodlands, significant wildlife habitats, prime agricultural soils, designated scenic areas, and natural areas and nature preserves identified in the comprehensive plan.

11.21 *Flood hazard areas.* All flood hazard areas shall remain as authorized by the City of Dover and/or the Delaware Department of Transportation.

- a) For the purposes of this section, natural open space is defined as an area of land that excludes buildings, structures, and impervious surface from being constructed on or located within the area. For evaluating flood hazard areas, patios, cement slabs, sidewalks, and other similar constructs are considered to be structures and are similarly prohibited.

11.211 *Redevelopment.* Existing uses or buildings located within a flood hazard area are considered to be non-conforming structures and are subject to the following requirements if redevelopment occurs on properties within the flood hazard area.

- a) Non-residential uses existing in a flood hazard area seeking to redevelop a property under the requirements of Article 10 are required to reduce impervious surfaces for the lot by 15% from the pre-redevelopment conditions.
- b) For non-residential uses where less than 33% of the total lot area is located within a flood hazard area, the planning commission may waive or reduce the amount of required reduction in impervious surfaces. For projects being reviewed under administrative site plan review, the city planner may waive or reduce the amount

of required reduction in impervious surface for projects where less than 33% of the total lot area is located within a flood hazard area.

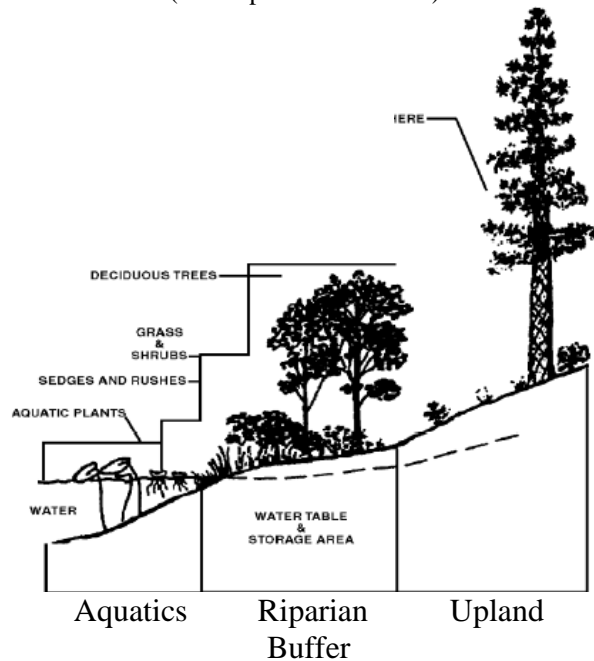
- c) New residential building construction or additions of impervious surface are not permitted in pervious areas of the flood hazard area.

11.22 *Water bodies and wetlands.* Water bodies and wetlands shall be left as permanent open space. No development, filling, piping or diverting shall be permitted, except for required roads, to be approved by the United States Army Corps of Engineers and/or the Delaware Department of Natural Resources and Environmental Control. Within these same areas, the clearing or removal of natural ground cover or vegetation, including the cultivation of the soil for agricultural purposes, is prohibited.

11.221 For the purposes of this section, the following, as depicted on the most recent USGS Topographic Maps, shall be defined as water bodies: Cahoon Branch, Dover Run, Fork Branch, Little River, Maidstone Branch, McKee Run, Morgan Branch, Muddy Branch, Puncheon Run, Silver Lake, and St. Jones River.

11.222 *Setbacks.* All buildings, structures, and impervious surfaces shall be set back at least 100 feet from the top of bank from wetland areas greater than 0.25 acres in size and from all water bodies. Patios, cement slabs, sidewalks, and other similar constructs are considered to be impervious surfaces. Within this 100 foot setback, vegetative ground cover is required. This setback may be reduced under the conditions set forth as follows:

Figure 11-1
(US Dept. of the Interior)



- a) The setback may be reduced to 50 feet from the top of bank provided that a riparian buffer is established in the setback, consisting of native vegetation. (See figure 11-1)
- b) The setback may be reduced to 30 feet from the top of bank provided that a riparian buffer is established in the setback, consisting of native vegetation and provided that bank stabilization is implemented through the planting of native species. (See figure 11-1)
- c) Single family residential uses may reduce the setback requirement to 75 feet of the top of bank.
- d) Removal of buffer plantings without approval. The removal of native vegetation or plantings required for the purposes of riparian buffers for any purpose whatsoever, except the establishment of pathways (not greater than eight feet in width), shall be prohibited unless approved by the planning commission through the site plan, conditional use, or subdivision review process.
- e) Plantings in a riparian buffer that are removed without permission must be replaced with similar plantings within 30 days of removal. The City Planner may extend this time frame where and if weather conditions necessitate a delay.
- f) *Exceptions to the setback requirements.* Stairs, ramps, open decks, patios, fences, and docks necessary for access to natural features with a combined total of 200 square feet in size are exempt from the setback restrictions. Paved trails and sidewalks of up to 6 feet in width or less are exempt from the setback restrictions as defined in this section.

11.23 *Wet soils.* No construction shall be permitted where the seasonally high water table is within 2 1/2 feet of the surface unless crawl space, piles or slab on grade with provisions to prevent water seepage will be used to prevent water damage to the building. The proposed construction techniques must be approved by the building inspector in accordance with City of Dover Building Code and must meet or exceed the standards of the Federal Housing Administration.

No basements or cellars shall be permitted to be constructed below the seasonal high water table, unless special measures are taken to prevent water damage to the building. Such measures must be approved by the building inspector in accordance with City of Dover Building Code and must meet or exceed the standards of the Federal Housing Administration.

11.231 *Requirements for development applications.* Site development applications appearing before the planning commission must include either a wetland delineation prepared by a licensed/registered soil scientist, wetlands scientist, or professional

engineer in accordance with US Army Corps of Engineers standards; or provide a statement from the design professional that no wetlands are present on the site.

11.232 Requirements for major subdivision applications. Subdivision plans must identify the seasonal high water table on each lot if basements are proposed for those lots. A licensed Class D Soil Scientist is required to determine the seasonal high water table and this information must be displayed on the subdivision plat. This information must also be present in the deed and plot plan for each property. Basements may be prohibited where severe groundwater conditions exist.

- a) A lot specific study may be substituted for the recorded seasonal high water table as per the subdivision plan.

11.24 Significant wildlife habitat. Natural features that constitute significant wildlife habitats are considered to be environmentally sensitive features and a scarce resource deserving of protection. The natural features that typically provide significant wildlife habitat include wetlands and marsh areas that provide nesting and breeding grounds for waterfowl and support a wide variety of aquatic life; wooded areas in general, but most especially the edges of the wooded areas adjacent to open fields and along stream corridors; freshwater marsh and wetland areas, old fields and hedgerows; and natural areas of grasses and shrubs along the edges of open fields, drainage channels and wetlands. Applications for subdivision plan and site development plan approval shall include the identification of all areas and features which constitute significant wildlife habitat as part of the documentation of existing site conditions. The protection and preservation of wildlife habitat shall be considered by the planning commission in development review.

11.25 Scenic resources. Scenic resources shall consist of the following: mature woodlands and most especially the edges of wooded areas adjacent to open fields, wetlands or urbanized areas; other areas of mature natural vegetation such as marsh grasses; the historic district and areas listed on the National Register of Historic Places; and freestanding historic buildings and sites and other buildings or districts of the city exhibiting particular architectural or visual merit buildings and places of special public or cultural significance, and significant views and view corridors to buildings or places of architectural, visual, public or cultural value and to attractive natural areas. Application for subdivision plan or site development plan approval shall include, as a part of the documentation of existing site conditions, the presence of and location of all scenic resources. The preservation and enhancement of the scenic resources potentially affected by the proposed development shall be considered by the planning commission in development review.

11.251 Silver Lake. All Site Plan, Conditional Use Site Plan, or Subdivision applications for parcels where any boundary of the parcel is abutting Silver Lake are required to go before the Silver Lake commission prior to appearing before the planning commission. The Silver Lake commission shall provide advisory comments for the planning commission on such applications.

11.26 *Combinations of environmentally sensitive features and scarce resources.* Wherever more than one environmentally sensitive feature or scarce resource is present on a site in combination, special care shall be taken in both the documentation of existing conditions on a site being considered for development and in the planning commission's review of a specific subdivision plan or site development plan application.

In general, the use of available development options such as planned neighborhood design and traditional neighborhood design is strongly encouraged to take advantage of the design and the planning feasibility in new development projects afforded by these options to preserve and protect environmentally sensitive features and the natural processes associated with these features to the maximum extent possible.

11.3 *Stormwater management.* All development must be designed, constructed, and maintained in accordance with State of Delaware Sediment and Stormwater regulations. The planning commission may require stormwater management in excess of the minimum regulations in areas with documented drainage problems upon concurrence with the Kent Conservation District, State of Delaware, or the City Engineer.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 16 – Tree Planting and Preservation, Subsection 16.2 – Definitions, be amended by deleting the “Wetlands” definition.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 12 – Definitions, be amended by inserting the definitions in the proper alphabetical order of this article, as follows:

Vegetative Ground Cover: Grass and a combination of shrubs and/or trees planted or naturally occurring that occupies a portion of a property for the purpose of maintaining or improving water quality or natural conditions of the land.

Wetlands: Lands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions.

ADOPTED: NOVEMBER 8, 2010

SYNOPSIS

The proposed ordinance updates the provisions of the *Zoning Ordinance* relating to environmental protections by:

- Clarifying that paving is prohibited within flood hazard areas (100-year flood plain).

- Setting forth standards for redevelopment within flood hazard areas.
- Removing the 25-foot setback requirement from flood hazard areas.
- Creating a variable buffer requirement from waterways, with variation based on planting and bank stabilization.
- Identifying exceptions to the buffer requirement, based on amenities that are necessary intrusions (such as decks, patios and docks) for enjoyment of the waterway.
- Identifying by name the water bodies to which the buffer requirements apply.
- Requiring that a wetland delineation or “statement of no wetlands” be included in all development applications.
- Creating a requirement to identify seasonal high water table on lots in residential subdivisions and prohibiting basements below the seasonal high water table.
- Giving the Silver Lake Commission a role in reviewing and making advisory comments to the Planning Commission on projects abutting Silver Lake.
- Defining “Vegetative Ground Cover” and “Wetlands.”

The Staff Substitute #1 to the proposed ordinance:

- Corrects numbering errors found.
- Improves internal consistency in terms of word choice.
- Adds Natural Areas and Nature Preserves identified in the Comprehensive Plan to areas to be considered as environmentally sensitive areas and scarce resources.
- Removes the wetlands definition from the Tree Planting and Preservation section of the *Zoning Ordinance* so that there is one wetlands definition to apply to the entire *Zoning Ordinance*.

ADOPTED: NOVEMBER 8, 2010

Actions History:

November 8, 2010 - Public Hearing/Final Reading - Council
 October 18, 2010 - Review - Planning Commission
 September 27, 2010 - First Reading - Council
 September 13, 2010 - Considered by Parks, Recreation, and Community Enhancement Committee