

## CITY OF DOVER ORDINANCE #2017-12

### 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 1 – Supplementary Regulations Applying to Residence Zones, Subsection 1.8 – Buffers Along Arterial Streets of the Dover Code be amended to read as follows:

#### ARTICLE 5. - SUPPLEMENTARY REGULATIONS

##### Section 1. - Supplementary regulations applying to residence zones.

1.8 *Arterial Street Buffers.* Where residential zoned property fronts on a principal arterial street, as designated by the comprehensive plan, a landscape buffer shall be required in addition to normal landscaping of the street right-of-way. This landscape buffer shall be required when the property is subject to site development plan review or site development master plan review by the planning commission according to Appendix B – Zoning, Article 10 – Planning Commission. Arterial street buffers shall be a minimum of 30 feet in depth, measured from the right-of-way line of the arterial street.

1.81 *Landscaping of arterial street buffers.* At the time of development of the property, the arterial street buffer shall be planted with a variety of trees, shrubs and ground cover. The landscape design and planting plan for these arterial street buffers shall be subject to the approval of the planning commission as an integral part of the site development plan.

1.82 *Standards for arterial street buffer landscaping.* Landscaping in arterial street buffers shall follow the landscape guidelines outlined in Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 15 – Landscape Guidelines of this ordinance. Landscaping shall be designed to enhance the appearance of the arterial street, complement the architecture of buildings on site, and integrate with adjacent landscape areas. Landscape designs and planting plans which would pose a hazard to traffic on the arterial street, obstruct underground or overhead utilities or infrastructure, or significantly impede visibility of properties from the street shall be prohibited.

1.83 *Planning commission waiver.* The planning commission may approve a buffer less than 30 feet in depth. In approving a lesser amount of buffering, the planning commission shall consider the following factors:

- a) Whether there are specific constraints related to existing lot size, lot configuration or the orientation of existing buildings on adjoining properties that would severely limit the development potential of the property if a deep buffer was required.
- b) Whether a deep or shallow buffer would cause the property to be out of character with the surrounding built environment.
- c) Whether there is significant landscape area within the right-of-way of the arterial street itself that can contribute to the buffer, and whether future road improvement activities are likely to reduce the depth of this area.

d) Whether the landscape design and planting plan for the buffer achieve the standards of subsection 1.82 – Standards for arterial street buffer landscaping.

(Ord. No. 1-78, 1-24-1978; Ord. of 12-14-1992; Ord. of 4-25-1994; Ord. of 6-13-1994; Ord. of 1-10-1996; Ord. of 5-22-2000; Ord. of 10-23-2006; Ord. of 1-14-2008; Ord. No. 2011-21, 10-10-2011; Ord. No. 2011-26, 12-12-2011; [Ord. No. 2015-13, 10-12-2015](#).)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 6 – Supplementary Regulations Applying to All Zones Other Than Single-Family Residence Zones of the Dover Code be amended to read as follows:

**Section 6. - Dumpsters for trash and recycling.**

6.1 *Location of trash receptacles.* In all zones of the City of Dover (except in residential zones where standard City of Dover 90-gallon trash containers are used), all trash receptacles and bulk recycling bins (excluding publicly operated recycling drop off centers), which shall be referred to collectively as "dumpsters" in this ordinance, are to be situated in order to allow safe and efficient access by trash collection vehicles, and shall be screened from public view. All dumpsters must comply with the following regulations:

6.11 *Location and screening required.* All dumpsters must be located in approved locations on the lot. Dumpsters must be placed on hard, paved, dust-free surfaces and may not be placed in designated parking spaces, fire lanes, or access ways. Outside storage of trash, cardboard, or shipping pallets is prohibited. A dumpster enclosure is required to screen the dumpster from view whenever these units are situated so that they will be visible from any public right-of-way or from an adjacent property.

6.12 *Minimum dumpsters required.*

Use	Dumpsters Required
Restaurant	Two required for the first 3,000 square feet of gross building area; one required for each additional 3,000 square feet of gross building area or fraction thereof
Shopping center (excluding supermarkets or anchor tenants)	Two required for the first three stores; one required for each store thereafter
Supermarkets & anchor tenants in shopping centers	Two required in addition to requirements for shopping center
Office & retail less than 50,000 square feet	Two required for the first 16,000 square feet of gross floor area; one required for each additional 16,000 square feet of gross floor area or fraction thereof
Office & retail greater than 50,000 square feet	Two required for the first 50,000 square feet of gross floor area; one required for each additional 24,000 square feet of gross floor area or fraction thereof

Industrial, warehousing & institutional	Two required for the first 80,000 square feet of gross building area; one required for each additional 40,000 square feet of gross building area or fraction thereof
Apartment complex	Two required for the first 48 apartments; one required for each additional 24 apartments or fraction thereof

6.13 *Selection of trash service.* Applicants for site development plan approval shall specify the proposed method of trash collection (side load or front load) at the time of application. A change in the method of collection may require an alteration of the site plan, subject to approval of the city planner or the planning commission.

6.14 *Maneuvering space.* Adequate off-street truck maneuvering space shall be provided on-lot and not within any public street right-of-way or other public lands. Internal site circulation lanes are to be designed with adequate turning radii to accommodate the size and efficient maneuvering of trash collection vehicles.

6.15 *Minimum dimensions for dumpster enclosures.* All dumpster enclosures must be adequate to screen dumpsters from public view. Enclosures for private collection must be no less than seven feet in height. The height of enclosures for City of Dover collection may be no less than five feet high.

6.16 *Enclosure construction.* All dumpster enclosures shall be constructed of durable materials that will withstand the normal use and wear expected in trash removal operations. Whenever a dumpster, in its enclosure, will be visible from a public right-of-way, the appearance of the dumpster enclosures shall complement the architecture of the principal building on the lot, and be constructed with the same or similar exterior materials.

6.17 *Gates.* Gates are required whenever a dumpster, in its enclosure, will be visible from a public right-of-way. Gates must be designed to swing back behind the front of the enclosure and lock in the open position. If City of Dover trash service is provided, it is the responsibility of the property owner or occupant to open and securely lock back the gates to allow for trash pick up. The gates may be opened 12 hours prior to pick up, and must be closed within 12 hours after pick up.

6.18 *Reduction of dumpster requirement.* When a use is required to provide dumpsters as part of site development plan approval, the required number of dumpsters may be reduced under the following circumstances:

a) *Dumpster pads reserved for future use.* An area of the site reserved for a dumpster may be substituted for an actual dumpster. The provided area must be large enough to accommodate a dumpster and must be accessible to trash collection services. The city planner may require that the owner of record of the property provide a dumpster in the reserved location, together with any enclosure required, upon determining there is need for the additional dumpster.

b) *Trash compactor substitution.* Trash compactors may be substituted for ordinary dumpsters at a two to one ratio. The city planner may approve a higher substitution ratio if specifications are provided indicating the machine will achieve a correspondingly higher trash compaction ratio.

Trash compactors must meet the same location and screening requirements as other dumpsters. Sites providing trash compactors must still provide separate receptacles for recycling.

6.2 *Location and screening approval required.* The locations of new dumpsters on a site and any screening necessary shall be approved through the site development plan approval process, according to the type of review required in Article 10 of this ordinance.

6.3 *Unauthorized dumpsters.* Any dumpster not previously approved through the site development plan approval process may be required by the city planner to be moved, removed, or screened if said dumpster is a nuisance to neighboring properties by virtue of its current location.

(Ord. of 9-13-1999)

### **BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 7 – Supplementary Regulations Applying to All Non-Residential Zones of the Dover Code be amended to read as follows:

#### **Section 7. - Supplementary regulations applying to all non-residential zones.**

7.1 *Lighting.* Lighting of commercial uses shall provide no less than 1½ footcandles at grade. Light shall be deflected away from adjacent residential areas and shall not be distracting to traffic on adjacent roads.

7.2 *Opaque Barrier.* Visual and sound screening shall be provided on a non-residential use when abutting a residential use, except in front yard areas. The screening shall be required to be installed on site as part of planning commission or administrative site plan approval. Where required, screening shall consist of an opaque barrier at least six feet in height, accompanied by landscaping.

7.21 *Opaque barrier options.* The requirement for the opaque barrier may be met by choosing one of the following:

- a) An opaque fence made of durable materials such as wood, vinyl, composite, etc.
- b) A wall constructed of masonry materials, either stucco, brick, split-faced block, or decorative concrete. If the principal structure on the lot is of masonry construction, the wall shall match the exterior of the building.
- c) An earthen berm (3:1 slope maximum).
- d) An earthen berm (3:1 slope maximum) with either an opaque fence or wall constructed on top. Materials of the fence or wall shall be as specified in options a) and b). The total height of the barrier may be no less than six feet high.

7.22 *Landscaping options.* The required opaque barrier must be accompanied by one of the following:

- a) A durable and continuous evergreen planted screen, six feet in height at the time of planting. In the case of an earthen berm, the evergreen screen may be on the top of the berm.

- b) A hedge that will grow to a height of at least six feet at maturity. The hedge shall be interspersed with evergreen trees at least six feet high at the time of planting. The hedge shall be at least four feet high at the time of planting.

7.23 *Parking lots.* Whenever a parking lot is located across the street from a residential use, it shall be screened from view of such land by a thick hedge located along a line drawn parallel to the street such hedge to be interrupted only at points of ingress and egress **and to meet the corner visibility standards of Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 1.31.** The open area between such hedge and the street shall be landscaped in harmony with the landscaping prevailing on neighboring properties fronting on the same street. The hedge shall be at least two feet in height at the time of planting and shall grow to no more than four feet in height at the time of maturity. While the hedge is growing to a suitable height, an adjacent four foot high fence may be required by either the planning commission or city planner, according to the type of review required by Appendix B – Zoning, Article 10 – Planning Commission.

7.24 *Planning commission waiver.* The planning commission may waive the requirement for the opaque barrier (wood fence, masonry wall, or earthen berm) and require only landscaping as required by section 7.22 – Landscaping options in cases where noise is not a concern and the vegetation alone is considered a desirable aesthetic alternative.

- 7.3 *Arterial Street Buffers.* Where nonresidential zoned property fronts on a principal arterial street, as designated by the comprehensive plan, a landscape buffer shall be required in addition to normal landscaping of the street right-of-way. This landscape buffer shall be required when the property is subject to site development plan review or site development master plan review by the planning commission according to Appendix B – Zoning, Article 10 – Planning Commission. Arterial street buffers shall be a minimum of 30 feet in depth, measured from the right-of-way line of the arterial street.

7.31 *Landscaping of Arterial Street Buffers.* At the time of development of the property, the arterial street buffer shall be planted with a variety of trees, shrubs and ground cover. The landscape design and planting plan for these arterial street buffers shall be subject to the approval of the planning commission as an integral part of the site development plan.

7.32 *Standards for Arterial Street Buffer Landscaping.* Landscaping in arterial street buffers shall follow the landscape guidelines outlined in Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 15 – Landscape Guidelines. Landscaping shall be designed to enhance the appearance of the arterial street, complement the architecture of buildings on site, and integrate with adjacent landscape areas. Landscape designs and planting plans which would pose a hazard to traffic on the arterial street, obstruct underground or overhead utilities or infrastructure, or significantly impede visibility of properties from the street shall be prohibited.

7.33 *Planning Commission Waiver.* The planning commission may approve a buffer less than 30 feet in depth. In approving a lesser amount of buffering, the planning commission shall consider the following factors:

- a) Whether there are specific constraints related to existing lot size, lot configuration or the orientation of existing buildings on adjoining properties that would severely limit the development potential of the property if a deep buffer was required.

b) Whether a deep or shallow buffer would cause the property to be out of character with the surrounding built environment.

c) Whether there is significant landscape area within the right-of-way of the arterial street itself that can contribute to the buffer, and whether future road improvement activities are likely to reduce the depth of this area.

d) Whether the landscape design and planting plan for the buffer achieve the standards of subsection 7.32 - *Standards for Arterial Street Buffer Landscaping*.

7.4 *Outdoor storage trailers.* Storage trailers accessory to an approved use shall be prohibited on a site, except when meeting the following conditions:

1. The total floor area of storage trailers shall be less than two percent of the gross floor area of the principal building.
2. All storage trailers shall be placed in accordance with all zoning regulations regarding permanent structures, including setbacks, parking, and other bulk regulations.
3. All such trailers shall be screened from public streets, and shall not be located between the principal building and the public road right-of-way.
4. Trailers placed during approved construction phases or those used as collection facilities for non-profit, governmental or philanthropic organizations shall not be calculated into floor area totals used to determine parking requirements, but must conform to setbacks and all other bulk regulations.
5. Storage trailers accessory to an approved use are to be temporary features on a site. No such trailer shall be in place for more than 18 months, except for those trailers to be used during construction or those used as collection facilities for non-profit, governmental or philanthropic organizations.

7.5 *Fences.* Fences or walls shall be limited to a maximum height of four feet above the ground when situated within front yard areas, and shall be limited to a maximum height of eight feet above the ground when situated within side and rear yard areas. Fences situated on corner lots shall be subject to the provisions of article 5, section 1.3. For the purposes of this provision, on lots with dual street frontage that are not corner lots, a fence situated to the rear of the principal structure shall be limited to a maximum height of eight feet above ground. Fences or walls with a height in excess of eight feet above the ground shall conform to the setback requirements for dwelling buildings as set forth in article 4 of this Appendix. Fence material commonly referred to as "barbed wire" and/or "razor wire," or any similar material shall be prohibited along property lines which adjoin residential zones.

(Ord. of 3-24-1986; Ord. of 12-14-1992; Ord. of 4-25-1994; Ord. of 9-13-1999; Ord. of 5-22-2000; Ord. No. 2011-26, 12-12-2011)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 15 – Landscape Guidelines of the Dover Code be amended to read as follows:

Section 15. - *Landscape guidelines.*

The following guidelines shall be used in the design of site landscape as required in other sections of this ordinance and shall be followed unless it can be demonstrated through the site plan review process that such features would be impractical or incompatible with a particular land use or site development proposal. Failure to maintain required landscaping shall constitute a violation of this ordinance and is subject to, as specified in article 8, section 4, violations and penalties:

15.1 Trees of substantial size shall be provided to create a sense of scale and an overhead canopy. Where trees are set in paving, flush tree grates or open planters shall be used to protect root zones without interrupting the ground plane.

15.2 Large shrubs, small trees and evergreens are most effective for foundation planting around buildings, emphasizing major vehicular entrances and areas requiring visual screening. Avoid using large, dense plant material where maximum visibility is imperative.

15.3 Security and visibility are important considerations in landscape design along commercial corridors. Understory plant materials shall be confined to 36 inches or lower and trees shall be limbed to above 12 feet at maturity to allow for visual surveillance.

15.4 Color and specimen material shall be targeted to a few key locations. A few highly visible masses of color will be more effective than numerous small patches dispersed over the entire site.

15.5 Massing of plant material, or large groups of a single species is preferred over planting a large area with numerous species. Trees and shrubbery shall be used in scale with corridor development and large open spaces to create visual balance.

15.6 Grading shall be level, except to allow for necessary surface drainage and earth berms used for screening purposes.

15.7 Lawn areas shall be contained and separated from landscaped beds with defined edging such as concrete walks, steel edging or curbing.

15.8 Entrances shall be provided with landscaping to define the entrance location and to establish the site entrance as part of the overall landscape.

15.9 Landscape plantings shall be placed at least 10 feet away from all underground utilities and infrastructure, as measured from the trunk of the planting. Plantings located within 10 feet of overhead utilities or infrastructure shall be of a species that does not grow to the height of the lowest equipment overhead. Placement of all plantings must minimize conflict with required servicing of utilities and infrastructure.

(Ord. of 3-18-1992)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 16 – Tree Planting and Preservation of the Dover Code be amended to read as follows:

**Section 16. - Tree planting and preservation.**

16.1 *Purpose.* The purpose of this section is to establish standards and requirements for the protection and planting of trees and woodlands because it is recognized that woodlands and trees are not only desirable, but are essential to the health, safety, and welfare of the population in that they provide oxygen, reduce carbon dioxide, stabilize soil, cleanse the air by transpiring clean water into the atmosphere, cleanse water passing into the ground through the root system, provide protection for wildlife and their habitats, provide shade, reduce noise and glare, increase property values, and provide an important physical, aesthetic, and psychological balance to the built environment.

16.2 *Definitions.*

*Caliper dimension.* The term "caliper dimension" means an outside diameter measurement of the trunk of a tree measured at a vertical distance of three feet above grade.

*Clearing.* The removal of trees from an area of 5,000 square feet or greater, whether by cutting or other means. The term "clearing" shall not include the removal of trees for landscaping purposes by individual lot owners.

*Development Area.* The area containing all new site features (buildings, parking and drive areas, pedestrian walks, stormwater management areas, buffer areas etc. but not underground utilities) proposed by a plan. The development area shall be delineated using property lines and lines run straight across the property from one property line to another without bending or curving.

*Design professional.* The term "design professional" shall be any person licensed as a landscape architect or architect, or Delaware certified nursery professional.

*Dripline.* A line on the ground established by a vertical plane extending from a tree's outermost branch tips to the ground, i.e., the line enclosing the area directly beneath the tree's crown, from which rainfall would drip.

*Tree.* Any self-supporting, woody perennial plant, usually having a main stem or trunk and many branches and at maturity normally attaining a trunk diameter greater than three inches at any point and height of over ten feet.

*Tree protection area.* Any portion of a site wherein are located existing trees which are proposed to be retained in order to comply with the requirements of this section. The tree protection area shall include no less than the total area beneath the tree canopy as defined by the dripline of the tree or group of trees collectively.

*Woodland.* An area of contiguous wooded vegetation (7,500 square feet or greater), where trees exist at a density of at least one tree with a caliper dimension of six inches or greater per 375 square feet of land and where the tree branches form a contiguous canopy.

16.3 *Applicability.* The terms and provisions of this section shall apply to any activity on real property which requires conditional use, site plan or subdivision approval of the planning commission as set forth in article 10, except the provisions in subsection 16.4 which shall apply to all real property.

16.4 *Tree preservation.*

16.41 *Trees required by planning commission to be replaced.* Trees required by the planning commission as a part of a conditional use, subdivision, or site plan approval shall not be removed unless they are diseased or infested, or present a danger to life and property. In cases where such trees are removed, they must be replaced with a tree planting in accordance with the table of trees standards kept in the office of the city planner.



16.42 *Trees of special value.* Trees having an historic value, as determined by the state historic preservation officer, or that are of an outstanding nature due to type or species, age, or other professional criteria, may be required by the planning commission to be preserved. Such trees may be prohibited from being removed by the city planner until such time that the planning commission has granted approval to remove such trees.

16.43 *Tree preservation in wetlands.* No portions of wetland areas shall be developed or cleared of vegetation unless granted permission under state and/or federal permit; and they shall remain as essentially undisturbed areas protected under the provisions set forth in subsection 16.7.

16.44 *Clearing prohibited without approval.* Clearing, as defined by this section, for any purpose whatsoever, except the establishment of trails and pathways (not greater than eight feet in width) and open yard areas, shall be prohibited unless approved by the planning commission through the site plan, conditional use, or subdivision review process.

#### 16.5 *Woodland preservation.*

16.51 *Tree preservation and selective clearing plan required.* All site development proposals which involve the development of woodland areas and require planning commission approval shall include a tree preservation and selective clearing plan as part of the submission plan. The tree preservation and selective clearing plan shall be prepared in accordance with the provisions of subsection 16.5, subsection 16.7 and subsection 16.8 of this section.

16.52 *Limited clearing for site development allowed.* Generally, site development plans for the construction of a new building within existing woodland areas shall limit clearing of the land to those areas necessary to provide for the placement of the building or group of buildings, adequate access onto the property and to the proposed building or group of buildings, utility placement, off-street parking and yard areas to allow for daylight infiltration and building maintenance. When woodland areas are proposed to be cleared to allow for new construction, clearing within the area of the proposed construction shall be limited to an area of 30 feet from proposed building foundation, and 15 feet from off-street parking lots, and utility placement.

16.53 *Maximum clearing requirement.* Specifically, no more than 50 percent of a lot, parcel or tract of land occupied by woodland vegetation may be cleared for any purpose.

16.54 *Reserved.*

#### 16.6 *Tree preservation and planting in nonwoodlands.*

16.61 *Tree preservation and planting plan required.* All developments requiring approval of the planning commission shall be required to submit, with its application and plans, a tree preservation and planting plan as set forth in subsection 16.8, and shall conform with the following provisions.

16.62 *Tree density.* For each property required to submit a tree preservation and planting plan, a development area as defined in this section shall be delineated within the nonwoodland area of the property. Within this development area, existing trees may be retained and new trees shall be planted such that the development area shall attain or exceed a tree density of one tree per 3,000 square feet or fraction thereof.

16.63 *Minimum standards for new trees.* For new trees to be counted toward the required tree density, they must be of a species and size as set forth in the table of trees approved by the planning commission and kept on file in the office of the city planner, or be of an alternate species found acceptable by the commission.

16.64 *Minimum standards for existing trees.* For existing trees to be counted toward the required tree density, the tree shall have a minimum caliper dimension of two inches. No trees over eight inches in caliper dimension shall be removed unless within an area of 30 feet from the proposed building foundation, off-street parking lot, and utility placement.

16.7 *Tree protection and planting requirements.*

16.71 *Application.* The following guidelines and standards shall apply to activities regulated under article 5, section 15 of this ordinance:

16.72 *Protection required.* To protect the required trees or woodland and their critical root zone, a tree protection area delineated by the dripline of a tree or group of trees to be retained, shall be established. The protection area shall not be disturbed by site utility and grading work, by construction activities such as parking, material storage, concrete washout, sedimentation intrusion or erosion, or other activity. Damage to trees or woodlands and their critical root zones shall require tree plans to be revised to compensate for the loss as determined by the building inspector.

16.73 *Protection measures.* Tree protection areas shall be protected by fencing, staking, or continuous ribbon and, where necessary, silt screens which shall be situated to coincide with the dripline of the tree or group of trees to be preserved. Protection measures shall be erected prior to construction, and must remain until final landscaping is installed.

16.74 *Planting requirements.* New trees proposed to be planted for credit toward the density requirement shall have spacing that is compatible with the spatial site limitations and with responsible consideration toward species size when mature. Species selected for planting must be ecologically compatible with the specifically intended growing site. Trees selected for planting shall be free from injury, pest, disease, and disorders.

16.8 *Tree preservation, planting and selective clearing plans.*

16.81 *Plan specifications.* A tree preservation and planting plan or a preservation and selective clearing plan, prepared by or in conjunction with a design professional, shall be shown on a copy of a preliminary plat, sketch, or site plan, as appropriate to the proposed development, drawn to the same scale and covering the same area as the other plan documents prepared for the planning commission hearing. The plan may be combined with a required buffer and landscape plan for the project, at the option of the developer. The plan shall provide sufficient information and detail to clearly demonstrate that all applicable requirements and standards of this section will be fully satisfied. The plan shall contain, but need not be limited to, the following:

- a. Project name, zone, parcel number, north arrow and scale.
- b. Developer's name, address and telephone number.
- c. Name, address, and telephone number of the design professional responsible for the preparation of the plan.

- d. Delineation of all lot lines, minimum yard areas, buffers, and landscape areas as required by the zoning ordinance [this appendix].
- e. Total acreage of the site and total lot area for each lot delineated.
- f. Delineation of all wetlands and woodlands.
- g. Designation and delineation of all lots in nonwoodland areas expected to retain existing trees to meet the tree density requirement.
- h. Approximate location and description of the protective tree fencing, staking, or continuous ribbon to be installed which, at a minimum, shall follow the dripline of all trees to be retained along adjoining areas of clearing, grading, or other construction activity.
- i. The location, spacing, caliper dimension, and species of new trees proposed to meet tree density requirements.
- j. Measures to be taken to avoid sedimentation intrusions and erosion in tree protection areas, and the location of such devices.
- k. A summary table of the number of new trees to be planted and minimum number of existing trees to be retained to meet the tree density requirement, if any, along with calculations showing that the tree density requirement has been achieved. Groupings of trees in the tree protection areas for new trees may be keyed to the summary table by area rather than having each tree individually labeled on the plan.
- l. There shall be a note on the plan indicating that a one-year full price replacement guarantee on all new trees planted is held by the applicant.

#### 16.9 *Tree mitigation.*

16.91 *Planning commission waiver.* The planning commission may waive the provisions of subsections 16.52, 16.53, and 16.62, and require replacement planting for mitigation purposes should the planning commission determine, after demonstration by the applicant, that due to physical limitations of the land which would otherwise prohibit the reasonable use of the land, or for purposes of preserving, protecting and promoting the interest of public health, safety, welfare and/or public convenience. All tree mitigation plantings must occur within the corporate limits of the City of Dover. Tree mitigation may occur off-site in accordance with the provisions listed below in this ordinance:

- (a) If a waiver is sought from the provisions of subsection 16.62, new tree plantings are required at a rate of 1:1. All new tree plantings shall meet the minimum size at planting requirements of the City of Dover table of trees.
- (b) If a waiver is sought from the provisions of subsection 16.52 and/or subsection 16.53, then mitigation must be in the form of newly created woodland areas. New woodlands shall be created at a rate of 1.25 times the amount of woodlands to be removed. A woodland mitigation plan shall be prepared by a licensed forester, landscape architect, or certified nursery professional, for the consideration of the planning commission.
- (c) All tree mitigation must occur on-site unless an off-site location is specifically approved by the planning commission. When considering off-site locations for tree mitigation, the commission shall consider:

- 1) A physical hardship related to the land which would otherwise prohibit compliance on the subject site;
- 2) Whether the mitigation plan proposed by the applicant is superior in terms of environmental benefits, tree quantity, or aesthetic qualities compared to strict compliance with the ordinance on-site.

16.92 *Tree mitigation required for unauthorized clearing.* In the event that trees or woodland areas to be preserved under this ordinance or as a condition of a site plan, subdivision, or conditional use approval are illegally removed, tree mitigation shall be required. All tree mitigation plantings must be placed on the same lot, parcel, or tract on which the illegal clearing occurred, except as noted below. All replacement trees must be of the same or a similar variety as the trees illegally removed.

- (a) If trees have been removed from non-woodland areas, new tree plantings shall be provided in accordance with the table below:

Caliper Dimension of Trees Removed	Number of Trees Required	Caliper dimension at Planting
25" or larger	5 trees	3"
17" to 24"	3 trees	3"
9" to 16"	3 trees	3"
8" or less	2 trees	3"

\* *Note* —All trees replanted must be guaranteed to survive a minimum of one year.

- (b) If trees have been removed from woodland areas, then mitigation must be in the form of newly created woodland areas. New woodlands shall be created at a rate of 1.75 times the amount of woodlands that were illegally removed. The woodland unlawfully removed must be replanted to satisfy a portion of this requirement. A woodland mitigation plan shall be prepared by a licensed forester, landscape architect, or certified nursery professional, for review and approval by the city planner.
- (c) If the applicant wishes to provide replacement plantings on any property other than the one on which illegal clearing occurred, the mitigation plan must be reviewed and approved by the planning commission. When considering off-site locations for tree mitigation, the commission shall consider:
  - 1) A physical hardship related to the land which would otherwise prohibit compliance on the subject site;
  - 2) Whether the mitigation plan proposed by the applicant is superior in terms of environmental benefits, tree quantity, or aesthetic qualities compared to strict compliance with the ordinance on-site.

(Ord. of 7-13-1992; Ord. of 7-12-1993, § 4; Ord. of 9-13-1999; Ord. of 4-28-2008(2); Ord. No. 2010-25, 11-8-2010)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 18 – Sidewalk Requirements of the Dover Code be amended to read as follows:

Section 18. - *Pedestrian, bicycle, and multi-modal access requirements.*

- 18.1 *Purpose.* The purpose of this section is to establish standards and requirements for the construction of transportation networks for pedestrians, bicyclists, and other users of non-motorized forms of transit, in order to ensure safe and convenient multi-modal access to all development within the City of Dover. Sidewalks, multi-use paths, and other hard paved trails, whether adjacent to a roadway or not, shall be referred to collectively as “pathways” within this section. It is the intent of this section that all new pathways installed shall be designed to a standard commensurate with existing and expected future multi-modal traffic volumes, recognizing that the convenience of a growing network of such pathways citywide will encourage residents and visitors to use non-motorized means of travel to reach their destinations.
- 18.2 *Applicability.* Sidewalks or other pathways according to the requirements of this section shall be installed on a property by the property owner or developer under the following circumstances:
- a) When the property is part of a development proposal which is subject to planning commission site development plan review.
  - b) When the property is part of a development proposal which is subject to planning commission site development master plan review.
  - c) When the property is part of a request for a conditional use permit which also requires site development plan review or site development master plan review.
  - d) When the property is part of a development proposal which is subject to administrative site plan review, provided the proposal involves construction of an entire new building.
- 18.3 *Pathway design standards and location requirements.* Pathways shall meet the following minimum standards and requirements in order to allow for pedestrian access:
- a) *Public street frontage.* Standard City of Dover sidewalk, as per chapter 98, article IV of the Dover Code of Ordinances, shall be required to be installed along the entire public street frontage of a property. Where frontage sidewalk exists but does not meet the standards of chapter 98, article IV, the sidewalk shall be re-laid to meet the standards. Sidewalk shall include barrier-free access ramping at points of intersection with street crossings and at other locations so as to afford reasonable barrier-free pedestrian movement and site access.
  - b) *Private street frontage.* Wherever a private road within a development is proposed, whether planned for future subdivision or not, Standard City of Dover sidewalk, as per chapter 98, article IV of the Dover Code of Ordinances, shall be required to be installed on both sides of the cartway of the private road. Such sidewalk shall include barrier-free access ramping at points of intersection with street crossings and at other locations so as to afford reasonable barrier-free pedestrian movement and site access.
  - c) *On-site linkages.* Within all nonresidential developments and all multifamily residential developments, sidewalk at least five feet wide, constructed of concrete or good paving brick

laid substantially in concrete, shall be installed to make pathways between street frontages, parking areas, building entrances, and any other site features needing pedestrian access. Such pathways shall be designed to provide reasonable travel times between these features and disincentivize taking shortcuts across areas inappropriate for pedestrians. Where such pathways must cross drive lanes, standard City of Dover crosswalk shall be installed.

18.4 *Alterations to pathway design standards.* The planning commission or city planner, according to the type of plan review required by article 10 of this ordinance, may alter the minimum pathway design standards under the following circumstances in order to allow for multi-modal access:

- a) Where vehicular traffic on adjacent roadways is of sufficient speed and volume to pose a potential danger to bicyclists and other non-motorized forms of transport using the roadway, or where pedestrian and multi-modal traffic is expected in sufficient volumes to cause conflicts on a narrower sidewalk, a ten-foot wide multi-use path made of concrete or asphalt may be required instead of standard City of Dover sidewalk along the public street frontage.
- b) Where it is determined by evaluation of the characteristics of the nearby transportation networks including roadway classification type, the presence and type of existing pathways, and the general character of the area in terms of development, future development potential, and zoning district, a ten-foot wide multi-use path made of concrete or asphalt may be required instead of standard City of Dover sidewalk along the public street frontage.
- c) Where an adopted plan recommends installation of multi-modal facilities for a specific site, those facilities may be required to be constructed according to the standards of the agency implementing the plan.
- d) Where it can be shown that pathway materials alternate to those specified in this section would be more durable to multi-modal traffic, be more environmentally desirable, or be more in keeping with the overall design of the development, use of these alternate materials may be authorized.

18.5 *Waiver of pathway location requirements.* The property owner or developer may request a waiver from the planning commission or city planner, according to the type of plan review required by article 10 of this ordinance, under the following circumstances in order to reduce or eliminate the requirements for pathway installation:

- a) When the property is isolated from the existing pathway network, with no existing pathways within the immediate vicinity of the property.
- b) When the proposed use would not generate or attract additional pedestrian, bicycle, or other non-motorized trips.
- c) When physical characteristics of the property are such that pathway installation is impractical or impossible.

18.6 *State Law Requirements.* Where state laws or regulations of the Delaware Department of Transportation applying to right-of-way design conflict with the provisions of this section, the state laws and regulations shall prevail.

(Ord. of 6-13-1994; (Ord. of 9-13-1999)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 5 - Supplementary Regulations, Section 19 – Building and Architectural Design Guidelines of the Dover Code be amended to read as follows:

**Section 19. - Building and architectural design guidelines.**

The following guidelines shall be used in design of buildings and their architectural characteristics for the purposes of meeting the intent of Appendix B – Zoning, Article 10 – Planning Commission, section 2, subsection 2.27:

(1) *Physical orientation and facade.*

- (i) The principal building facade of proposed buildings shall be oriented toward the primary street frontage, and in the same direction as the majority of existing buildings on the frontage street. Proposed buildings on corner properties shall reflect a public facade on both street frontages.
- (ii) Consideration shall be given to the dominant architectural features of existing buildings, but do not necessarily have to mimic those styles. Large expanses of blank walls are to be avoided, and consideration shall be given to windows and entrance ways along frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.

(2) *Architectural characteristics.*

- (i) *Building proportions.* Consideration shall be given to proportional attributes, including overall height-to-width ratios, of existing building facades, doors, windows, projecting canopies, and other architectural features, found in adjacent existing buildings.
- (ii) *Building mass.* Facades of new buildings shall consider, but not mimic, the sense of lightness or weight of existing buildings on neighboring properties and consider similar proportions of solids (i.e., siding, blank walls, etc.) to voids (i.e., windows, door openings, etc.).
- (iii) *Materials.* Proposed buildings shall incorporate durable exterior surface materials similar to and complementary with the color, texture, size, and scale of exterior materials reflected on existing buildings in the immediate vicinity.
- (iv) *Roofs.* Consideration shall be given to general shape, ridge and eave heights, and material characteristics expressed in existing buildings along the subject street.
- (v) *Visible utilities.* Outside HVAC equipment and visible utility connections shall be designed to minimize impact on adjacent property owners, by reducing their overall visible presence and if necessary screening them from public view. Consideration must also be given to equipment placement in proximity to loading areas and public facades of the buildings.

(3) *Exemptions.*

- (i) *Building additions.* Proposed building additions which will be designed to match the architectural characteristics and exterior material treatments of the existing building to

which the addition is being made shall be exempt from the requirement to submit elevation drawings or other graphic representations.

(Ord. of 9-25-2000)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 6 – Off-Street Parking, Driveways and Loading Facilities, Section 1 – Permitted accessory parking of the Dover Code be amended to read as follows:

Section 1. - Permitted accessory parking.

1.1 *Off-street parking spaces.* Off-street parking spaces, open or enclosed, are permitted accessory to any use. One commercial vehicle may be parked on a lot in any residence zone only if less than one ton in carrying capacity.

1.2 *Trailers and boats.* The long-term use of a recreational vehicle as a residence by any person or persons is prohibited in all zones. A boat with its trailer or a utility trailer, under 31 feet body length or an unoccupied recreational vehicle, may be parked within a garage or anywhere behind the setback line if screened from adjacent lots. However, none of the vehicles shall be parked in a required side yard if alley parking adjacent to the lot is available.

1.3 *Driveways.* No driveway shall provide access to a lot located in another zone, which lot is used for any use prohibited in the zone in which such driveway is located.

1.4 The minimum width of a residential driveway shall be nine feet.

1.5 *Access drives.* In areas under the joint or overlapping jurisdiction of the Delaware Department of Transportation and the City of Dover, the regulations of the Delaware Department of Transportation relating to ingress and egress drives shall apply.

(Ord. of 9-12-1983; Ord. of 1-10-1996; Ord. of 11-13-2007; Ord. No. 2016-16 , 8-8-2016)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 6 – Off-Street Parking, Driveways and Loading Facilities, Section 3 – Required Off-Street Parking Spaces, Subsection 3.6 – Drainage and Surfacing of the Dover Code be amended to read as follows:

**ARTICLE 6. - OFF-STREET PARKING, DRIVEWAYS AND LOADING FACILITIES**

Section 3. - Required off-street parking spaces.

3.6 *Drainage and surfacing.*

- (a) All open permanent parking areas and access drives shall be properly drained and all such areas shall be provided with paved asphalt, concrete or other hard, paved, dust-free surface.



- (b) All permanent parking areas shall be enclosed with upright concrete curbing at least six inches in height. The city planner may relax this requirement for a portion of a parking area when there is a demonstrated need to convey stormwater to a proposed or approved stormwater management area. Curbing shall not be required for loading areas, handicapped access and for parking spaces accessory to a one-family or two-family residence (see also article 6, section 5.3).

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 6 – Off-Street Parking, Driveways and Loading Facilities, Section 3 – Required Off-Street Parking Spaces, Subsection 3.9 – Adjustments to Parking Requirements of the Dover Code be amended to read as follows:

- 3.9 *Adjustments to parking requirements.* The planning commission or city planner, according to the type of plan review required by Appendix B – Zoning, Article 10 – Planning Commission, may reduce, in an amount not to exceed 50 percent, the number of parking spaces required when, in the opinion of the commission, it has been demonstrated that the use is adequately served by transportation and parking alternatives, including but not limited to:
- (a) Site plan proposals within the downtown redevelopment target area, as described in appendix C of the Dover Code of Ordinances, may be granted a 20 percent reduction in the amount of off-street parking normally required, due to the availability of mass transit, municipal parking and existing pedestrian amenities.
  - (b) Designated off-street parking reserved for car pools, van pools, and bicycle parking facilities, in accordance with the following schedule:
    - (1) Each carpool space shall be equivalent to three standard parking spaces.
    - (2) Each vanpool space shall be equivalent to five standard parking spaces.
    - (3) Every group of five bicycle parking spaces shall be equivalent to one standard parking space.
  - (c) Employer participation in a traffic-mitigation plan approved by the Delaware Department of Transportation.
  - (d) Cash-in-lieu of parking contributions toward the capital construction or improvement of municipal parking facilities that are proposed. The cash-in-lieu of parking contribution shall be in a monetary amount equivalent to the estimated cost of construction for the number of standard surface parking spaces for which the reduction is sought. To take advantage of this option, the developer shall submit to the city engineer a cost estimate for the parking requested to be waived. The city engineer shall examine the estimate for accuracy in current prevailing costs of construction at the time of proposal and shall report to the planning commission his/her findings.
  - (e) Proposals involving superior urban design which contribute to an enhanced pedestrian environment and which include such features as pedestrian plazas and pocket-parks, pedestrian-way connections with existing sidewalk systems and community facilities, park benches and other street furniture, mass transit connections and shelters, and landscaping and shade tree plantings.

In all areas, except the downtown redevelopment target area, the planning commission or city planner, according to the type of plan review required by Appendix B – Zoning, Article 10 – Planning Commission, may require the development plans to have an area of open space designated where parking could be constructed less than or equal to the number being reduced. In such cases the plan shall bear a note which explains that the petitioner, in accepting a parking reduction, agrees to construct such additional parking as is otherwise required under the provisions of this appendix, if the planning commission, after a hearing, determines that the reasons for granting said reduction no longer exist. In all such instances where the planning commission determines that the reasons for granting a reduction no longer exist, the owner of record for the subject property for which a reduction was previously granted must construct the parking required to meet the regulations of the city during the next construction season.

(Ord. of 12-14-1992(2); Ord. of 4-25-1994; Ord. of 9-13-1999; Ord. of 4-23-2007(4); Ord. No. 2009-12, 9-14-2009; Ord. No. 2009-30, 3-8-2010; Ord. No. 2011-29, 1-9-2012; Ord. No. 2011-29, 1-9-2012)

**BE IT FURTHER ORDAINED:**

That Appendix B - Zoning, Article 6 – Off-Street Parking, Driveways and Loading Facilities, Section 5 – Supplementary Regulations for Parking and Loading Facilities of the Dover Code be amended to read as follows:

**Section 5. - Supplementary regulations for parking and loading facilities.**

- 5.1 *Access near street corners.* No entrance or exit for any accessory off-street parking area with over ten parking spaces, nor any loading berth shall be located within 50 feet of the intersection of any two street lines.
- 5.2 *On lots divided by zone boundaries.* When a lot is located partly in one district and partly in another district, the regulations for the district requiring the greater number of parking spaces or loading berths shall apply to all of the lot. Parking spaces or loading berths on such a lot may be located without regard to district lines, provided that no such parking spaces or loading berths shall be located in a residence zone, unless the use to which they are accessory is permitted in such zone, or by special permission of the board of adjustment.
- 5.3 *Supplementary parking regulations for multiple dwellings.* No parking space shall be located in any front yard or within three feet of any lot line in side or rear yards. The parking of motor vehicles within 15 feet of any wall or portion thereof, is prohibited. Except for electric vehicle charging stations, no automobile service shall be permitted to be extended to users of the lot, including sales, repair or fueling, and no gasoline, oil, grease, or related supplies shall be stored or sold in any such lot or in any garage on such lot.
- 5.4 *Supplementary regulations for any parking lots adjacent to residential lots.*
  - 5.41 Whenever space is provided for the parking of ten or more vehicles in the open, such spaces shall be individually identified by means of pavement markings.
  - 5.42 Reserved.

5.43 *Parking lots.* Whenever a parking lot is located across the street from a residential use, it shall be screened from view of such land by a thick hedge located along a line drawn parallel to the street, such hedge to be interrupted only at points of ingress and egress and to meet the corner visibility standards of Appendix B – Zoning, Article 5 – Supplementary Regulations, Section 1.31. The open area between such hedge and the street shall be landscaped in harmony with the landscaping prevailing on neighboring properties fronting on the same street. The hedge shall be at least two feet in height at the time of planting and shall grow to no more than four feet in height at the time of maturity. While the hedge is growing to a suitable height, an adjacent four foot high fence may be required by either the planning commission or city planner, according to the type of review required by Appendix B – Zoning, Article 10 – Planning Commission.

(Ord. of 4-25-1994; Ord. of 9-13-1999; Ord. of 10-12-1998; Ord. No. 2009-28, 3-8-2010; [Ord. No. 2016-14, 5-9-2016](#))

ADOPTED: OCTOBER 9, 2017

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### SYNOPSIS

The ordinance updates sections of Articles 5 and 6 of the *Zoning Ordinance* in order to enhance the flexibility of the code in several areas, including dumpster requirements, screening and buffer requirements, tree planting requirements, and curbing requirements. The proposed ordinance also adds requirements for recycling to Article 5, Section 6 and rewrites Article 5, Section 18 to allow the City to require multi-use path instead of frontage sidewalk under specific circumstances.

The staff amendment provides for a series of technical corrections and clarifications to ordinance #2017-12. The amendment also addresses Public Works staff concerns about landscaping planted near utilities and infrastructure. The amendment also expands a restriction on parking within 15 feet of buildings with multiple dwellings.

The Planning Commission amendment provides clarification of the requirements for determining when “multi-use” pathways would be required as a project component instead of standard sidewalks. The concept for the amendment was recommended by the Planning Commission upon their review of Ordinance #2017-12 and review of the proposed provisions for pedestrian, bicycle, and multi-modal access requirements.

(SPONSORS: HARE AND SLAVIN)

### Actions History:

10/09/17 - Public Hearing/Final Reading – City Council

09/18/17 - Public Hearing/Recommendation – Planning Commission

08/28/17 - First Reading – City Council

08/14/17 - Introduced – Council Committee of the Whole/Legislative, Finance, and Administration Committee