



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

December 14, 2010

The Honorable Richard Maly
Mayor, Town of Camden
1783 Friends Way
Camden, DE 19934

RE: 2010-11-03; Town of Camden Zoning Ordinance

Dear Mayor Maly:

Thank you for meeting with State agency planners on November 24, 2010 to discuss the proposed Town of Camden 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.

This office has received the following comments from State agencies. For ease of use, these comments are organized in sequence by page and/or section of the ordinance. The agency making the recommendation is noted at the end of each comment. Please use the following contact information if you need to reach agency representatives to discuss further.

Office of State Planning Coordination (OSPC)	David Edgell 739-3090
State Historic Preservation Office (SHPO)	Terrence Burns 739-5685
Department of Transportation (DelDOT)	Bill Brockenbrough 760-2109
Natural Resources and Environmental Control (DNREC)	Kevin Coyle 739-9071
Delaware State Housing Authority (DSHA)	Karen Horton 739-4263

Code Requirements:

Page 1, Section 240-03: This reference is incorrect. Title 9 applies to County Government. The corresponding reference for municipalities is Title 22, Chapter 3, § 309. Check with your Town Solicitor for verification, and for an opinion about whether or not it is necessary to reference this section in the ordinance. (OSPC)

Page 3, Section 240-06 Unzoned Land: The language here is incorrect or perhaps misleading regarding lands to be annexed. The official zoning map can only apply to lands within the town boundaries. The town cannot zone land that is currently in Kent County's jurisdiction. The Comprehensive Plan's future land use map identifies desired land use categories for lands to be annexed into the town. The language in this section should be reworded to state that lands that are annexed into the town will be assigned an appropriate zoning district in conformance with the land use recommendations found in the comprehensive plan. Please consult your Town Solicitor and see Delaware Code, Title 22, Chapter 1, § 101 (1) for more information. (OSPC)

Page 19, Section 240-20 – Historic Overlay Zone District: In section G (1) (b), it states that the review of alterations and repairs in this district will be carried out by the State Historic Preservation Office (SHPO). The SHPO is happy to provide training and technical assistance to Camden's Architectural Design Commission; *however, it is not appropriate to cite them as a reviewing body under the ordinance.* The Architectural Design Commission should be cited here as making determinations in accordance with the architectural design standards. The remainder of the text of this section should be reviewed in order to determine where it is appropriate to cite the Architectural Design Commission as the reviewing body (rather than the Board of Adjustment). Camden may want to be more specific about who will make the determination if a building has been adequately recorded when a demolition permit is being sought (Section 240 – 20 I [1]) (SHPO)

On page 88, in Section 240-44(C): The definition of an automobile refers to a vehicle licensed by the Delaware Department of Public Safety. This is an outdated reference. Motor vehicle licensing is now handled by the Department of Transportation. (DelDOT)

Recommendations:

Current Zoning Map, AG/TDR: The proposed zoning map shows two large blocks of land labeled "AG/TDR," but the text and tables of the zoning code does not mention this designation. It is assumed that the designation means that the land is zoned for agricultural use and that the development rights associated with it have been or could be transferred elsewhere. However, there should at least be some explanation in the text and tables of what the designation means. If the regulations pertaining to the transfer of development rights are located outside the zoning code, the zoning code should say where those regulations can be found. (DelDOT)

Current Zoning Map and Page 35, Table 240-12; Pages 37-38 Section 240-25 Industrial District I; Pages 41 – 44, Table 240-15, Page 45, Table 240-17: The zoning map includes the I/C-2 Zone. This zone is not described in any of the tables or zoning text. Similarly, there is no I zone shown in the legend or on the zoning map. It is recommended that the map and the text be revised to correspond to one another. I assume that the I/C-2 zone on the map is intended to be the same as the I (Industrial) zone described in the text and tables. If this is the case, then select one name and letter designation for both the map and text. If the I/C-2 zone is intended to be a separate zoning category then this new category must be fully described in the text and tables. If the lands identified as I/C-2 are "split zoned," or partially zoned I and partially zoned C-2, then it

will be necessary to reflect the actual portions of those parcels zoned in each district on the zoning map. If this is the case, then the category I/C-2 should be removed from the legend and a new category for the I zone should be established. (OSPC)

Pages 2 and 38-41, Performance Standards: It is recommended that performance standards be presented as a separate section, and clearly indicate which zones they apply to. The section on page 2 is too brief and subjective, and its applicability is not clear. The section on pages 38-41 is much more comprehensive, but it is misplaced under the I District if it is intended to apply to other zoning districts as well, such as the C-2 district as noted on page 38, Section G (2). The performance standards are not mentioned in the C-2 district text. (OSPC)

Page 4, Section 240-08 Zoning District Map: This section clearly dictates that the zoning map is to be formally titled “Town of Camden Zoning District Map.” The draft zoning map submitted for review is titled “Current Zoning Map, Town of Camden.” I recommend that the map and the text be consistent, as such it is necessary to pick one of these titles and apply it to both the map and this section of the text. (OSPC)

Page 6, Section 240-12, D, (1): What is a “Community Impact Statement?” Is it defined and detailed elsewhere in the code? If so, a reference is recommended here. If not, then it is recommended that it be defined in the code. (OSPC)

Page 7, Section 240-12 (F) – (H): The process described here only seems to apply to R-3, but not R-1 or R-2. It is recommended that the town have a single process that applies to all development applications regardless of zone. This could be described elsewhere in the ordinance as a separate section, rather than in each zone under “Other Requirements.” (OSPC)

Page 10-11, Section 240-13: Some sections of this district seem to indicate that the requirement is for “mobile home subdivisions” with fee simple lots, while other parts (11 for instance) discuss requirements for what appear to be “mobile home parks” which are traditionally lot lease communities with amenities and open space all under common ownership. Please consider whether these two approaches are compatible, and perhaps identify and define a common terminology. (OSPC)

Page 10, Section 240-13(D)(5): “Access to the mobile home park shall be from a minor residential street.” The term “minor residential street” is not defined but it appears to be the same as a “local street,” which is another term that appears in the Code without a definition. These terms should be defined, but perhaps more importantly DeIDOT urges that access on a higher classification of street be required. Local roads and streets generally exist primarily to provide access rather than mobility. As a result, residents of such a street may find the traffic from a park of significant size to be unacceptable. DeIDOT recommends a requirement that access be from a collector street. (DeIDOT)

Page 12, Section 240-14, (D) and Page 56 Section 240-30 (F): DeIDOT recommends that Sections 240-14(D) and 240-30(F) be consolidated and revised to better accord with Section 5.4 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, available at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf. More specifically, they offer three points of advice:

Section 5.4 provides two approaches to determining the sight triangle, a technically rigorous one for use on the State-maintained road system and a standard size for use within residential subdivisions with State-maintained streets. For intersections with the State-maintained road system, DeIDOT will enforce the technically rigorous approach. In their opinion the Town's code does not need to address it, but Section 5.4 could be cited. For intersections of two Town-maintained streets, use of a standard-size sight triangle should be sufficient because these streets generally have low speeds and low volumes.

For subdivision streets, Section 5.4 of the DeIDOT manual specifies 30-foot sight triangles measured along curb lines. While the effect may not be greatly different from the 20-foot triangles proposed in Sections 240-14(D) and 240-30(F) of the code, DeIDOT suggests that measuring along curb lines is more practical than measuring along property lines as curb lines can be located without the aid of a surveyor.

Rather than specifying a maximum height for objects permitted in the sight triangle, Section 5.4 prohibits "placement of shrubbery or other visual barriers" within the triangle, with an exception for fire hydrants and states that "DeIDOT shall have full authority to maintain the required sight distance." Such language, while restrictive, makes it clear that the property owner is responsible for maintaining clear sight distance and avoids disputes regarding the height of objects in the triangle or the need for property owners to keep their shrubbery pruned. DeIDOT recommends that the Town take a similar approach. (DeIDOT)

Page 12, Section 240-14(D)(1): Objects as high as three feet are permitted in the sight triangle at street intersections. This section requires further attention. The American Association of State Highway and Transportation Officials (AASHTO) specify that for measuring sight distance the driver's eye height should be assumed to be 3.25 feet. At that height, an object three feet high and close to the driver will likely limit visibility. (DeIDOT)

Page 12, Section 240-14(D)(2): states that fences are permitted in the sight triangle at street intersections if they are no more than four feet high and at least 50% open. In addition to the height concern mentioned above, at an acute angle, a fence that is only 50% open can block sight distance. A better solution might be to either prohibit fences in the sight triangle or to limit them to chain link. (DeIDOT)

Page 16, Section 240-17, (7): It is suggested that the modification of spaces be in the form of a waiver granted by planning commission or council, rather than a variance. Such a modification may not meet the standard “hardship” test for a variance. Check with your town solicitor for his/her opinion on this. FYI: Milford has adopted such a waiver procedure; it allows planning commission to waive the construction of parking where it would clearly be in excess of needs for a particular use, however land must be reserved to build the parking should the use ever change. Something to consider for both residential home based businesses and commercial uses. (OSPC)

Page 17, Section 240-18, (B): Consider adding personal watercraft (PWC), all terrain vehicles (ATVs), and utility trailers to your definition. (OSPC)

Page 18 Historic Overlay Zone and Heritage Overlay Zone, Overall Comments: The Camden zoning ordinance assigns two zoning districts (Table 240 – 1, page 4) in which architectural design standards must be applied to new construction and repairs, the Historic Overlay District (HO), and the Heritage Overlay District (HZ). The purpose of each overlay district is described in Table 240-2 (page 5) with further discussion of each in Sections 240-20 and 240-21 respectively (pages 18 – 22). The Architectural Design Standards to be applied to new construction and repairs on buildings in these zones are found in Section 240-34 (pages 63-70). In Section 240-34 I., the zoning ordinance establishes an Architectural Design Commission to review actions in accordance with the guidance in the architectural design standards (pages 70 – 73). There are some issues and inconsistencies in the document which should be addressed before it is finalized.

Section 240-21 – Heritage Overlay Zone District: Although it is understandable that Camden might want to protect areas along the Route 13A corridor, it is unclear why the same level of design standards would be imposed on new construction and repairs along the Route 13 highway corridor. In fact, some of the restrictions in the design standards do not appear to be realistic for this corridor.

Section 240-34 – Architectural Design Standards: Throughout this section the Heritage Zone Overlay District is cited; not once is the Historic Zone Overlay District cited. This is a major oversight since the types of restrictions being proposed in the architectural design standards are more critical for this zone. This may have resulted due to the SHPO being cited as the reviewer within the Historic Zone; but as noted, this will not be possible. Also as noted, some of the restrictions in the standards appear too restrictive for the Heritage Zone, and it might be appropriate to institute a less comprehensive design standard for this zone. For the Historic Zone, the Secretary of the Interior’s Standards for Rehabilitation, a nationally recognized architectural design standard, should perhaps be cited. This would not preclude Camden from adding more specific restrictions such as are currently part of this section of the zoning ordinance.

Again it should be made clear that the Architectural Design Commission would make decisions in both the Historic Zone and the Heritage Zone. The membership of the commission indicates that it must include an architect, but it also indicates that all members of the Commission must

reside in the Town. It is highly likely that there may be times when no architect resided in Camden. It would be vital to indicate the residency requirement could be waived for the architect position on the Board. The discussion of the terms of the members in I (2) (c) must be modified as follows: “The terms of office for members appointed to fill (1) and (4) above shall be for three (3) years. The terms of (2) and (3) shall run concurrently with their terms as members of their organizations.” Furthermore, if you have any questions or would to discuss these issues further, please contact Alice Guerrant at 302-736-7412. (SHPO)

Page 18, Section 240-20; Page 21 Section 240-21: As noted by SHPO in their comprehensive comments above, we feel that the Board of Adjustment is not the appropriate body to perform the design review tasks associated with the Historic and Heritage Overlay Zones. It is suggested that you consult your Town Solicitor for an opinion. Our recommendations are as follows:

- Designate the Architectural Design Commission to review all projects within the Heritage Overlay District
- Designate the Architectural Design Commission to review all projects within the Historic Overlay District.
- Remove all reference to the Board of Adjustment having a role in design review on page 18 and elsewhere in the ordinance where it appears. (OSPC)

Page 27, Table 240-5: lists 1,000 square feet as the minimum living space per dwelling unit for Multi-Family and Multi-Family Mid-Rise units. We suggest that this requirement is excessive, particularly for 1-bedroom 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 program 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 bedroom -1300 square feet.

So while 1,000 square feet may be reasonable for a 2- or 3-bedroom unit, it may be economically unfeasible for an efficiency or 1- bedroom unit. We recommend 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. (DSHA)

Page 32, Table 240-10: Specifies that off-street parking spaces for residential units must measure at least 9 feet by 18 feet. DelDOT recommends that a 20-foot minimum length be required. (DelDOT)

Page 35, Table 240-12: The P Preservation district is not listed in the table, and it probably should be. The Agricultural / Open Space Zone is listed in the table, but not in the zone text.

Are these intended to be the same zone? If so, then it is recommended that one title and symbol be selected and consistently used throughout the ordinance and on the map. (OSPC)

Page 41, Table 240-15 and 16: Only one area is mapped as P, primarily land owned by Kent County that includes Brecknock Park. Because Brecknock is a well established recreational area it is doubtful that some of the permitted and conditional uses identified in Tables 240-15 and 240-16 are compatible with this park. As it stands now, it doesn't seem protective of the park.

Recommendation: Consider identifying additional areas for inclusion in the Preservation District (P) or at least identify the potential for areas to be added to this district in the future that might incorporate some of the permitted and conditional uses found in Tables 240-15 and 240-16. (DNREC)

Page 51-52, Section 240-28, B, (3): It is recommended that you consult your Town Solicitor about whether or not the Board of Adjustment is the appropriate public body to determine waiver requests (whether for loading spaces or any other waivers). Typically boards of adjustment have a very specific task to review variance requests based on hardship tests, and they operate in a quasi-judicial manner by reviewing evidence and hearing testimony. A waiver request may not be compatible with their operation and function. The planning commission may be a more appropriate body to consider waiver requests. (OSPC)

Page 56, Section 240-30(C)(1): states in part that "Where no official line is established, the right-of-way of any major thoroughfare, is designated on the Major Thoroughfare Plan shall be assumed to extend at least 30 feet on each side of the centerline of the existing right-of-way..." This statement concerns us in two respects. First, DeIDOT is unable to find a Major Thoroughfare Plan in the Code. Second, for State-maintained roads, the standard right-of-way width varies with functional classification. DeIDOT recommends that this section be revised to cite DeIDOT's Functional Classification Map and Section 3.6.5 of DeIDOT's Standards and Regulations for Subdivision Streets, available on-line at http://www.deldot.gov/information/pubs_forms/func_maps/pdf/functional_classification.pdf and http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf, respectively. (DeIDOT)

Page 57, Sections 240-30(F)(2) and (3): would permit objects as high as three feet are permitted in the sight triangle at street intersections. See the DeIDOT comments on Section 240-14(D)(1). (DeIDOT)

Pages 58-59, Section 240-31, A, (4): This section enables the planning commission to set conditions on the approval of conditional uses "to preserve the character of residential areas." Does the Town not wish to enable the planning commission to set conditions on conditional uses in commercial or industrial areas? I recommend that this be reconsidered, as there are many conditional uses listed in the commercial and industrial districts that may warrant special considerations and future planning commissions may wish to have the option to set reasonable conditions on these uses. (OSPC)

Page 60-63, Section 240-33, Open Space: What is a “planned unit residential project?” This term does not appear to be mentioned in the residential zoning district sections of the zoning ordinance, nor is it defined in Section 240-44. This ordinance does not appear to contain a “Planned Unit Development” or “PUD” development option, which I assume that this section would otherwise be referring to. Does the Town intend this section to apply to all residential subdivisions? If so, then I recommend that the term “planned unit residential project” be deleted and replaced with some other term which is defined in either the zoning or subdivision ordinance. If not, then it could be argued that this section is not applicable. (OSPC)

Page 60, Section 240-33, Open Space: It is a bit unclear from this section whether or not stormwater management areas are being considered by the Town as open space. Item (4) states that open space shall not include stormwater management areas; however, item (5) allows stormwater management areas to be set aside as passive open space. Furthermore, the open space definition at the end of the document does not mention stormwater management areas at all— neither in the list of areas considered to be open space or in the list of exclusions (areas not to be considered open space). Stormwater management areas do not typically support recreational activities, nor are they considered environmentally sensitive, nor do they typically provide habitat for species of concern. If stormwater management areas are allowed to be included in the required open space calculations, there will be less open space set aside that can actually be useful for recreation or that would provide protection to environmentally sensitive areas and habitat that support species of concern.

Recommendation: Larger, connected areas of forest and wetland space are generally more beneficial to wildlife displaced by development than smaller, disconnected spaces. The Town should consider the need for connections between open space areas within developments as well as connections to contiguous habitats on adjacent parcels. This would minimize the impact of development on wildlife when land-use changes include the conversion of previously open space into residential developments. (Note: This recommendation may actually be more appropriate in the subdivision ordinance, as it is more related to subdivision design.) (DNREC)

Pages 70-73, Architectural Design Commission: This commission’s role appears to conflict with the role granted to the Board of Adjustment on page 18, Section 240-20. This needs to be reconciled. The Architectural Design Commission is much better suited to this role, so our recommendations are as follows:

- Designate the Architectural Design Commission to review all projects within the Heritage Overlay District
- Designate the Architectural Design Commission to review all projects within the Historic Overlay District.
- Remove all reference to the Board of Adjustment having a role in design review on page 18 and elsewhere in the ordinance where it appears.

Page 73, Section 240-35, Environmental: This section should include habitat that supports rare, threatened or endangered species (RTEs) or Species of Greatest Conservation Need¹ (SGCN) as an ‘environmentally sensitive area’. These areas are in need of protection and conservation but were not included in this ordinance. Not all areas within the Town (or that may be considered for future annexation) have been surveyed for species of concern, but RTEs and SGCN have been documented in habitat associated with wetlands, waterways, and woodlands within Town boundaries and in surrounding areas that may be considered for annexation in the future.

Recommendation: The Town 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, within the Division of Fish and Wildlife-DNREC, 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 Town should then carefully consider implementing recommendations that would protect those species and their habitat, prior to approval of site plans. (DNREC)

Page 73, Section 240-35, Environmental: River tributaries and creeks that occur within the Town are mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan² (DEWAP) because they support SGCN and are part of a larger stream system. Derby Pond is also mapped as KWH. KWH can also support the full array of species across the landscape and the maps in DEWAP show areas of the state where conservation efforts can be focused. Although designation as KWH is non-regulatory, these maps are intended to help guide site-specific conservation planning efforts.

Recommendation: The Town should consider including KWH in the list of environmentally sensitive areas in Section 240-35 (A) (1), Environmentally sensitive areas and scarce resources.

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.

Page 74, Section 240-35, (A), (1), (f): The language contained in the zoning ordinance appears to contradict the Town’s Source Water Protection Ordinance #2008-O-02, Section 5, A) adopted on February 4, 2008. The source water protection ordinance (SWPO) states in part that “excellent ground-water recharge potential areas shall be preserved in a natural condition whenever possible” and “stormwater facilities shall not be permitted within ground water recharge areas”. However, the Zoning Ordinance, Chapter 240, Section 240-35, (A) (1) (f), states that excellent recharge areas will be protected by limiting impervious cover. The section states that these areas are suitable for ‘stormwater management ponds’.

The language contained in this section of the zoning ordinances appears to promote the use of excellent recharge potential areas as areas to be developed and specifically names storm water management ponds, an activity expressly prohibited under the Ordinance #2008-O-02. The intent of developing and implementing source water protection ordinances is to protect the resource.

The intent of protecting these areas is to allow them to maintain their natural ground water recharge potential. However, this does not mean promoting these areas as places to prioritize for location of storm water facilities.

Recommendation: The use of stormwater management facilities in excellent recharge areas should be limited to Green Technology BMPs and other runoff reduction practices that have been endorsed by the Department. Stormwater ponds and/or other treatment practices that do not provide runoff reduction benefits should be sited outside these excellent recharge areas unless no other alternative exists. In such cases, pretreatment must be provided so as to ensure adequate protection of groundwater resources.
(DNREC)

Page 105, Section 240-44(C): The definition of street includes definitions of ten specific types of street and related terms. DelDOT recommends that definitions be added, either there or elsewhere in this section, 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. (DelDOT)

Once the zoning code is approved, please forward to this office for your records. Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

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

Cc: Jim Plumbly
Chris Fazio