



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

December 10, 2010

Mr. Paul Eckrich
City of Lewes
P.O. Box 227
Lewes, DE 19958

RE: PLUS 2010-11-02; City of Lewes Zoning Code Update

Dear Mr. Eckrich:

Thank you for meeting with State agency planners on November 24, 2010 to discuss the proposed City of Lewes draft Zoning Ordinance.

Please note that changes to the ordinance, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

Recommendations: Our office strongly recommends that the Town consider these recommendations from the various State agencies as you review the ordinance for final approval and adoption.

Office of State Planning Coordination – Contact: Bryan Hall 739-3090

This office commends the Council, Commission and staff for their hard work on what is a very well developed set of codes that are reflective of the goals and objectives set forth in the City's current comprehensive land use plan. As the City now considers final adoption of this draft ordinance, this office offers the following comments in addition to those presented by other State agencies:

- The use of tables helps to simplify the codes and makes the overall document much more user friendly, I would recommend that as part of the final review that these tables are crossed checked against the text / narratives that define the zoning districts to ensure that all elements are consistent.
- The proposed code reference flood plains, flood plain requirements, flood plain build standards, etc; as discussed at the meeting of 11/24/2010 the Town will be in 2011 reviewing all flood plain ordinances with DNREC. I would suggest that staff ensure

consistency through both of these processes (the DNREC review and the adoption of the proposed zoning code) to ensure that the Town maintains its flood insurance ratings and more importantly protects the healthy safety and welfare of its residents.

- **Once the zoning ordinance is approved, please submit the completed document (text and maps) to our office for our files.**

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- The Department of Transportation recommends further attention to §197-46. Accessory Uses. As written on page 21, paragraph C(4) prohibits “Sleeping facilities...stored in such a manner so as not to be available for sleeping purposes” but is silent regarding sleeping facilities that are available for sleeping purposes.

Further, and perhaps more importantly, §197-46 seems superfluous given §197-52. Accessory Buildings and Structures on page 26. They suggest that these sections could be combined, or at least §197-46, paragraph C could be eliminated.

- Regarding §197-48. Prohibited Uses in All Zoning Districts, DelDOT points out that the list on page 22 does not include the manufacture of either bituminous concrete or Portland cement concrete. Other jurisdictions have thought incorrectly the prohibitions on the manufacture of asphalt and/or the refining of asphalt would be sufficient in this regard, only to find that they were not. Asphalt is a petroleum product that serves as the binder in bituminous concrete and in casual speech the two terms are used interchangeably, but they recommend that the City consider its choice of words carefully in this context.
- In §197-61. Off-Street Parking, Paragraph C (1) (a) on page 36 provides that the minimum length for an off-street parking space serving a residential use is 18 feet. DelDOT recommends a minimum length of 20 feet. This same comment applies to the definition of a Parking Space on page 89 in Article 16. Definitions.
- On page 92 in Article 16. Definitions, the definition of street includes definitions of eight specific types of street. DelDOT recommends that definitions be added, either there or elsewhere in Article 16, for the terms “circle” and “roundabout.” Suggested definitions for these terms are as follows:
 - Circle – A circular intersection, the traffic controls and operation of which are not inherently specified (see Roundabout).
 - Roundabout – A circular intersection at which entering drivers yield to traffic already in the intersection and travel counterclockwise around a center island.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle
739-9071**

Article 9, Environmental Protection Regulations and Article 3, Zoning Districts-Open Space Zone

- The ordinance does not address rare, threatened or endangered species or habitat that supports those species. One purpose of Article 9 is to identify environmentally sensitive areas in the City. Recognizing the value of open space land for species and habitats of concern should also be a purpose identified in Article 3, Open Space Zone. The City should consider addressing the following in the ordinance:

Rare, threatened and endangered species and Species of Greatest Conservation Need

- Not all areas within the City (or that may be considered for future annexation) have been surveyed for species of concern. Rare, threatened and endangered species and Species of Greatest Conservation Need¹ (SGCN) have been documented in habitat associated with wetlands, waterways, beach, dunes, and woodlands within City boundaries. The majority of the species occur in areas proposed as ‘open space’ or ‘open space (water)’.

Recommendation: The City should consider measures that would provide protection to habitat that supports these species. In addition to wetland buffers and forest preservation, this could be accomplished partly by requiring applicants of development projects to contact the Natural Heritage and Endangered Species Program to determine if their project activities will impact species of conservation concern. In some cases a site visit may be requested in order to provide the necessary information. The City should then carefully consider implementation recommendations that would protect those species and their habitat, prior to approval of site plans.

Key Wildlife Habitat

- Areas within the City of Lewes are mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan² (DEWAP) because they are part of a larger wetland complex or because they support SGCN. KWH can support the full array of species across the landscape and the maps in DEWAP show areas of the State where

¹ Species of greatest conservation need (SGCN) are indicative of the overall diversity and health of the State’s wildlife resources. Some may be rare or declining, others may be vital components of certain habitats, and still others may have a significant portion of their population in Delaware. SGCN are identified in the Delaware Wildlife Action Plan (DEWAP).

² The Delaware Wildlife Action Plan (DEWAP) is a comprehensive strategy for conserving the full array of native wildlife and habitats-common and uncommon- as vital components of the state’s natural resources. Congress challenged the states to demonstrate comprehensive wildlife conservation. Delaware, along with all of the other states and provinces throughout the country are working to implement their wildlife action plans. This document can be viewed via the Division of Fish and Wildlife’s website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>. DEWAP also contains a list of species of greatest conservation need, Key Wildlife Habitat maps, and species-habitat associations.

conservation efforts can be focused. Although designation as KWH is non-regulatory, these maps are intended to help guide site-specific conservation planning efforts.

Delaware State Housing Authority – Contact Karen Horton 739-4263

- Article 5. §197-50 lists 1,250 square feet as the minimum living space per dwelling unit for Multiple Unit Structures. The Delaware State Housing Authority (DSHA) suggests that this requirement is excessive, particularly for 1- and 2 -bedroom units and efficiency units. For example, the Low Income Housing Tax Credit (LIHTC) program is the primary program in Delaware used to facilitate the development of affordable rental housing. The LIHTC uses the following minimum square footage requirements for new construction:
 - Efficiency -500 square feet;
 - One bedroom - 700 square feet;
 - Two bedroom - 850 square feet;
 - Three bedroom - 1050 square feet; and,
 - Four bedrooms - 1300 square feet.

So while 1,250 square feet may be reasonable for a 3- or 4-bedroom unit, it may be economically unfeasible for an efficiency or 1- and 2-bedroom unit. It is recommended that the Town uses 600 square feet as the minimum living space per dwelling unit as more units can be reasonably accommodated and is the square footage used in many of Delaware's communities.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP
Office of State Planning Coordination Director