

ZONING ORDINANCE  
TOWN OF ODESSA, DELAWARE

An ordinance regulating the uses of buildings and structures for trade, commerce, residence, recreation, public activities and other purposes, the size of yards, courts and other open spaces, the location, height, bulk, number of stories and size of buildings and other structures, the density and distribution of population, creating districts for said purposes and establishing the boundaries thereof; defining certain terms used herein; providing for the method of administration, amendment and enforcement; providing penalties for violations; providing for a board of adjustment and defining the duties and powers of said board; repealing conflicting ordinances; and for other purposes.

ARTICLE 1  
PURPOSE AND AUTHORITY

SECTION 10. PURPOSE

The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan and are designed to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land, avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. These regulations have been made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

SECTION 11. AUTHORITY

The Mayor and Council of Odessa, pursuant to the provisions of Chapter 3, Title 22, of the Delaware Code Annotated, hereby ordains and enacts into law the following Articles and Sections.

ARTICLE II  
SHORT TITLE

This ordinance shall be known and may be cited as the Zoning Ordinance of the Town of Odessa, New Castle County, Delaware.

## ARTICLE III

### DEFINITIONS OF TERMS USED IN THIS ORDINANCE

For the purpose of interpreting this ordinance, certain words or terms used are herein defined. Except as defined herein, all other words used in this ordinance shall have their customary dictionary definition.

#### SECTION 30. INTERPRETATION OF CERTAIN TERMS AND WORDS

1. Words used in the singular number include the plural, and words used in the plural number include the singular.
2. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
3. The word "lot" includes the word "plot" or "parcel".
4. The word "building" includes the word "structure".
5. The word "shall" is always mandatory and not merely directory.
6. The word "may" is permissive, but not compulsory.
7. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied".
8. The word "Map", "Zoning Map", or "Odessa Zoning Map" shall mean the "Official Zoning Map of the Town of Odessa, Delaware".

#### SECTION 31. DEFINITIONS

**ACCESSORY STRUCTURE.** A building, the use of which is incidental to that of the main building and which is located on the same lot.

**ALLEY.** A minor way which may or may not be legally dedicated, and is used primarily for vehicular service access to the rear or side of properties abutting on a street.

**APARTMENT.** A division of a house or building constituting a dwelling separate from the rest; a suite of rooms.

**APARTMENT BUILDING.** A building containing a number of separate dwellings.

**ARTISAN SHOP.** An establishment for the preparation, display and sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven articles and related handmade items.

**ASSISTED LIVING FACILITY / SENIOR CARE FACILITY-** A residential facility other than a nursing home, or elderly housing for persons who are fifty-five (55) years of age or over, which are provided living and sleeping facilities. Meal preparation, laundry services, room cleaning, transportation, recreation and/or some medical services may also be provided exclusively for the use of residents of the facility.

**AUTOMOTIVE GARAGE.** Any premises used for the repair of vehicles, but not including automotive wrecking or storage.

**BED & BREAKFAST.** A dwelling in which one or more persons are lodged on a temporary rent-paying basis with or without meals. This dwelling shall not constitute the legal residence of such person(s).

**BUILDING.** A structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, or chattels.

**BUILDING, PRINCIPAL.** A building in which is conducted the principal use of the lot on which it is located.

**BUILDING HEIGHT.** The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, and gambrel roofs.

**BUILDING SETBACK LINE.** A line establishing the minimum allowable distance between the main wall of the building and the street or highway right-of-way line when measured perpendicularly from the street or highway right-of-way. Covered porches, enclosed or not, shall be considered part of the main building and shall not project into the required yard.

**CONDOMINIUM.** Individual ownership of a unit in a multi-unit structure.

**CONVENTIONAL BUILT HOME.** A home built from start to finish on the building site.

**DAYCARE HOME.** A home which provides care, protection, supervision and guidance in private homes for one to six children, excluding children of the operator, where service is provided for part of the 24-hour day, unattended by parent or guardian, and for compensation.

**DAYCARE CENTER.** A facility for the provision of care, protection, supervision and guidance for six or more children, excluding children of the operator. Service at the facility is provided on a regular basis for periods of less than 24 hours per day, unattended by parent or guardian and for compensation.

**DWELLING, DUPLEX.** A semi-detached residential building designed to be occupied by two (2) families living independently of each other.

**DWELLING, SINGLE-FAMILY.** A detached residential dwelling designed for and occupied by one (1) family only.

**DWELLING UNIT.** A building, or portion thereof, providing complete and permanent living facilities, but not including single and/or double-wide mobile homes, or manufactured homes.

**ELDERLY HOUSING–** Multi-family structures containing at least 5 (5) units and solely devoted to housing families consisting of two (2) or more persons, of which the head (or his spouse) is sixty-two (62) years of age or over, or is handicapped; or single persons who are sixty-two (62) years of age or over, or are handicapped.

**FAMILY.** One or more individuals living together as a single housekeeping unit and using certain housekeeping facilities in common.

**FENCE, SECURITY.** Must conform to County requirements.

**FLOOR AREA.** The sum of the gross horizontal areas of the several floors of a dwelling unit, exclusive of porches and balconies, garages, basements and cellars, measured from the exterior faces of the exterior walls or from the center lines of walls or partitions separating the dwelling units.

**FLOOR AREA RATIO.** A figure which when multiplied by the lot area will determine the amount of permitted floor area. The figure is determined by dividing the gross foundation area of all buildings on a lot by the area of that lot.

**FLORIST SHOP.** An establishment where plants and flowers are prepared for sale and sold at retail on the premises.

**GARAGE, PRIVATE.** A building accessory (a building, the use of which is incidental to that of

the main building and which is located on the same lot) to a principal dwelling normally used for automobile storage and in which no business, service, or industry is conducted.

**GASOLINE SERVICE STATION.** An area of land together with any structure thereon used for the retail sale of motor fuel, lubricants and incidental services, such as lubrication and the sale and installation or minor repair of tires, batteries or other automobile accessories.

**GENERAL BUSINESS OFFICE.** A non-retail service-oriented office or agency such as insurance brokers, travel agents, computer programming, consulting organizations or similar uses.

**HOME OCCUPATION.** A service or product provided to the public within a dwelling and/or accessory building by the inhabitants thereof, which is incidental and subordinate to the residential use.

**HOTEL.** A single building with central lobby, offering lodging accommodations to the general public (without individual cooking facilities for transient guests) and providing additional services such as restaurants, meeting/conference rooms, and recreational facilities.

**KINDERGARTEN, PRESCHOOL.** A center which provides daytime care and instruction to two or more children and operates on a regular or seasonal basis.

**LOT.** A tract or parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

**LOT, CORNER.** A corner lot is one bounded on at least two sides by streets, whenever the lines of such streets extend forming an interior angle of 135 degrees or less. The owner or developer of a corner lot shall specify which street line is to be the front lot line at the time of filing application for a building and zoning permit.

**LOT, COVERAGE.** The land area of a lot covered by principal and accessory buildings, expressed as a percent of the total land area of the lot.

**LOT, DEPTH.** The average horizontal distance between front and rear lot lines, measured generally perpendicular to the front lot line.

**LOT, DOUBLE FRONT.** A lot bounded on at least two sides by streets. The owner or developer shall specify which street line is to be the front lot line at the time of filing applications for a building and zoning permit.

**LOT OF RECORD.** A lot which is a part of a subdivision, a plot of which has been recorded in the Office of Recorder of Deeds of New Castle County, or a lot described by metes and

bounds the description of which has been so recorded.

**LOT, WIDTH.** The horizontal distance between the side of lot lines measured across the rear of the required front yard. Where no front yard is required, a lot width shall be measured along the street right-of-way.

**MANUFACTURED HOME.** A structure transportable in one or more sections built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities.

**MOBILE HOME.** A structure built on a frame and wheels capable of being moved from one site to another and having at any time been titled by the Division of Motor Vehicles of any state.

**NON-CONFORMING USE.** A structure or land lawfully occupied by an existing use which does not conform with the permitted uses for the zoning district in which it is situated, either at the effective date of this ordinance, or as a result of subsequent amendments to this ordinance.

**NURSING HOME-** A facility for which four (4) or more persons may be admitted for periods exceeding twenty-four (24) hours to receive treatment and/or medication for bodily illness, including convalescence from illness.

**OPEN STORAGE.** An unroofed area for the storage of bulk materials whether fenced or not.

**OPEN AREA.** The portion of a lot not set aside or used for buildings, parking, loading and streets. Land used for recreational purposes shall be considered open area for the purpose of this definition.

**ON-SITE SANITARY SEWAGE DISPOSAL.** A covered watertight settling tank in which raw sewage is biochemically changed into solid, liquid and gaseous states to facilitate further treatment and final disposal on the site.

**PAVED AREA.** A portion of land paved with a weatherproof surface for parking space, driveways or streets. In the computation of such, that area covered by buildings shall be excluded.

**PRE-BUILT HOME.** A home built in a factory, delivered and assembled on a permanent building site. (Nanticoke)

**PROFESSIONAL OFFICE.** The office of a member of a recognized profession maintained for the conduct of that profession.

ROOMING HOUSE. A dwelling in which more than two persons are lodged on a continuing rent-paying basis with or without meals. A boarding house shall also be termed a rooming house.

**START HERE** **SETBACK.** An area extending the full width of the lot between the street right-of-way and the building setback line within which no buildings or parts of buildings may be erected.

**SETBACK LINE.** An established line within a property defining the minimum required distance between the face of any structure to be erected and an adjacent right-of-way, or street line. The face as measured to the major portion of the structure includes sun parlors, foyers, bay windows, porches, projecting eaves, gutters, steps, and any other solid projections and solid entrances.

**SIGNS.** Any form of publicity, visible from any public highway directing attention to an individual activity, business, service, commodity or product and conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trademarks or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints, or other devices erected on an open framework or attached or otherwise applied to posts, stakes, poles, trees, buildings or other structures or supports. To include, but not limited to, advertising, business and home identification signs.

**SIGN, BULLETIN BOARD.** A sign used to announce meetings or programs of schools, churches, auditoriums, libraries, museums, community recreation centers or similar non-commercial places of public assembly.

**SIGN, ILLUMINATION.** Lighted shall mean illuminated only by light cast upon the sign from a concealed exterior light source. Luminous shall mean illuminated by any other type of light source.

**SIGN, AREA.** The area that is measured by the smallest square, rectangle, triangle, circle or combination, thereof, which will encompass the entire advertising copy area excluding architectural embellishments. In computing the area, only one side of a double-face sign shall be considered.

**SPECIAL EXCEPTION.** A use that would not generally be appropriate throughout a zoning district, but which may be permitted in specific circumstances without harm to the intent of the zoning ordinance. Such uses may be permitted in zoning districts where provisions thereof are made by this ordinance.

**STORY.** The portion of a building included between the surface of any floor and the surface of the floor next above it; or if there is no floor above it, the space between any floor and the ceiling next above it.

**STREET.** A right-of-way (or portion thereof) intended for general public use to provide means of approach for vehicles and pedestrians. The word "street" includes road, thoroughfare,

avenue, highway, land, place, alley, or however otherwise designated within the above-mentioned right-of-way.

**STREET, LINE.** The right-of-way line of a street.

**STREET, PRIVATE.** Any street right-of-way not dedicated to public use.

**STREET, PUBLIC.** Any street right-of-way dedicated to public use and/or maintained by Del Dot, the State Highway Department, or the Town of Odessa.

**STREET, RIGHT-OF-WAY.** An area set aside or used as a means of ingress, egress, or approach. No parts of private group parking areas, nor the driveways that service said parking areas are to be classified as street rights-of-way.

**STRUCTURE.** Anything constructed or erected, the use of which requires more or less permanent location on the ground, or which is attached to something having more or less permanent location on the ground.

**TOWN HOUSE.** Individual ownership of a unit in a multi-unit structure.

**USED CAR LOT.** An area used for the storage and display of used vehicles advertised for sale.

**VARIANCE.** A departure from terms of the zoning ordinance where such departure will not be contrary to public interest and where, owing to physical conditions peculiar to the property and not the result of the applicant's own actions, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

**YARD.** An open space on the same lot with a principal building, unoccupied and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

**ZONING ADMINISTRATOR.** A person or persons appointed and authorized by the Town Council for the purpose of determining compliance with the Zoning Ordinance.

ARTICLE IV  
ESTABLISHMENT OF DISTRICTS

SECTION 40. CLASSES OF DISTRICTS

For the purpose of this Ordinance, the Town of Odessa is hereby divided into the districts designed as follows:

- R-1 District: Single Family Residential
- C-1 District: General Commercial
- H District: Historic
- NE District: Non-Profit Estate District
- C-2 District: Restricted Downtown Commercial District
- PND District: Planned Neighborhood Development District
- PCD District: Planned Commercial Development District

SECTION 41. OFFICIAL ZONING MAP

The boundaries of the above districts are hereby established as shown on a map entitled "Official Zoning Map of the Town of Odessa, Delaware", adopted September 4, 1997, by the Mayor and Council and certified by the Town Secretary. Said map and an explanatory matter thereon accompanies and is hereby made part of this ordinance. Said map shall be retained in the Town Hall and made available to the public.

SECTION 42. RULES GOVERNING BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the aforesaid boundaries as shown on the official zoning map, the following rules shall apply:

- 42.1 Where district boundaries are indicated as approximately following the center lines of streets or highways, or street lines, such center lines of street lines shall be construed to be such boundaries.
- 42.2 Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
- 42.3 Where district boundaries are so indicated that they are approximately parallel to the center lines of street, highways, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such a distance therefrom as indicated on the zoning map. If no distance is given, such dimension

shall be determined by use of the scale shown on said zoning map.

- 42.4 Where a district boundary line divides a lot in single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than thirty-five (35) feet beyond the district boundary line.

#### SECTION 43. CHANGES IN THE ZONING MAP

If, in accordance with the provision of ARTICLE XIV (Board of Adjustment) of this ordinance and Chapter 3, Title 22, of the Delaware Code Annotated, changes are made in the zoning district boundaries, such changes shall be made on the Official Zoning Map promptly after the change has been approved by the Mayor and Council. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning Map.

#### SECTION 44. REPLACEMENT OF OFFICIAL ZONING MAP

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Mayor and Council may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map.

ARTICLE V  
APPLICATION OF REGULATIONS

SECTION 50. USE

Except as hereinafter provided, no buildings or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this ordinance, or amendments thereto, for the district in which it is located.

SECTION 51. HEIGHT AND DENSITY

Except as hereinafter provided, no building shall hereafter be erected or altered so as to exceed the height limit, nor shall any building or land be used or occupied hereafter in excess of the maximum density requirements of this ordinance for the district in which it is located.

SECTION 52. LOT OCCUPANCY

Except as hereinafter provided, no building shall hereafter be erected or altered so as to occupy a greater percentage of the lot area, nor shall any side, rear or front yard be narrower or smaller than is required for the district in which it is located.

SECTION 53. YARD USE LIMITATIONS

Except as hereinafter provided, no part of a yard or other open space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.

ARTICLE VI  
GENERAL PROVISIONS

SECTION 60. ONE PRINCIPAL BUILDING PER LOT

Within residential districts no more than one (1) principal building with it customary accessory buildings shall occupy or be constructed upon any lot of record.

SECTION 61. REDUCTION IN LOT AREA

Except as provided in ARTICLE IX (Exceptions and Modifications), no lot may be reduced in area below the minimum lot area as specified herein for the district within which it is located.

SECTION 62. DISTANCE BETWEEN BUILDINGS

Except as herein provided, no accessory building shall be located closer than ten (10) feet to a principal building or to any other accessory building. Accessory buildings shall be located in rear yards (5) feet or more from a rear or side lot line.

SECTION 63. STREET ACCESS

No building shall hereafter be constructed on a lot which does not have frontage on a publicly dedicated, accepted and maintained street, or a private street which conforms to accepted street standards of the Town.

SECTION 64. INTERFERENCE WITH TRAFFIC SIGNALS

In any district, no outdoor advertising sign or structure or tree shall protrude from any property over any street or create confusion around, or otherwise interfere with traffic signals.

SECTION 65. VISION CLEARANCE AT CORNERS

No fence, building, sign, or other obstruction above a height of three (3) feet shall be constructed on the right-of-way lines of two (2) streets.

SECTION 66. FRONTAGE ON CORNER LOTS AND DOUBLE FRONTAGE LOTS

On corner lots fronting on more than one street, the minimum front yard shall be provided for each street in accordance with the provisions of this ordinance.

SECTION 67. UTILITIES LOCATION

Utilities such as sewage and water treatment plants and pumping stations, and standpipes for public water supply may be located in any district subject to the approval of the Board of Adjustment as a Special Exception. In such cases, the following requirements shall be complied with:

- 67.1 Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which they are a part.
- 67.2 Any building or structure except an enclosing fence, shall be set back at least fifty (50) feet from any property line.
- 67.3 Open space on the premises shall be suitably landscaped and maintained.
- 67.4 The storage of vehicles and equipment on the premises shall be prohibited.
- 67.5 The surrounding area shall not be adversely affected by noise, odor, glare, dust, fumes, gas, smoke or vibration.

ARTICLE VII  
NON-CONFORMING USES

SECTION 70. NON-CONFORMING USES PERMITTED

Any building, structure or use of land existing at the time of the enactment of this ordinance or any amendments thereto, which changes the zoning of that property used for a purpose not permitted in the zoning district in which they are located shall be considered a non-conforming use.

SECTION 71. NON-CONFORMING USES AND BUILDINGS PERMITTED

Except as herein specified, any building or part of a building or any land which at the time of the enactment of this ordinance or an amendment thereto is being put to a non-conforming use may continue to be used for the same specific non-conforming use. Any change of title or of right to possession shall not affect such continuation of an existing use.

SECTION 72. DISCONTINUANCE

If a non-conforming use of land or building ceases operations for the period of one (1) continuous year, such use shall not be re-established and any future use shall be in conformity with the provisions of this ordinance.

SECTION 73. CHANGE IN USE

A non-conforming use or non-conforming building or structure shall not be expanded into any portion of a conforming building or structure. If such a non-conforming use or portion thereof is discontinued or changed to a conforming use, any future use of such building, structure, or portion shall be in conformity with the regulations of this ordinance.

SECTION 74. ALTERATION OR ENLARGEMENT OF NON-CONFORMING BUILDINGS, STRUCTURES OR LAND

Non-conforming buildings, structures or land shall not be added to or enlarged upon in any manner, unless said building, structure or land including additions and enlargements are made to conform to all the regulations of the district in which they are located. No structural alterations may be made other than those ordered by an authorized Building Inspector to assure the safety of a non-conforming building or structure.

SECTION 75. DAMAGE OR DESTRUCTION

75.1 Non-conforming buildings or structures may not be rebuilt, altered or repaired after damage exceeding seventy-five (75) percent of its fair market value exclusive of the foundations.

A non-conforming building, which is damaged or destroyed by fire, explosion, or act of God, beyond the control of the owner or occupier less than seventy-five (75) percent of its fair market value exclusive of the foundations, may be rebuilt and used for the same specific non-conforming use provided that:

- (a) The reconstruction of the building is begun within four (4) months of the date the building was destroyed and is carried through to completion without undue delay. The Board of Adjustment may grant an extension not exceeding an additional period of three (3) months within which the reconstruction may be commenced in any case where the delay has been the result of causes outside of the control of the owner of the building so destroyed.
- (b) The reconstructed building does not exceed in height and area of the building destroyed.

75.2 If there is a question concerning the fair market value or the fair market value excluding the foundations of a damaged or destroyed non-conforming use property, such values shall be determined by an independent appraisal done at the property owner's expense.

ARTICLE VIII  
USE REQUIREMENTS BY DISTRICTS

SECTION 80. R-1 SINGLE-FAMILY RESIDENTIAL

The regulations of this district are intended to insure that residential development will occur as a low density neighborhood consisting of single-family residences along with limited home occupations and private and public community uses to provide a healthful environment.

80.1 - PERMITTED USES

The following uses shall be permitted by right:

- 1 - Single-family detached dwellings.
- 2 - Churches and other places of worship and Sunday School buildings.
- 3 - Libraries and museum(s).
- 4 - Public and private elementary schools, home day-care, kindergartens, preschools and day nursery schools.
- 5 - Public and private parks, playgrounds and similar recreational uses operated only on a non-commercial basis, provided that no building for such a purpose shall be constructed closer to any property line than one hundred (100) feet.
- 6 - Private garages.
- 7 - Municipal and public service facilities including Town Hall; Public safety facilities such as fire and police stations, rescue squad headquarters, civil defense centers, provided that:
  - (a) All vehicles and equipment shall be stored indoors.
  - (b) All buildings shall be set back at least one-hundred (100) feet from all property lines and shall be properly landscaped.
- 8 - Public works and public utility facilities such as transformer stations, pumping stations, telephone exchanges, sewage and water treatment plants, provided that:
  - (a) Such facilities are essential to the service of the community.
  - (b) No vehicles or materials shall be stored on the premises and no offices shall be permitted.

- (c) All buildings shall be set back at least one hundred (100) feet from all property lines and shall be properly landscaped.
  - (d) All dangerous apparatus shall be enclosed by an approved security fence at least six (6) feet in height.
- 9 - Home Occupation - provided that:
- (a) A resident or a resident member of the family shall be employed.
  - (b) Such occupations shall include, but not be limited to, dressing and tailoring, ceramics, furniture refinishing, repair and upholstering, custom-made cabinets and furniture, cosmetics, leather crafts and clock repair.
  - (c) No materials, products or equipment shall be stored outside a building or structure.
  - (d) The Zoning Administrator shall enforce all regulations applying to home occupations.
  - (e) Any violations of this ordinance will result in revocation of license to operate.
- 10 - Bed & Breakfast Establishments (hereafter known as "B&B's") - provided that:
- (a) B&B's shall be owner occupied and operated.
  - (b) No sleeping accommodations shall be provided other than in designated guest rooms. No more than five guest rooms shall be provided and no more than two adults shall occupy one guest room.
  - (c) No guest or family shall stay longer than seven consecutive nights at any one time.
  - (d) There shall be no separate kitchen, cooking facilities or any cooking appliances used in guest rooms. Meals shall be served to guests only.
  - (e) Other amenities shall be for the benefit of guests only.
  - (f) All rules applying to R-1 signage shall apply to B&B's.
  - (g) Smoke detectors powered from house current shall be required in all guest rooms.
  - (h) A minimum of three full bathrooms, including sink, toilet and bathtub and/or shower shall be provided in each B&B.

- (i) The Zoning Administrator shall enforce all regulations applying to the establishment and operation of B&B's.
- (j) Any violations of this ordinance will result in revocation of license to operate.

#### 80.2 - RESTRICTIONS TO PERMITTED USES

- (a) No permitted use shall alter the residential character of the structure and/or structures.
- (b) Accessory structures shall be located in the rear yard five (5) feet or more from the side and/or rear property line.
- (c) No uses shall generate excessive noise, smoke, dust, smell, or other conditions detrimental to the character of the surrounding area.

#### 80.3 - PERMITTED SIGNS

The following signs (see Section 31 - Definitions) are permitted:

- 1 - Signs to regulate traffic.
- 2 - Signs required to be posted by law.
- 3 - Warning signs.
- 4 - Signs established by governmental agencies.
- 5 - Signs indicating bus stops, taxi stands and similar transportation facilities.
- 6 - One professional sign for each such use. Such signs shall not exceed two (2) square feet in area, be motionless and may be illuminated by light cast upon the sign from a concealed exterior light source only.
- 7 - One real estate sign, no larger than nine (9) square feet in area, advertising the sale, lease or rental of such property.
- 8 - One temporary sign per subdivision indicating the sale of property within such subdivision. No such sign shall be larger than twelve (12) square feet in area.
- 9 - One sign or bulletin board not exceeding twelve (12) square feet in area upon the premises of a church or other institution for the purpose of displaying the name of such church or institution, and other related information.



- |     |            |  |
|-----|------------|--|
| 2 - | Side yards | 20 feet aggregate total with 8 feet minimum each side        |
| 3 - | Rear yard  | 25 feet minimum  |
| 4 - | Height     | 40 feet (principal building)<br>25 feet (accessory building) |

#### 80.6 - FENCES

Fences shall be constructed in keeping with the period and architecture of the primary residence.

#### 80.7 - OPEN STORAGE

Except as provided above in this section, all open storage is prohibited.

#### SECTION 81. C-1 GENERAL COMMERCIAL DISTRICT

The C-1 District consists of the area described as follows and further shown on the official zoning map for the Town of Odessa.

The commercial district shall include and be comprised of all properties that front on the west side of southbound U.S. Route 13 and shall be limited to the depth of the property by record of deed as recorded in the Recorder of Deeds Office.

The commercial district shall also include all properties west of southbound U.S. Route 13, south of Mechanic Street, east of Park Alley and north of Route 299.

The commercial district shall also include all properties west of Southbound U.S. Route 13 on the south side of and fronting on Route 299, beginning on the southwest corner of Routes 13 and 299 and continuing west to, but not including, the Zoar Methodist Church; including tax parcel 24003.00-044 and 24003.00-045.

The commercial district shall further include the area located between northbound and southbound U.S. Route 13, bounded on the northeast by an unnamed street and abutting on the southwest two R-1 properties having tax parcel numbers 24003.00-054 and 24003.00-052. This C-1 area is comprised of two properties; tax parcel 24003.00-155 and tax parcel 24003.00-051.

81.1 Permitted Uses - The following uses shall be permitted by right:

- 1 - Commercial personal services: barber shops, beauty shops, shoe repair shops, photographic studios.
- 2 - Small scale convenience retail sales: bookstore, newsstand, bicycle shop, clothing store, drug store.
- 3 - Professional services: offices of physicians, dentists, lawyers, architects, accountants, real estate offices, financial planners, travel agents, consultants, insurance agents.
- 4 - Restaurants, cafes, luncheonettes, ice cream shops, bakeries, coffee shops, tea rooms, small grocery stores, delicatessens, financial services; hardware, jewelry, stationery, office supply, furniture, household goods and appliance shops (no franchised businesses, no drive-thru windows).
- 5 - Banks (without drive-thru services).
- 6 - Cabinet, woodworking.
- 7 - Gift, antique, artisan shops.
- 8 - Floral and gift shops, but excluding commercial greenhouses.
- 9 - Tailor, dressmaking, millinery shops, stitchery/needlework, pottery shops.
- 10 - Locksmiths tinsmith, silversmith.
- 11 - Day care center.
- 12 - Customary accessory uses and structures when located on the same lot as the principal structures.

All open storage prohibited.

Activities shall not generate excessive noise, smoke, dust, smell, or other conditions detrimental to the character of the area and to the health of its operators, customers or others living near said business.

81.2 Uses Permitted as Special Exceptions - The following use is permitted subject to the approval of the Board of Adjustment:

- 1 - Alcoholic beverages.
- 2 - Public service facilities; including Town Hall, Police, Fire and Paramedic Stations  
*(See ordinance 2015-01, passed 5/4/15)*

All open storage prohibited except by approval of the Board of Adjustment in which case there shall be a buffer of evergreens or solid fence not less than six (6) feet in height. (Penalty for failure to maintain buffer may be up to allowable limit by State Law.)

Activities shall not generate excessive noise, smoke, dust, smell, or other conditions detrimental to the character of the area and to the health of its operators, customers or others living near said business.

81.3 Permitted Signs - The following signs are permitted in any C-1 District:

- 1 - All signs permitted in the R-1 Residential District.
- 2 - Business signs, provided that:
  - (a) The number of signs shall not exceed one (1) sign per business per frontage.
  - (b) Signs shall not project into the street and/or highway right-of-way or over the sidewalk.
  - (c) Signs shall not exceed three (3) square feet for each foot of building frontage on the lot; or thirty-two (32) aggregate square feet, whichever area is smaller.
  - (d) Signs may be illuminated by any conventional method except that no animated, revolving, flashing, or moving lights shall be permitted.

81.4 Area and Bulk Regulations

The following regulations shall be observed:

- |    |               |   |                       |
|----|---------------|---|-----------------------|
| 1. | Lot Size      | - | minimum 0.5 acres     |
| 2. | Lot Width     | - | 50 feet minimum       |
| 3. | Lot Coverage  | - | 50 percent maximum    |
| 4. | Building size | - | cannot exceed 2000 sf |

81.5 Setback and Height Regulations

- |    |                        |   |  |
|----|------------------------|---|--|
| 1. | Building Setback Line* | - | 20 foot minimum  |
| 2. | Side Yards*            | - | See notes a and b  |
| 3. | Rear Yard*             | - | 20 foot minimum  |
| 4. | Height                 | - | 40 foot maximum (principal building)<br>25 foot maximum (accessory building) |
- (a) Side and rear yards may be used for parking or loading.
- (b) Upon any side or rear lot line which abuts a residential district, there shall be provided a side yard of not less than twenty (20) feet. There shall also be provided a six (6) foot high, densely planted buffer strip. No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining lot.
- (c) See Article X regarding off-street parking requirements.

## SECTION 82. (H) HISTORIC DISTRICT

The purpose of the Historic District (H) regulation is to enhance and safeguard the heritage of the town by protecting and preserving buildings and sites which reflect the Town of Odessa's cultural, social and unique architectural characteristics by maintaining said portion of Odessa as an area of special charm and interest.

### 82.1 Permitted Uses

In the Historic District, use and bulk shall be governed by those provisions and regulations of this ordinance relating to that particular district designation of each property.

Approval by the Historic Commission shall be required for the demolition, erection, reconstruction, alteration, restoration, or where general repairs are made within the Historic District as provided in Article XV of this ordinance.

## SECTION 83. (NE) NON-PROFIT ESTATE DISTRICT:

The Non-Profit Estate District (NE) shall include and be comprised of properties owned by a non-profit corporation, trust, or foundation whose primary purpose is the preservation and maintenance of historic structures and decorative arts and the education of the public about the history of this area and/or early American life. The NE District shall include the following properties by parcel number as recorded in the Recorder of Deeds Office and further shown on the official zoning map for the Town of Odessa.

- Corbit-Sharp House, 24005.00046
- Collins-Sharp House, 24005.00037
- Brick Hotel, 24005.00037
- Old Bank, 24005.00035
- Wilson-Warner House, 24005.00030
- The Pump House, 24005.00047

### Section 83.1 Permitted Uses

The following uses shall be permitted subject to approval of Mayor and Council of Odessa by resolution.

1. bakery, coffee shop, tea room
2. colonial style restaurant
3. antique or antique reproduction shop
4. gift shop in keeping with museum theme and character

5. candle / needlework / lamp shop
6. artisan shop (i.e. soap, weaving, basket weaving, glass, stitchery and other similar crafts)
7. silversmith or goldsmith
8. blacksmith's barn and/or restoration hardware shop
9. lecture hall or training center in colonial craftsmanship such as cooking, weaving, gardening, masonry restoration, or museum administration
10. banquet or meeting facility for weddings, conferences, etc.
11. small garden shop and/or florist
12. colonial reproduction fabric shop with or without a furniture upholstery and/or restoration service
13. bookstore
14. entertainment- fairs and festivals
15. professional/business offices

#### Section 83.2 Restrictions to Permitted Uses

- a. Historic Review Certificate
- b. All uses shall be appropriate in size and scale and in keeping with the historic character of the area and sensitive in content to the historic importance of the district.
- c. All uses providing food shall be non-franchised, sit-down only.
- d. Activities shall not generate excessive noise, smoke, dust, smell, or other conditions detrimental to the character of the area or to the health of its operators, customers, and others living near said Non-Profit Estate District.
- e. A Non-Profit Estate District landowner may provide off-street parking for its visitors upon approval of a plan filed with the Historic Commission and the Mayor and Town Council.
- f. The Non-Profit Estate District status of any lot shall revert to R-1 Residential Zoning upon the sale of any parcel of land so designated to any person or entity other than a non-profit organization dedicated to historic preservation.
- g. All trash receptacles shall be enclosed and shielded from neighboring properties.

#### Section 83.3 Permitted Signs

All signs permitted in the R-1 Residential District.

#### Section 83.4 Open Storage

All open storage is prohibited.

#### Section 83.5 Uses Permitted as Special Exceptions

The following uses are permitted in the Non-Profit Estate District subject to the approval of the Board of Adjustment:

- a. alcoholic beverages

#### SECTION 84. C-2 RESTRICTED DOWNTOWN COMMERCIAL DISTRICT

The intent of the C-2 Restricted Downtown Commercial District is to provide for small-scale, limited commercial uses that complement the existing museums and Historic District and utilize existing historic structures. The C-2 District uses are intended to provide retail and food services to the community and visitors. The C-2 District consists of the area described as follows and further shown on the official zoning map for the Town of Odessa.

*The Downtown Commercial District includes those properties on the north side of Route 299 beginning on the east side corner of Southbound Route 13 and Route 299 fronting on Route 299 continuing east to the intersection of Northbound Route 13 and Route 299 including the property on the east side corner of Route 299 and Northbound Route 13.*

#### Section 84.1 Permitted Uses

The following uses shall be permitted subject to the approval of Mayor and Council of Odessa by resolution.

1. coffee shop, bakery
2. book store
3. antique Shop
4. florist
5. art gallery
6. ice cream shop
7. candy shop
8. gift shop in keeping with museum theme and character
9. café- light fare, non-franchised
10. reproduction furniture
11. quilting shop
12. artisan shop (i.e. soap, weaving, basket weaving, glass, stitchery and other similar crafts)
13. blacksmith's barn and/or restoration hardware shop

14. small garden shop and/or florist
15. colonial reproduction fabric shop with or without a furniture upholstery and/or restoration service
16. bookstore
17. professional/business offices- limited to second floor

#### Section 84.2 Restrictions to Permitted Uses

- a. Historic Review Certificate
- b. Uses shall be sensitive in content and scale to the historic character of the Historic District.
- c. All uses providing food shall be non-franchised, sit-down only.
- d. Activities shall not generate excessive noise, smoke, dust, smell, or other conditions detrimental to the character of the area or to the health of its operators, customers, and other living near said business.
- e. All trash receptacles shall be enclosed and shielded from neighboring properties.

#### Section 84.3 Permitted Signs

All signs permitted in the R-1 Residential District.

#### Section 84.4 Open Storage

All open storage is prohibited.

#### Section 84.5 Uses Permitted as Special Exceptions

The following uses are permitted in the Restricted Downtown Commercial District subject to the approval of the Board of Adjustment:

- a. alcoholic beverages

### SECTION 85, (PND) PLANNED NEIGHBORHOOD DEVELOPMENT DISTRICT

- A. The Planned Neighborhood Development (PND) District is intended to implement the Town of Odessa Comprehensive Plan by providing for high-quality, larger-scale mixed use development where conventional zoning may be inappropriate. The PND District shall provide a blend of residential and commercial uses. Project planning is performed for the entire development rather than on an individual parcel basis.
- B. The PND District permits variation in residential and commercial development by allowing deviation in standards such as lot size, bulk requirements, permitted uses, and dwelling types in order to encourage high-quality design that incorporates the best architectural and

community design features of Delaware and the Delmarva Peninsula from its colonial past to the mid 20<sup>th</sup> Century.

### **85.1 Effect on other provisions**

- A. The development standards for the PND District shall be determined by the requirements and procedures set forth in this Section and shall prevail over conflicting requirements, including conflicting requirements of the Town of Odessa Subdivisions Ordinance.

### **85.2 Eligibility For PND Designation**

No application for annexation and/or rezoning a land area to a PND designation shall be considered unless the following conditions are met:

- A. The PND designation is consistent with the land area's future land use designation within the Town of Odessa Comprehensive Plan; and
- B. The minimum land area for a PND District shall be twenty-five (25) acres. Areas smaller than twenty-five (25) acres may only be allowed PND designation provided the land will be incorporated into an existing PND; and
- C. The annexation and/or rezoning application for the land area may contain one or more parcels. The annexation and/or rezoning application for the land area shall be filed jointly by all owners of the involved land area.

### **85.3 Application, Review, and Approval Procedures**

The following process shall be followed in filing and reviewing applications for annexation and/or rezoning, and development as a PND.

#### A. Preapplication Conference

The applicant shall confer with the Planning Commission regarding the proposed development. After such review and comment by the Planning Commission, the application for annexation and/or rezoning and preliminary plan review shall be submitted pursuant to this Section.

#### B. Intergovernmental Coordination

##### 1. Compliance with PLUS.

No application for annexation and/or rezoning and preliminary plan review shall receive approval until the Office of State Planning Coordination has provided written comments to the Town of Odessa in accordance with the Preliminary Land Use Service (PLUS) as provided in Title 29, Chapter 92 of the *Delaware Code*, as amended. The applicant for annexation and/or rezoning and preliminary plan review shall be responsible for preparing and submitting all materials required for a PLUS review, in accordance with Title 29, Chapter 92 of the *Delaware Code*, as amended.

2. Referrals to Other Agencies.

The Planning Commission may request review and comment on an application for annexation and/or rezoning and preliminary plan review from pertinent State departments and agencies (such as Natural Resources and Environmental Control, Education, Transportation), New Castle County departments and agencies (particularly infrastructure providers), and any other appropriate party.

3. Before taking action on an application for annexation and/or rezoning and preliminary plan review, Mayor and Council shall allow sufficient time for the Office of State Planning Coordination, departments, and agencies to respond.

C. Fees

The Mayor and Council shall establish by resolution a schedule of fees, charges, and expenses (hereinafter collectively “fees”), and a collection procedure for applications and reviews associated with this Section. The schedule of fees shall be posted in the Town Office, and may be altered or amended by the Mayor and Council. No application will be accepted, reviewed, or approved until such time as the appropriate fees have been paid in full. Ongoing fees not billed upon application, such as legal expenses and the cost for review by technical consultants, shall be invoiced as the fees are incurred.

D. Application for Annexation and/or Rezoning and Preliminary Plan Review

1. The application for annexation and/or rezoning and preliminary plan review to a PND designation shall provide, at a minimum, the following details of the development in narrative and/or illustrative form:

- a) The Preliminary Master Design Standards Manual, as set forth in subsection 85.6-A of this Section, for purpose of showing that the proposed development fulfills the purpose, intent, and design standards of the PND. The manual shall address the following elements of the PND District as provided in the tables below:

Table 1. Design Principles in Mixed Residential Areas

Residential neighborhoods and their individual blocks, to the extent possible, shall contain a mixture of a variety of house and lot types and sizes to strengthen community interactions.
Different architectural styles shall be mixed to the extent practical and appropriate within any given block.
Porches are encouraged as an architectural feature, and, if provided, shall be sized to be functional social spaces with sufficient room to comfortably accommodate appropriate furniture and area for movement.

Table 2. Design Principles in Community Commercial Areas

Commercial use buildings may be connected but must retain fire separation as required by code.
Mixed-use buildings with residential units located above commercial uses are encouraged.
Community Commercial areas shall be designed around and shall have frontage on an internal main street that connects to the street system outside the district. Buildings within the area shall be organized in relation to this internal main street, to create a walkable connection among the different uses and buildings.
Off-street parking in Community Commercial areas shall be provided in a manner so that it is screened from the main right-of-way by buildings, landscaping or other means.
Off-street parking shall be screened from adjacent non-commercial uses and shall be located to the side or rear of buildings.
Off-street parking shall be shared by adjacent uses.
Service drives shall be designed and used for loading and trash collection.
Public areas for seating, gathering, and public amenities such as fountains, amphitheaters, display areas, public art, kiosks, and recreational activity shall be integrated into the district.

Table 3. Block and Street Design Principles

Private streets are prohibited.
Blocks, the aggregate of lots, tracts, alleys and lanes circumscribed by thoroughfares, may be square, elongated or irregular. Streets are to be planned using a grid pattern or loose network forming blocks.
Mid-block pathways should be used when appropriate to allow pedestrians to walk through the long side of each block.
Street trees shall be provided on both sides of every street.
On-street parking shall be provided on all streets.
The street layout should be based on a hierarchical system, using avenues or boulevards to link major destinations.
The plan, through its design, should seek to minimize vehicular speed and short-cutting while making walking and cycling safer, easier and more pleasant.
Alleys should be used wherever possible in order to place garages and utilities at the rear of lots so that the streetscape is maintained with house fronts and not dominated by garage doors and utility structures. If garage access from the front is used, then garages should be set back from the front wall of the house so as to limit the impact of the garage and cars parked in front of it on the streetscape. Townhouses with garages in the front are strongly discouraged.
Commercial and other buildings shall face the street with minimal setbacks, and parking should be located to the side or rear of all commercial buildings.

Table 4. Sidewalk Design Principles

Sidewalks are required on both sides of the street.
Sidewalks located within Mixed Residential Areas shall be a minimum of 4' wide

and separated from the curb by a minimum of 4' grass strip. Sidewalks located within Community Commercial Areas shall be a minimum of 7' wide and separated from the curb by a minimum of 3' grass strip, or a 10' wide sidewalk with trees planted in grates within that part of the sidewalk which is 3' adjacent to the curb.

- b) A Conceptual Site Plan of the property or properties to be included in the PND, for the purpose of demonstrating that the proposed PND satisfies the requirements of this Section. The Conceptual Site Plan shall address the following elements of the proposed PND District:
- i. The general layout of Mixed Residential areas, Community Commercial areas, and Open Space areas within the PND, including the total acreage devoted to each area;
  - ii. The intended manner in which the property or properties shall be subdivided including the average lot area, dimensions of the average lot, the average street frontage, the dimensions of the average building envelope, the average height of the various types of buildings, and the setbacks of buildings (front, side, and rear);
  - iii. The general uses to be contained on each lot with the total gross square feet by use;
  - iv. The general layout of the streets, alleyways, and entrance(s) and the parts thereof proposed to be dedicated to the Town of Odessa or State of Delaware;
  - v. The general layout of sidewalks and other pedestrian pathways; and
  - vi. The location and layout of parking, including number of spaces.
- c) A statement from the applicant estimating the impacts that the PND will have on traffic in the Town of Odessa and on the Town of Odessa's revenues shall be included with the application for annexation and/or rezoning and preliminary plan review.

2. The application for annexation and/or rezoning and preliminary plan review shall be reviewed by the Planning Commission, Historic Commission, and Tree Commission for consistency with the goals, objectives, and standards of the Town of Odessa Comprehensive Plan and this Section. These commissions shall provide written recommendations to the Mayor and Council within sixty (60) days of receiving such application(s) and preliminary plan.

3. The Mayor and Council shall review the recommendations of said commissions (if provided) prior to taking any final action on the application for annexation and/or rezoning and preliminary plan review. Approval of the application for annexation and/or rezoning and preliminary plan review shall constitute approval of the preliminary plan. Approval of the preliminary plan shall be required in order for the property or properties to be considered for annexation and/or rezoning pursuant to subsection 85.3-E of this Section.

#### E. Procedures for Annexation and/or Rezoning

The property or properties shall be annexed and/or rezoned in accordance with the Town Charter and Code. The annexation shall be subject to an annexation agreement and the rezoning shall be subject to a development agreement which shall incorporate the application for annexation and/or rezoning and preliminary plan review, the Conceptual Site Plan, the Preliminary Master Design Standards Manual, and any other requirements of this Section.

F. Application for Final Plan Review after Annexation and/or Rezoning.

1. The elements of the Final Plan shall include the following:
  - a) A Final Site Plan consisting of the following items:
    - i. All information required for a Subdivision Plan as set forth in the Town of Odessa Subdivisions Ordinance (to the extent applicable);
    - ii. The final program of uses including building footprints for commercial/office uses and buildable envelope for residential portions, building height, and total square feet by use and housing type;
    - iii. The final layout of Mixed Residential Areas, Community Commercial Areas, and Open Space Areas within the PND, including the total acreage devoted to each area;
    - iv. The final layout of the streets, alleyways, and entrance(s) and the parts thereof proposed to be dedicated to the Town of Odessa or State of Delaware;
    - v. The final layout of sidewalks and other pedestrian pathways; and
    - vi. The final location and layout of parking, including number of spaces.
  - b) The Final Master Design Standards Manual, as set forth in subsection 85.6-B of this Section, for purpose of showing the development pattern, materials, dimensions, and architectural styles.
2. The Planning Commission, Historic Commission, and Tree Commission shall review the Final Plan for consistency with the purpose and intent of the approved annexation and/or development agreement, including the Preliminary Master Design Standards Manual and the Conceptual Site Plan. These commissions shall provide written recommendations to the Mayor and Council. The Mayor and Council shall review the recommendations of said commissions prior to taking any final action on the petition. The commissions shall provide written comments within sixty (60) days of notice of final plan review.
3. Each application for final plan review shall be heard by Mayor and Council for final action on the application for final plan review and approval.
4. The Mayor and Council shall act to approve the Final Plan once it has determined that the Final Plan is consistent with the purpose and intent of the approved annexation and/or development agreement, including the Preliminary Master Design Standards Manual and the Conceptual Site Plan.
5. The approved Final Plan shall grant the applicant the same authority as an approved subdivision plot plan.

6. The Final Plan, including the Final Design Standards Manual and Final Site Plan, once approved by the Mayor and Council, shall constitute an agreement by the applicant to follow the standards and guidelines contained therein during the design, construction and maintenance of land developed according to the PND District regulations. It is a formal acknowledgement of the applicant's commitment to heed the purpose and intent of the PND District regulations.

7. Any material departure from the approved Final Plan without approval by the Mayor and Council shall be cause for revocation of any building permits for that work which is inconsistent with the Final Plan. Any material change in an approved Final Plan shall be submitted for approval in accordance with this subsection. At minimum, material change shall include change in the following:

- a) A change in the proposed use of any portion of the land in excess of two percent (2%), including open space, except an increase in open space of up to twenty percent (20%) shall not be considered material;
- b) A change in residential density and use types in excess of two percent (2%), except that reductions in density of up to 10% shall not be considered material;
- c) A change in commercial density in excess of two percent (2%), except that reductions in density of up to 10% shall not be considered material;
- d) A change in street or sidewalk layout and entrance locations (minor alignment changes shall not be considered material);
- e) Overall architectural style and building patterns and the layout of buildings on lots (minor changes necessitated by detailed engineering considerations in site design shall not be considered material).

#### G. Expiration and Extension.

1. Approval of a Final Plan submitted under the provisions of this Section shall expire two years after the date of such approval.

2. Mayor and Council may grant a one-time extension, at its sole discretion, based on a presentation by the applicant at a meeting of Mayor and Council and on the information provided by the applicant concerning reasons why the project was unable to proceed in a timely manner. The period of such extension shall be for a period of one year.

#### H. Recordation upon Final Plan Approval.

Upon Final Plan approval, the following documents shall be recorded with the New Castle County Recorder of Deeds:

1. The final subdivision plan;
2. The final site plan;
3. The Final Master Design Standards Manual.

#### I. Bonds & Guaranties.

1. Performance Bond or Guaranty Required. As a condition of approval of Final Plans, the Mayor and Council may require the applicant to post a performance bond or other form of guaranty, including a letter of credit, for any infrastructure improvements required by this Section. The amount of such performance bond or other form of guaranty shall be sufficient to construct the infrastructure improvements and shall be in a form acceptable to the Mayor and Council. The amount of such bond shall be no less than the cost of such improvements. Infrastructure improvements include streets, roads, surface drainage facilities, erosion and sedimentation control facilities, water supply facilities, sanitary sewer facilities, open space and parks, other common area improvements, and/or infrastructure improvements deemed necessary by Mayor and Council.

J. Schedule of Construction.

When approving a Final Plan, the Planning Commission may recommend and Mayor and Council may adopt a schedule of construction. If such a schedule is adopted, no permits for construction shall be issued except in accordance with the adopted schedule. Where single-family and multi-family dwellings types are part of the development or where nonresidential uses are part of the development, the schedule of construction may require concurrent construction of a given type, number or use in proportions recommended by the Planning Commission and adopted by Town Council. Amendments to the schedule of construction may be requested by the applicant and are subject to the approval of Mayor and Council.

**85.4 Deviation from PND Standards**

A. Purpose and Scope of Deviations from PND Standards.

1. Purpose: In order to afford the applicant sufficient flexibility to design a high-quality New Urbanist community, waivers from the requirements of this Section may be granted pursuant to the procedures and required findings set forth in this subsection.
2. Scope: Except for the following development standards and design principles, waivers may be considered and granted for all PND District development standards and design principles:
  - a) The maximum land area devoted to Commercial Uses, including off-street parking areas (see subsection 85.5-A);
  - b) The maximum land area devoted to Civic or Institutional Uses within a Community Commercial Area (see subsection 85.5-A);
  - c) The maximum ground floor area of permitted tenants within a Community Commercial Area (see subsection 85.5-A, Table 7);
  - d) The list of permitted uses within the PND District (see subsection 85.5-A);
  - e) Environmental Protection Standards (see subsection 85.5-B);
  - f) Infrastructure Standards (see subsection 85.5-D);
  - g) The minimum land area devoted to Open Space Areas (see subsection 85.5-A)

B. Waiver Request Application Process.

1. An application for a waiver from the requirements of this Section shall contain, to the extent applicable, the following components:
  - a) The subsection (or part thereof) for which a waiver is being sought, including, if applicable, the specific development standard(s) and/or design principle(s);
  - b) A description of the area(s) and/or lot(s) within the PND District for which a waiver is sought;
  - c) A description of the alternative development standards and/or design principles that the applicant is proposing to govern the development of this area(s) and/or lot(s);

- d) A description of why the waiver(s) is necessary in order to fulfill the Purpose and Intent of Subsection 85.0 of the PND District.
2. An application for a waiver from this Section shall be subject to the following procedures:
    - a) An application for a waiver may be submitted at any time prior to the recordation of the documents specified in subsection 85.3-H.
    - b) The application for a waiver shall be submitted to both the Planning Commission and Mayor and Council.
    - c) The Planning Commission shall review the application for a waiver and shall provide a recommendation to Mayor and Council for approval or disapproval of the waiver based on the satisfaction of the required findings for granting a waiver request, as specified in subsection 85.4-C. For applications requesting more than one waiver, each waiver request shall be individually considered for review and approval.
    - d) Upon the Planning Commission providing a recommendation on the application for a waiver, the Mayor and Council shall review and approve the application for a waiver if the required findings for granting a waiver request, as specified in subsection 85.4-C, are satisfied. For applications requesting more than one waiver, each waiver request shall be individually considered for review and approval.
    - e) A request for a waiver shall be approved and granted to the applicant when the Mayor and Council have acted to approve the waiver.
    - f) For those areas and/or lots for which waivers are approved, development may proceed, upon recordation of the waiver, according to the alternative development standards and/or design principles stipulated and approved during this waiver approval process.

#### C. Required Findings for Granting a Waiver Request.

1. That the waiver will result in development in harmony with the Purpose and Intent of the PND District in subsection 85.0.
2. That the waiver will result in development that does not create dangers to health and safety, and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from development occurring according to the development standards and/or design principles for which a waiver is sought.
3. That the waiver will result in development in harmony with the general character of the proposed neighborhood considering density, design, bulk, and scale of proposed new structures.
4. That the waiver will result in development that is not detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties.
5. That the waiver will result in development that complies with all other applicable standards, laws, and regulations.

## 85.5 Development Standards and General Design Principles

### A. Permitted Uses and General Design Principles in the PND District

A PND District shall include a Mixed Residential Area or areas, a Community Commercial Area or areas, and Open Space Areas as identified below.

1. **Mixed Residential Areas:** A mix of residential dwelling types is required within a PND. Single-family detached dwellings must comprise a minimum of sixty percent (60%) of the total number of residential units in a PND, but may not account for more than seventy-five percent (75%) of the total number of residential units in a PND. The following uses are permitted within a PND Mixed Residential Area:

- a) Single-family, detached dwellings
- b) Duplex dwellings
- c) Townhouse dwellings

Table 5. Dimensional and Density Standards in Mixed Residential Areas

<b>Standard</b>	<b>Single-family detached</b>	<b>Duplex</b>	<b>Townhouse</b>
<b>Lot Standards</b>			
<b>Minimum Lot Area per Dwelling Unit (square feet)</b>	<b>3,600</b>	<b>1,300</b>	<b>1,300</b>
<b>Minimum Façade Width (feet)</b>	<b>15</b>	<b>15</b>	<b>Interior 15 End 15</b>
<b>Minimum Lot width (per unit) at front building line (feet)</b>	<b>30</b>	<b>20</b>	<b>Interior 15 End 20</b>
<b>Minimum Setbacks—Principal Building (ft)</b>			
<b>Minimum Front Yard</b>	<b>10</b>	<b>4</b>	<b>4</b>
<b>Minimum Side Yard</b>	<b>3</b>	<b>3</b>	<b>Interior 0 End 5</b>
<b>Minimum Rear Yard</b>	<b>30</b>	<b>30</b>	<b>30</b>
<b>Maximum Lot Coverage</b>	<b>75%</b>	<b>90%</b>	<b>95%</b>
<b>Maximum Building Height (feet)</b>	<b>45</b>	<b>45</b>	<b>45</b>
<b>Maximum Density</b>	<b>8 dwelling units per acre of PND area devoted to Mixed Residential Area</b>		

2. **Community Commercial Areas:** Mixed use areas containing commercial uses, as identified below, shall be included within the PND. The inclusion of civic or institutional uses, as identified below, is strongly encouraged within the PND. All proposed residential uses in the

PND should be within approximately one half (0.5) mile from proposed commercial and civic uses. The maximum land area devoted to Commercial Uses, including off-street parking areas, shall not exceed twenty-five percent (25%) of the gross PND tract area. If included in a PND, the maximum land area devoted to Civic or Institutional Uses shall not exceed twenty-five percent (25%) of the gross PND tract area. Subject to the review and approval process stipulated in 85.5-A(3), the following uses shall be permitted within a PND Community Commercial Area:

a) Commercial Uses

1) Offices for professional, medical, religious, charitable and administrative services

- Financial institutions, credit unions and banks
- Barbershops and beauty shops, including nail salons and spas
- Medical clinics, treatment centers, and urgent care centers
- Veterinary care facilities
- Studios for art, music, dance, workshops and any retail sales related thereto
- Retail food stores including, but not limited to, bakeries, candy and convenience stores, grocery and meat markets
- Restaurants, excluding “drive thru”
- Retail sales and service, and specialty stores
- Indoor repair and service, with no outdoor storage
- Antique shop
- Bookstore
- Dry cleaners
- Hotels
- Liquor or wine establishments
- Residential units located above commercial uses
- Fitness centers
- Daycare centers
- Child learning centers

b) Civic or Institutional Uses

1) Municipal offices and community meeting facilities

- Libraries and museums
- Post offices
- Public and private elementary schools
- Kindergartens and early childhood centers

Table 6. Dimensional and Density Standards for Residential Uses in Community Commercial Areas

<b>Standard</b>	<b>Residential Units Above Commercial Use</b>
<b>Lot Standards</b>	
<b>Minimum Lot Area per Dwelling Unit (square</b>	<b>N/A</b>

feet)	
<b>Street Frontage (feet)</b>	<b>N/A</b>
<b>Lot width at front building line (feet)</b>	<b>N/A</b>
<b>Setbacks—Principal Building (feet)</b>	
<b>Front Yard</b>	<b>N/A</b>
<b>Side Yard</b>	
<b>One Side</b>	<b>N/A</b>
<b>Sum of Both</b>	<b>N/A</b>
<b>Rear Yard</b>	<b>N/A</b>
<b>Maximum Lot Coverage</b>	<b>N/A</b>
<b>Maximum Building Height (feet)</b>	<b>N/A</b>
<b>Minimum Living Space Per Unit (square feet)</b>	<b>800</b>

Table 7. Dimensional and Density Standards for Commercial and Civic or Institutional Uses in Community Commercial Areas

<b>Standard</b>	<b>Commercial, Civic, or Institutional Uses</b>
<b>The maximum ground floor area (sq. ft.) of any two commercial tenants, excluding hotels, in PND District shall not exceed:</b>	<b>17,500 each</b>
<b>The maximum ground floor area (sq. ft.) of any remaining commercial tenant(s), excluding hotels, in PND District shall not exceed:</b>	<b>10,000 each</b>
<b>The maximum ground floor area (sq. ft.) of a hotel use in PND District shall not exceed:</b>	<b>40,000</b>
<b>The maximum ground floor area (sq. ft.) of any one permitted civic or institutional use in PND District shall not exceed:</b>	<b>60,000</b>
<b>The maximum ground floor area (sq. ft.) of any</b>	<b>10,000</b>

<b>Standard</b>	<b>Commercial, Civic, or Institutional Uses</b>
<b>remaining civic or institutional use in PND District shall not exceed:</b>	
<b>Setbacks—Principal Building (ft.)</b>	
<b>Front Yard</b>	<b>None Required</b>
<b>Side Yard</b>	<b>None Required</b>
<b>Rear Yard</b>	<b>20</b>
<b>Maximum Building Height (ft.)*</b>	<b>50</b>

\* One principal building may be up to 60' in height. Architectural elements like cupolas, "bell" towers", etc. may exceed maximum building height upon approval of the Planning Commission.

3. Review and Approval Process for Uses in the Community Commercial Area. The uses listed in 85.5-A(2) are permitted subject to the following review and approval process:

- a) The Historic Commission shall review each proposed use within a PND Community Commercial Area and shall issue a Historic Review Certificate for each proposed use, provided that the following findings are satisfied:
  - 1) Required Finding 1. The proposed use is of a size and scale consistent with the historic character of the Town of Odessa.
  - 2) Required Finding 2. The proposed use is sensitive in content to the historic importance of the Town of Odessa.
- b) Mayor and Council shall approve by resolution each proposed use within a PND Community Commercial Area, provided that the following findings are satisfied:
  - 1) Required Finding 1. The proposed use is consistent with the Purpose and Intent of the PND District (85.0) and is consistent with the Final Plan governing the PND in question, if that Final Plan has already been approved by Mayor and Council.
  - 2) Required Finding 2. A Historic Review Certificate has been issued by the Historic Commission for the proposed use.

4. Open Space Areas: The area devoted to Open Space Areas shall comprise a minimum of twelve-and-one-half percent (12.5%) of the gross PND tract area. The size, location, and configuration of open space areas must provide adequate access to residents and enable appropriate access for maintenance. Long, thin or inaccessible areas of open space should be avoided. Open Space Areas in a PND District may be designed according to the standards for types of open space identified in Table 8 and shall consist of at least two of the six types of open space identified in Table 8. The following design principles shall apply to all Open Space Areas in a PND District.

- a) All Open Space Areas shall be free of wetlands or stormwater management areas containing permanently standing water, in order to be readily accessible and usable for active and passive recreation.
- b) Significant natural features shall be incorporated into permanent public open space whenever possible.

- c) Open space areas shall be arranged to maintain contiguity with other designated open space areas or similar areas on adjacent lands in order to ensure the potential for a contiguous open space network throughout the Town.
- d) All open space shall be open to the use of residents or dedicated to the Town of Odessa as public parkland upon mutual agreement between the Town and the applicant.

Table 8. PND Open Space Types

<p><b>Squares:</b> Squares are areas for passive recreational use. They shall be bounded by streets on a minimum of three sides or 75% of the perimeter. The minimum size for a square shall be 500 square feet. The maximum size for a square shall be one acre. Squares are encouraged to be planted parallel to all street right-of-ways with one tree species planted a minimum of 10 feet on center and at a maximum of 30 feet on center. Geometrical tree planting layouts for internal plantings are encouraged.</p>
<p><b>Parks:</b> Parks may be designed for passive and/or active recreational use. Parks are encouraged to be enclosed by streets on all sides. The minimum size for a park shall be one acre and the maximum size shall be 3 acres. Maximum park size may exceed 3 acres if through design the park creates a central open space which services an entire neighborhood or group of neighborhoods; or incorporates physical features which are an asset to the community (i.e. lake, high ground, significant stands of trees)</p>
<p><b>Forecourts:</b> Forecourts are open space areas which act as buffers between residential buildings and non-residential buildings or streets. Forecourts are entirely bounded by streets. It is recommended that forecourts be planted to all street right-of-ways with one tree species. Such plantings shall be a minimum of 10 feet on center and a maximum of 30 feet on center.</p>
<p><b>Plazas:</b> Plazas are open areas typically located adjacent to a civic or commercial building. Plazas function as gathering places and may incorporate a variety of non-permanent activities such as vendors and display stands. Plazas shall be level, stepped, or gently sloping (less than 5% grade). A minimum size of 2,000 square feet and maximum size of 30,000 square feet is recommended, but a plaza may be smaller or larger depending on the building or facility design. At no time shall a plaza's horizontal length or width be greater than three times the height of surrounding buildings. Plazas may be left unplanted. If planted, trees should form the geometric frame of the plaza space. Spacing should be a minimum of 10 feet on center and a maximum of 30 feet on center.</p>
<p><b>Parkways:</b> Parkways are open spaces designed to incorporate natural settings such as creeks and significant stands of trees within a neighborhood. Parkways are to be entirely bounded by streets or pedestrian right-of-ways. Parkways differ from parks and squares in that their detailing is natural (i.e. informally planted). Parkways are used for walking, jogging, or bicycling. In addition, small scale recreational features such as a playground area or soccer field are appropriate in parkways.</p>
<p><b>Greenbelts:</b> Greenbelts run along the perimeter of a neighborhood and serve to buffer a neighborhood from surrounding non-compatible uses such as a highway corridor or industrial district. Greenbelts are left natural but may include walking trails. In addition, schools located adjacent to greenbelts can provide all recreational and athletic fields within the greenbelt.</p>

5. Interpretation of Uses

- a) General. A use not specifically listed as a permitted use in any area of the PND District is prohibited unless determined similar in accordance with Subsection ii. below.
- b) Determination of Similar Uses. A determination that a use is similar to a use permitted by right shall be considered an expansion of the use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall be included in the list of uses permitted by right.
- c) Application
  - i. All applications for permits involving uses not specifically listed among the uses permitted by right in the PND District shall be submitted to the Planning Commission.
  - ii. The Planning Commission shall have the authority to determine that a use is similar to a use permitted by right.
- d) Standards Governing the Determination of Similar Use
  - i. That the use closely resembles and contains the same characteristics as the classification to which it is to be added; and
  - ii. That the use does not create dangers to health and safety, and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added; and
  - iii. That the use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.

#### 6. Accessory Structures Permitted

Customary accessory structures are permitted when located on the same lot as the principal structures.

#### B. Environmental Standards

Standards governing development in environmentally sensitive locations in a PND District, such as wellhead areas, water recharge areas, and floodplain areas, shall be as set forth in articles of this ordinance, as amended, dealing with development in such areas. No development in a PND District shall be approved if the environmental standards specified in other articles of this ordinance are not satisfied.

#### C. Parking Standards

Parking and loading requirements in the PND District shall be as set forth in the Off-Street Parking and Loading Article of this ordinance, as amended, except for as noted in this Section.

##### 1. Location of Parking

- a) Off-street parking shall be located to the side or rear of all commercial and institutional buildings
- b) A parking lot may not be adjacent to or opposite a street intersection

##### 2. Parking area landscaping and screening

- a) All parking and loading areas fronting streets or sidewalks and all parking and loading areas abutting residential districts or uses shall provide:
  - i. A landscaped area at least three (3) feet wide along the street or sidewalk.
  - ii. Screening at least three (3) feet in height and not less than 50% opaque.
  - iii. One tree for each twenty-five (25) linear feet of parking lot frontage.
  
- b) Parking area interior landscaping. Green space in the form of landscape islands and/or peninsulas is required to break up rows of parking spaces as follows:
  - i. If the total number of parking spaces is less than 100 the minimum requirement is:
    - a. Islands at both ends of each row of parking (minimum of 9' X 18')
    - b. One island or peninsula (minimum of 9' X 18') for every 10 contiguous spaces
    - c. No more than 2 continuous bays (60' width) without a 9' wide island separating the 2 bays from additional parking bays or drive aisles
    - d. Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space
  - ii. If the total number of parking spaces is 100 spaces or greater the minimum requirement is:
    - a. Islands at both ends of each row of parking (minimum of 9' X 18')
    - b. One island or peninsula (minimum of 9' X 18') for every 12 contiguous spaces
    - c. No more than 3 continuous bays (60' width) without a 9' wide island separating the 2 bays from additional parking bays or drive aisles
    - d. Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space

3. On-Street Parking

- a) Adjacent on-street parking may apply toward the minimum parking requirements for commercial and institutional uses.

Table 9. Minimum Parking Requirements Specific to the PND District

Use	Required Off-Street Parking Spaces
All commercial and institutional uses permitted within the PND, except for public and private elementary schools, kindergartens and early childhood centers, and those uses provided for elsewhere within this table	One off-street parking space per five hundred (500) square feet of gross floor area
Hotels	0.6 off-street parking spaces for each guest room plus one off-street parking space for each three employees
Residential units located above commercial uses	One-and-a-half (1.5) off-street parking spaces per dwelling unit
Single-family, detached and Duplex dwellings	Two (2) off-street parking spaces per dwelling unit
Townhouse dwelling	Two (2) off-street parking spaces per

Use	Required Off-Street Parking Spaces
	dwelling unit

D. Infrastructure Standards

1. Wastewater Facilities

Connection to a sanitary sewer collection and transmission system shall be required for each lot and each principal use within a PND District.

2. Drinking Water Facilities

Connection to a community water supply and distribution system shall be required for each lot and each principal use within a PND District. The source of supply may be municipal or private.

3. Public Utilities

a) General

- i. Provision shall be made for each lot and principal use in the PND District to be connected to those utility services available in the Town of Odessa at the time of development or subdivision.
- ii. Developers shall provide required utilities at their expense and dedicate them to the Town or other entity as applicable.

b) Location. The developer shall install underground service connections to the street property line of each platted lot at his/her expense.

c) Easements

- i. Easements shall be provided for public and private utilities.
- ii. The developer and the applicable utility companies shall coordinate the establishment of utility easements established in adjoining properties.

d) Electric and Telecommunications

- i. Electrical and telephone wires and cables, both main and service lines, shall be placed underground in accord with the rules and specifications of the Public Service Commission laws on utility service in developments.
- ii. All main underground cables that are within the right-of-way of a street shall be located as specified by the Town of Odessa or DelDOT, where they have jurisdiction. Underground electric and telephone lines may be located in front yards. Where alleys are used, the utilities should, if possible, be located in the alleys.

e) Gas or Other Underground Utilities. Gas or other underground utilities should be planned in coordination with other utilities and easements for all utility locations.

f) Lighting

Any lighting shall be directed towards the ground of the property it is intended to illuminate and shall not shine avoidable amounts of light on adjacent properties or create conditions of glare for adjacent properties.

## **85.6 Design Standards Manuals**

### A. Preliminary Master Design Standards Manual

To the extent possible, the Preliminary Master Design Standards Manual shall consist of a brief written and graphic description of the applicant's proposed approach to each of the development standards and design principles in section 85.3-D(1)(a) and those items listed in subsection 85.6-C. The architectural, lighting, signage and landscape examples may be vignettes of styles with graphic and narrative descriptions for this submission. The purpose of the Preliminary Master Design Standards Manual is to insure that the applicant gives adequate thought to the nature of a PND designation and understands the impacts of such a designation on site development; and it provides a way for the Town to be involved early in the planning process to confirm that the purpose and intent of the PND District regulations will be addressed.

### B. Final Master Design Standards Manual

The Final Master Design Standards Manual shall address the development standards and design principles in section 85.3 and those items listed in subsection 85.6-C through evidence of substantive research and physical guidelines. The extensive use of photographs, drawings and other graphic methods is strongly encouraged. The results of this work may be organized in a manner that best represents the applicant's intent as long as all the items are substantively addressed. The purpose of the Final Master Design Standards Manual is to substantively demonstrate the design principles and physical guidelines that will govern the final development of the PND site.

### C. Contents of Design Standards Manuals

The following items are required to be included in the Final Master Design Standards Manuals:

1. *Historical precedents* - a discussion and illustration of local and regional precedents in the design of the Town of Odessa's traditional neighborhoods, communities, buildings, and landscape and how they will be reflected in the proposed development.
2. *Buildings* - a classification of the full range of buildings, residential, commercial, office or mixed, to be constructed, including detailed guidelines addressing their architectural character and essential required elements, such as size, composition and massing, windows,

doors, porches, roof design, fenestration, and all materials. A plan of their location by use type throughout the development shall be included.

3. *Accessory structures* - detailed design guidelines for accessory structures including, but not limited to, fences, sheds, pools, garages, gazebos shall be included and compatible with the PND design principles.
4. *Landscape design* - a palette of hard (paving) and plant materials along with street furniture, major focal elements and ornamentation shall be provided. These shall be located on a plan of the development. Details of plant species and hard materials shall be included.
5. *Lighting design* - placement of public and private lighting throughout the development and design of the lighting fixtures, globes, illumination patterns and intensities.
6. *Signage* - provide the design, size, height and placement of all signs for public and private uses in the neighborhood. Include standards for street signs, parking signs, fire lanes, and signs for businesses in residential, office and commercial districts.
7. *Application and administration* - a presentation of the manner in which the Master Design Standards Manual requirements and guidelines will be administered and enforced on behalf of the developer. The roles and responsibilities of the developer, builders and homeowners and/or homeowners' association in overall administration of Master Design Standards Manual requirements shall be addressed.
8. *Architectural Design Principles* - Because of the higher density permitted within the PND District, structures in such communities are expected to achieve a higher standard of community and architectural design. PND districts should be designed with architectural diversity and character in mind to provide a high level of design quality in the built environment. Developers, architects, and designers are to be afforded flexibility to meet the challenge of designing attractive, higher density communities but are compelled to follow the design standards in this Section. The following standards apply to all buildings:
  - a) *Building Orientation and Facade.*
    - i. The principal building facade of proposed buildings should 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 should reflect a public facade on both street frontages.
    - ii. In designing new buildings, consideration should be given to the dominant architectural features of existing buildings in the immediate vicinity, as applicable. However, strict adherence to existing architectural styles is not the predominant goal of this ordinance. Existing architecture should be utilized as a frame of reference for proposed architecture, but should not be the sole design template in every instance.
    - iii. Large expanses of blank walls are to be avoided. The public façade shall incorporate windows and primary doorway entrance along the street frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.
  - b) *General Architectural Characteristics.*
    - i. *Building Proportions.* Consideration should 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 and Scale. Facades of new buildings should incorporate, but not mimic, the sense of lightness or weight exhibited in the architecture of existing buildings on neighboring properties and should incorporate similar proportions of solids (i.e. siding, blank walls, etc.) to voids (i.e. windows, door openings, etc.).
- iii. Materials. The Plan shall incorporate durable exterior surface materials complementary with the color, texture, size, and scale of exterior materials reflected on existing buildings in the immediate vicinity.
- iv. Roofs. The general roof shape, ridge and eave heights, and material characteristics proposed shall be visually compatible with these same attributes expressed in existing buildings in the immediate vicinity.

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## **Section 86. Planned Commercial Development (PCD) District**

### **86.0 Purpose and Intent**

- C. The Planned Commercial Development (PCD) District is intended to implement the Town of Odessa Comprehensive Plan by providing for high-quality, larger-scale development where conventional zoning may be inappropriate. The PCD District shall primarily provide for appropriate commercial and office uses, but may additionally provide for residential uses. Project planning is performed for the entire development rather than on an individual parcel basis.
- D. The PCD District permits variation in development by allowing deviation in standards such as lot size, bulk requirements, permitted uses, and dwelling types in order to encourage high-quality design that incorporates the best architectural and community design features of Delaware and the Delmarva Peninsula from its colonial past to the mid 20<sup>th</sup> Century.

### **86.1 Effect on other provisions**

- B. The development standards for the PCD District shall be determined by the requirements and procedures set forth in this Section and shall prevail over conflicting requirements, including conflicting requirements of the Town of Odessa Subdivisions Ordinance.

### **86.2 Eligibility For PCD Designation**

No application for annexation and/or rezoning a land area to a PCD designation shall be considered unless the following conditions are met:

- A. The PCD designation is consistent with the land area's future land use designation within the Town of Odessa Comprehensive Plan; and
- B. The minimum land area for a PCD District shall be ten (10) acres. Areas smaller than ten (10) acres may only be allowed PCD designation provided the land will be incorporated into an existing PCD; and
- C. The annexation and/or rezoning application for the land area may contain one or more parcels. The annexation and/or rezoning application for the land area shall be filed jointly by all owners of the involved land area.

### **86.3 Application, Review, and Approval Procedures**

The following process shall be followed in filing and reviewing applications for annexation and/or rezoning, and development as a PCD.

#### A. Preapplication Conference

The applicant shall confer with the Planning Commission regarding the proposed development. After such review and comment by the Planning Commission, the application for annexation and/or rezoning and preliminary plan review shall be submitted pursuant to this Section.

## B. Intergovernmental Coordination

### 1. Compliance with PLUS.

No application for annexation and/or rezoning and preliminary plan review shall receive approval until the Office of State Planning Coordination has provided written comments to the Town of Odessa in accordance with the Preliminary Land Use Service (PLUS) as provided in Title 29, Chapter 92 of the *Delaware Code*, as amended. The applicant for annexation and/or rezoning and preliminary plan review shall be responsible for preparing and submitting all materials required for a PLUS review, in accordance with Title 29, Chapter 92 of the *Delaware Code*, as amended.

### 2. Referrals to Other Agencies.

The Planning Commission may request review and comment on an application for annexation and/or rezoning and preliminary plan review from pertinent State departments and agencies (such as Natural Resources and Environmental Control, Education, Transportation), New Castle County departments and agencies (particularly infrastructure providers), and any other appropriate party.

3. Before taking action on an application for annexation and/or rezoning and preliminary plan review, Mayor and Council shall allow sufficient time for the Office of State Planning Coordination, departments, and agencies to respond.

## C. Fees

The Mayor and Council shall establish by resolution a schedule of fees, charges, and expenses (hereinafter collectively “fees”), and a collection procedure for applications and reviews associated with this Section. The schedule of fees shall be posted in the Town Office, and may be altered or amended by the Mayor and Council. No application will be accepted, reviewed, or approved until such time as the appropriate fees have been paid in full. Ongoing fees not billed upon application, such as legal expenses and the cost for review by technical consultants, shall be invoiced as the fees are incurred.

## D. Application for Annexation and/or Rezoning and Preliminary Plan Review

1. The application for annexation and/or rezoning and preliminary plan review to a PCD designation shall provide, at a minimum, the following details of the development in narrative and/or illustrative form:

- c) The Preliminary Master Design Standards Manual, as set forth in subsection 86.6-A of this Section, for purpose of showing that the proposed development fulfills the purpose, intent, and design standards of the PCD. The manual shall address the following elements of the PCD District as provided in the tables below:

Table 1. Design Principles in Mixed Residential Areas

Residential neighborhoods and their individual blocks, to the extent possible, shall contain a mixture of a variety of house and lot types and sizes to strengthen community interactions.
Different architectural styles shall be mixed to the extent practical and appropriate within any given block.
Porches are encouraged as an architectural feature, and, if provided, shall be sized to be functional social spaces with sufficient room to comfortably accommodate appropriate furniture and area for movement.

Table 2. Design Principles in Commercial/Professional Office Areas

Commercial use buildings may be connected but must retain fire separation as required by code.
Mixed-use buildings with residential units located above commercial uses are encouraged.
Commercial/Professional Office areas shall be designed around and shall have frontage on an internal main street that connects to the street system outside the district. Buildings within the area shall be organized in relation to this internal main street, to create a walkable connection among the different uses and buildings.
Off-street parking in Commercial/Professional Office areas shall be provided in a manner so that it is screened from the main right-of-way by buildings, landscaping or other means.
Off-street parking shall be screened from adjacent non-commercial uses and shall be located to the side or rear of buildings.
Off-street parking shall be shared by adjacent uses.
Service drives shall be designed and used for loading and trash collection.
Public areas for seating, gathering, and public amenities such as fountains, amphitheaters, display areas, public art, kiosks, and recreational activity shall be integrated into the district.

Table 3. Block and Street Design Principles

Private streets are prohibited.
Blocks, the aggregate of lots, tracts, alleys and lanes circumscribed by thoroughfares, may be square, elongated or irregular. Streets are to be planned using a grid pattern or loose network forming blocks.
Mid-block pathways should be used when appropriate to allow pedestrians to walk through the long side of each block.
Street trees shall be provided on both sides of every street.
On-street parking shall be provided on all streets.
The street layout should be based on a hierarchical system, using avenues or boulevards to link major destinations.
The plan, through its design, should seek to minimize vehicular speed and short-cutting while making walking and cycling safer, easier and more pleasant.
Alleys should be used wherever possible in order to place garages and utilities at the rear of lots so that the streetscape is maintained with house fronts and not

dominated by garage doors and utility structures. If garage access from the front is used, then garages should be set back from the front wall of the house so as to limit the impact of the garage and cars parked in front of it on the streetscape. Townhouses with garages in the front are strongly discouraged.
Commercial and other buildings shall face the street with minimal setbacks, and parking should be located to the side or rear of all commercial buildings.

Table 4. Sidewalk Design Principles

Sidewalks are required on both sides of the street.
Sidewalks located within Mixed Residential Areas shall be a minimum of 4' wide and separated from the curb by a minimum of 4' grass strip. Sidewalks located within Commercial/Professional Office Areas shall be a minimum of 7' wide and separated from the curb by a minimum of 3' grass strip, or a 10' wide sidewalk with trees planted in grates within that part of the sidewalk which is 3' adjacent to the curb.

- d) A Conceptual Site Plan of the property or properties to be included in the PCD, for the purpose of demonstrating that the proposed PCD satisfies the requirements of this Section. The Conceptual Site Plan shall address the following elements of the proposed PCD District:
  - i. The general layout of Commercial/Professional Office areas, Mixed Residential areas, and Open Space areas within the PCD, including the total acreage devoted to each area;
  - ii. The intended manner in which the property or properties shall be subdivided including the average lot area, dimensions of the average lot, the average street frontage, the dimensions of the average building envelope, the average height of the various types of buildings, and the setbacks of buildings (front, side, and rear);
  - iii. The general uses to be contained on each lot with the total gross square feet by use;
  - iv. The general layout of the streets, alleyways, and entrance(s) and the parts thereof proposed to be dedicated to the Town of Odessa or State of Delaware;
  - v. The general layout of sidewalks and other pedestrian pathways; and
  - vi. The location and layout of parking, including number of spaces.
- c) A statement from the applicant estimating the impacts that the PCD will have on traffic in the Town of Odessa and on the Town of Odessa's revenues shall be included with the application for annexation and/or rezoning and preliminary plan review.

2. The application for annexation and/or rezoning and preliminary plan review shall be reviewed by the Planning Commission, Historic Commission, and Tree Commission for consistency with the goals, objectives, and standards of the Town of Odessa Comprehensive Plan and this Section. These commissions shall provide written recommendations to the Mayor and Council within sixty (60) days of receiving such application(s) and preliminary plan.

3. The Mayor and Council shall review the recommendations of said commissions (if provided) prior to taking any final action on the application for annexation and/or rezoning and preliminary plan review. Approval of the application for annexation and/or rezoning and preliminary plan review shall constitute approval of the preliminary plan. Approval of the preliminary plan shall

be required in order for the property or properties to be considered for annexation and/or rezoning pursuant to subsection 86.3-E of this Section.

E. Procedures for Annexation and/or Rezoning

The property or properties shall be annexed and/or rezoned in accordance with the Town Charter and Code. The annexation shall be subject to an annexation agreement and the rezoning shall be subject to a development agreement which shall incorporate the application for annexation and/or rezoning and preliminary plan review, the Conceptual Site Plan, the Preliminary Master Design Standards Manual, and any other requirements of this Section.

F. Application for Final Plan Review after Annexation and/or Rezoning.

1. The elements of the Final Plan shall include the following:
  - a) A Final Site Plan consisting of the following items:
    - i. All information required for a Subdivision Plan as set forth in the Town of Odessa Subdivisions Ordinance (to the extent applicable);
    - ii. The final program of uses including building footprints for commercial/office uses and buildable envelope for residential portions, building height, and total square feet by use and housing type;
    - iii. The final layout of Mixed Residential Areas, Commercial/Professional Office Areas, and Open Space Areas within the PCD, including the total acreage devoted to each area;
    - iv. The final layout of the streets, alleyways, and entrance(s) and the parts thereof proposed to be dedicated to the Town of Odessa or State of Delaware;
    - v. The final layout of sidewalks and other pedestrian pathways; and
    - vi. The final location and layout of parking, including number of spaces.
  - b) The Final Master Design Standards Manual, as set forth in subsection 86.6-B of this Section, for purpose of showing the development pattern, materials, dimensions, and architectural styles.
2. The Planning Commission, Historic Commission, and Tree Commission shall review the Final Plan for consistency with the purpose and intent of the approved annexation and/or development agreement, including the Preliminary Master Design Standards Manual and the Conceptual Site Plan. These commissions shall provide written recommendations to the Mayor and Council. The Mayor and Council shall review the recommendations of said commissions prior to taking any final action on the petition. The commissions shall provide written comments within sixty (60) days of notice of final plan review.
3. Each application for final plan review shall be heard by Mayor and Council for final action on the application for final plan review and approval.

4. The Mayor and Council shall act to approve the Final Plan once it has determined that the Final Plan is consistent with the purpose and intent of the approved annexation and/or development agreement, including the Preliminary Master Design Standards Manual and the Conceptual Site Plan.

5. The approved Final Plan shall grant the applicant the same authority as an approved subdivision plot plan.

6. The Final Plan, including the Final Design Standards Manual and Final Site Plan, once approved by the Mayor and Council, shall constitute an agreement by the applicant to follow the standards and guidelines contained therein during the design, construction and maintenance of land developed according to the PCD District regulations. It is a formal acknowledgement of the applicant's commitment to heed the purpose and intent of the PCD District regulations.

7. Any material departure from the approved Final Plan without approval by the Mayor and Council shall be cause for revocation of any building permits for that work which is inconsistent with the Final Plan. Any material change in an approved Final Plan shall be submitted for approval in accordance with this subsection. At minimum, material change shall include change in the following:

- a) A change in the proposed use of any portion of the land in excess of two percent (2%), including open space, except an increase in open space of up to twenty percent (20%) shall not be considered material;
- b) A change in residential density and use types in excess of two percent (2%), except that reductions in density of up to 10% shall not be considered material;
- c) A change in commercial density in excess of two percent (2%), except that reductions in density of up to 10% shall not be considered material;
- d) A change in street or sidewalk layout and entrance locations (minor alignment changes shall not be considered material);
- e) Overall architectural style and building patterns and the layout of buildings on lots (minor changes necessitated by detailed engineering considerations in site design shall not be considered material).

#### G. Expiration and Extension.

1. Approval of a Final Plan submitted under the provisions of this Section shall expire two years after the date of such approval.

2. Mayor and Council may grant a one-time extension, at its sole discretion, based on a presentation by the applicant at a meeting of Mayor and Council and on the information provided by the applicant concerning reasons why the project was unable to proceed in a timely manner. The period of such extension shall be for a period of one year.

#### H. Recordation upon Final Plan Approval.

Upon Final Plan approval, the following documents shall be recorded with the New Castle County Recorder of Deeds:

1. The final subdivision plan;
2. The final site plan;
3. The Final Master Design Standards Manual.

I. Bonds & Guaranties.

1. Performance Bond or Guaranty Required. As a condition of approval of Final Plans, the Mayor and Council may require the applicant to post a performance bond or other form of guaranty, including a letter of credit, for any infrastructure improvements required by this Section. The amount of such performance bond or other form of guaranty shall be sufficient to construct the infrastructure improvements and shall be in a form acceptable to the Mayor and Council. The amount of such bond shall be no less than the cost of such improvements. Infrastructure improvements include streets, roads, surface drainage facilities, erosion and sedimentation control facilities, water supply facilities, sanitary sewer facilities, open space and parks, other common area improvements, and/or infrastructure improvements deemed necessary by Mayor and Council.

J. Schedule of Construction.

When approving a Final Plan, the Planning Commission may recommend and Mayor and Council may adopt a schedule of construction. If such a schedule is adopted, no permits for construction shall be issued except in accordance with the adopted schedule. Where single-family and multi-family dwellings types are part of the development or where nonresidential uses are part of the development, the schedule of construction may require concurrent construction of a given type, number or use in proportions recommended by the Planning Commission and adopted by Town Council. Amendments to the schedule of construction may be requested by the applicant and are subject to the approval of Mayor and Council.

**86.4 Deviation from PCD Standards**

A. Purpose and Scope of Deviations from PCD Standards.

1. Purpose: In order to afford the applicant sufficient flexibility to design a high-quality New Urbanist community, waivers from the requirements of this Section may be granted pursuant to the procedures and required findings set forth in this subsection.
2. Scope: Except for the following development standards and design principles, waivers may be considered and granted for all PCD District development standards and design principles:
  - a) The minimum land area devoted to a Commercial/Professional Office Area, including off-street parking areas (see subsection 86.5-A);
  - b) The maximum ground floor area of permitted tenants within a Commercial/Professional Office Area (see subsection 86.5-A, Table 7);
  - c) The list of permitted uses within the PCD District (see subsection 86.5-A);
  - d) Environmental Protection Standards (see subsection 86.5-B);
  - e) Infrastructure Standards (see subsection 86.5-D);
  - f) The minimum land area devoted to Open Space Areas (see subsection 86.5-A)

B. Waiver Request Application Process.

1. An application for a waiver from the requirements of this Section shall contain, to the extent applicable, the following components:
  - a) The subsection (or part thereof) for which a waiver is being sought, including, if applicable, the specific development standard(s) and/or design principle(s);
  - b) A description of the area(s) and/or lot(s) within the PCD District for which a waiver is sought;
  - c) A description of the alternative development standards and/or design principles that the applicant is proposing to govern the development of this area(s) and/or lot(s);

- d) A description of why the waiver(s) is necessary in order to fulfill the Purpose and Intent of Subsection 86.0 of the PCD District.
2. An application for a waiver from this Section shall be subject to the following procedures:
- a) An application for a waiver may be submitted at any time prior to the recordation of the documents specified in subsection 86.3-H.
  - b) The application for a waiver shall be submitted to both the Planning Commission and Mayor and Council.
  - c) The Planning Commission shall review the application for a waiver and shall provide a recommendation to Mayor and Council for approval or disapproval of the waiver based on the satisfaction of the required findings for granting a waiver request, as specified in subsection 86.4-C. For applications requesting more than one waiver, each waiver request shall be individually considered for review and approval.
  - d) Upon the Planning Commission providing a recommendation on the application for a waiver, the Mayor and Council shall review and approve the application for a waiver if the required findings for granting a waiver request, as specified in subsection 86.4-C, are satisfied. For applications requesting more than one waiver, each waiver request shall be individually considered for review and approval.
  - e) A request for a waiver shall be approved and granted to the applicant when the Mayor and Council have acted to approve the waiver.
  - f) For those areas and/or lots for which waivers are approved, development may proceed, upon recordation of the waiver, according to the alternative development standards and/or design principles stipulated and approved during this waiver approval process.

C. Required Findings for Granting a Waiver Request.

1. That the waiver will result in development in harmony with the Purpose and Intent of the PCD District in subsection 86.0.
2. That the waiver will result in development that does not create dangers to health and safety, and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from development occurring according to the development standards and/or design principles for which a waiver is sought.
3. That the waiver will result in development in harmony with the general character of the proposed neighborhood considering density, design, bulk, and scale of proposed new structures.
4. That the waiver will result in development that is not detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties.
5. That the waiver will result in development that complies with all other applicable standards, laws, and regulations.

## **86.5 Development Standards and General Design Principles**

### A. Permitted Uses and General Design Principles in the PCD District

A PCD District shall include a Commercial/Professional Office Area or areas and Open Space Areas as identified below. A Mixed Residential Area or areas may be included in a PCD District, but the minimum land areas for Commercial/Professional Office Areas and Open Space Areas must still be satisfied

1. Commercial/Professional Office Areas: Areas containing commercial, office, and civic and institutional uses, as identified below, shall be included within the PCD. The minimum land area devoted to Commercial Uses, including off-street parking areas, shall comprise fifty percent (50%) of the gross PCD tract area. Subject to the review and approval process stipulated in 86.5-A(2), the following uses shall be permitted within a PCD Commercial/Professional Office Area:

- a) Business, professional or governmental offices
- b) Banks, savings and loan associations, investment companies, credit bureaus, brokers and similar financial institutions
- c) Service agencies, such as real estate agencies, insurance agencies, computer services, and travel agencies
- d) Medical and dental offices including clinics and laboratories incidental to these uses
- e) Offices for non-profit institutions and organizations
- f) Retail food stores including, but not limited to, bakeries, candy and convenience stores, grocery and meat markets
- g) Restaurants, excluding “drive thru”
- h) Retail sales and service, and specialty stores
- i) Copy center
- j) Assisted Living Facility/Senior Care Facility

Table 5. Dimensional and Density Standards for Commercial and Civic or Institutional Uses in Commercial/Professional Office Areas

<b>Standard</b>	
<b>The maximum ground floor area (sq. ft.) of any one tenant, excluding Assisted Living Facility/Senior Care Facility,, in PCD District shall not exceed:</b>	<b>17,500</b>
<b>The maximum ground floor area (sq. ft.) of any remaining tenant(s) in PCD District shall not exceed:</b>	<b>10,000 each</b>
<b>The maximum ground floor area (sq. ft.) of any one building composing an Assisted Living Facility/Senior Care Facility</b>	<b>40,000</b>
<b>Setbacks—Principal Building (ft.)</b>	
<b>Front Yard</b>	<b>None Required</b>
<b>Side Yard</b>	<b>None Required</b>
<b>Rear Yard</b>	<b>20</b>
<b>Adjoining residential use</b>	<b>50</b>
<b>Maximum Building Height (ft.)*</b>	<b>45</b>
<b>Minimum portion of Community/Professional Office Area that must be landscaped</b>	<b>20%</b>
<b>There shall be a grassed landscape buffer area of no less than ten feet along all lot lines within a Commercial/Professional Office Area. Where adjacent to residential zones, the buffer shall consist of a landscape screen no less than 6 1/2 feet high. All landscaping shall be properly maintained throughout the life of any use on the lot.</b>	

\* Architectural elements like cupolas, “bell” towers”, etc. may exceed maximum building height upon approval of the Planning Commission.

2. Review and Approval Process for Uses in the Commercial/Professional Office Area. The uses listed in 86.5-A(1) are permitted subject to the following review and approval process:

- a) The Historic Commission shall review each proposed use within a PCD Commercial/Professional Office Area and shall issue a Historic Review Certificate for each proposed use, provided that the following findings are satisfied:
  - 1) Required Finding 1. The proposed use is of a size and scale consistent with the historic character of the Town of Odessa.
  - 2) Required Finding 2. The proposed use is sensitive in content to the historic importance of the Town of Odessa.
- b) Mayor and Council shall approve by resolution each proposed use within a PCD Commercial/Professional Office Area, provided that the following findings are satisfied:
  - 1) Required Finding 1. The proposed use is consistent with the Purpose and Intent of the PCD District (86.0) and is consistent with the Final Plan governing the PCD in question, if that Final Plan has already been approved by Mayor and Council.
  - 2) Required Finding 2. A Historic Review Certificate has been issued by the Historic Commission for the proposed use.

3. Mixed Residential Areas: A Mixed Residential Area is optional within a PCD District. The following uses are permitted within a PCD Mixed Residential Area:

- a) Single-family, detached dwellings
- b) Duplex dwellings
- c) Townhouse dwellings

Table 6. Dimensional and Density Standards in Mixed Residential Areas

<b>Standard</b>	<b>Single-family detached</b>	<b>Duplex</b>	<b>Townhouse</b>
<b>Lot Standards</b>			
<b>Minimum Lot Area per Dwelling Unit (square feet)</b>	<b>5,000</b>	<b>3,500</b>	<b>2,000</b>
<b>Minimum Façade Width (feet)</b>	<b>15</b>	<b>15</b>	<b>Interior 15 End 15</b>
<b>Minimum Lot width (per unit) at front building line (feet)</b>	<b>50</b>	<b>30</b>	<b>Interior 20 End 30</b>
<b>Minimum Setbacks—Principal Building (ft)</b>			
<b>Minimum Front Yard</b>	<b>10</b>	<b>5</b>	<b>5</b>
<b>Minimum Side Yard</b>	<b>10</b>	<b>10</b>	<b>Interior 0 End 10</b>
<b>Minimum Rear Yard</b>	<b>30</b>	<b>30</b>	<b>30</b>
<b>Maximum Lot Coverage</b>	<b>40%</b>	<b>65%</b>	<b>75%</b>
<b>Maximum Building</b>	<b>45</b>	<b>45</b>	<b>45</b>

<b>Standard</b>	<b>Single-family detached</b>	<b>Duplex</b>	<b>Townhouse</b>
<b>Height (feet)</b>			
<b>Maximum Density</b>	<b>5 dwelling units per acre of PCD area devoted to Mixed Residential Area</b>		

4. Open Space Areas: The area devoted to Open Space Areas shall comprise a minimum of twelve-and-one-half percent (12.5%) of the gross PCD tract area. The size, location, and configuration of open space areas must provide adequate access to residents and enable appropriate access for maintenance. Long, thin or inaccessible areas of open space should be avoided. Open Space Areas in a PCD District may be designed according to the standards for types of open space identified in Table 8 and shall consist of at least two of the six types of open space identified in Table 8. The following design principles shall apply to all Open Space Areas in a PCD District.

- a) All Open Space Areas shall be free of wetlands or stormwater management areas containing permanently standing water, in order to be readily accessible and usable for active and passive recreation.
- b) Significant natural features shall be incorporated into permanent public open space whenever possible.
- c) Open space areas shall be arranged to maintain contiguity with other designated open space areas or similar areas on adjacent lands in order to ensure the potential for a contiguous open space network throughout the Town.
- d) All open space shall be open to the use of residents or dedicated to the Town of Odessa as public parkland upon mutual agreement between the Town and the applicant.

Table 7. PCD Open Space Types

<p><b>Squares:</b> Squares are areas for passive recreational use. They shall be bounded by streets on a minimum of three sides or 75% of the perimeter. The minimum size for a square shall be 500 square feet. The maximum size for a square shall be one acre. Squares are encouraged to be planted parallel to all street right-of-ways with one tree species planted a minimum of 10 feet on center and at a maximum of 30 feet on center. Geometrical tree planting layouts for internal plantings are encouraged.</p>
<p><b>Parks:</b> Parks may be designed for passive and/or active recreational use. Parks are encouraged to be enclosed by streets on all sides. The minimum size for a park shall be one acre and the maximum size shall be 3 acres. Maximum park size may exceed 3 acres if through design the park creates a central open space which services an entire neighborhood or group of neighborhoods; or incorporates physical features which are an asset to the community (i.e. lake, high ground, significant stands of trees)</p>
<p><b>Forecourts:</b> Forecourts are open space areas which act as buffers between residential buildings and non-residential buildings or streets. Forecourts are entirely bounded by streets. It is recommended that forecourts be planted to all street right-of-ways with one tree species. Such plantings shall be a minimum of 10 feet on center and a maximum of 30 feet on center.</p>

**Plazas:** Plazas are open areas typically located adjacent to a civic or commercial building. Plazas function as gathering places and may incorporate a variety of non-permanent activities such as vendors and display stands. Plazas shall be level, stepped, or gently sloping (less than 5% grade). A minimum size of 2,000 square feet and maximum size of 30,000 square feet is recommended, but a plaza may be smaller or larger depending on the building or facility design. At no time shall a plaza's horizontal length or width be greater than three times the height of surrounding buildings. Plazas may be left unplanted. If planted, trees should form the geometric frame of the plaza space. Spacing should be a minimum of 10 feet on center and a maximum of 30 feet on center.

**Parkways:** Parkways are open spaces designed to incorporate natural settings such as creeks and significant stands of trees within a neighborhood. Parkways are to be entirely bounded by streets or pedestrian right-of-ways. Parkways differ from parks and squares in that their detailing is natural (i.e. informally planted). Parkways are used for walking, jogging, or bicycling. In addition, small scale recreational features such as a playground area or soccer field are appropriate in parkways.

**Greenbelts:** Greenbelts run along the perimeter of a neighborhood and serve to buffer a neighborhood from surrounding non-compatible uses such as a highway corridor or industrial district. Greenbelts are left natural but may include walking trails. In addition, schools located adjacent to greenbelts can provide all recreational and athletic fields within the greenbelt.

## 5. Interpretation of Uses

- a) General. A use not specifically listed as a permitted use in any area of the PCD District is prohibited unless determined similar in accordance with Subsection ii. below.
- b) Determination of Similar Uses. A determination that a use is similar to a use permitted by right shall be considered an expansion of the use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall be included in the list of uses permitted by right.
- c) Application
  - i. All applications for permits involving uses not specifically listed among the uses permitted by right in the PCD District shall be submitted to the Planning Commission.
  - ii. The Planning Commission shall have the authority to determine that a use is similar to a use permitted by right.
- d) Standards Governing the Determination of Similar Use
  - i. That the use closely resembles and contains the same characteristics as the classification to which it is to be added; and
  - ii. That the use does not create dangers to health and safety, and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added; and

- iii. That the use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.

#### 6. Accessory Structures Permitted

Customary accessory structures are permitted when located on the same lot as the principal structures.

#### B. Environmental Standards

Standards governing development in environmentally sensitive locations in a PCD District, such as wellhead areas, water recharge areas, and floodplain areas, shall be as set forth in articles of this ordinance, as amended, dealing with development in such areas. No development in a PCD District shall be approved if the environmental standards specified in other articles of this ordinance are not satisfied.

#### C. Parking Standards

Parking and loading requirements in the PCD District shall be as set forth in the Off-Street Parking and Loading Article of this ordinance, as amended, except for as noted in this Section.

##### 1. Location of Parking

- a) Off-street parking shall be located to the side or rear of all commercial and institutional buildings
- b) A parking lot may not be adjacent to or opposite a street intersection

##### 2. Parking area landscaping and screening

- a) All parking and loading areas fronting streets or sidewalks and all parking and loading areas abutting residential districts or uses shall provide:
  - i. A landscaped area at least three (3) feet wide along the street or sidewalk.
  - ii. Screening at least three (3) feet in height and not less than 50% opaque.
  - iii. One tree for each twenty-five (25) linear feet of parking lot frontage.
- b) Parking area interior landscaping. Green space in the form of landscape islands and/or peninsulas is required to break up rows of parking spaces as follows:
  - i. If the total number of parking spaces is less than 100 the minimum requirement is:
    - e. Islands at both ends of each row of parking (minimum of 9' X 18')
    - f. One island or peninsula (minimum of 9' X 18') for every 10 contiguous spaces
    - g. No more than 2 continuous bays (60' width) without a 9' wide island separating the 2 bays from additional parking bays or drive aisles
    - h. Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space

- ii. If the total number of parking spaces is 100 spaces or greater the minimum requirement is:
  - e. Islands at both ends of each row of parking (minimum of 9' X 18')
  - f. One island or peninsula (minimum of 9' X 18') for every 12 contiguous spaces
  - g. No more than 3 continuous bays (60' width) without a 9' wide island separating the 2 bays from additional parking bays or drive aisles
  - h. Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space

3. On-Street Parking

- a) Adjacent on-street parking may apply toward the minimum parking requirements for commercial and institutional uses.

Table 8. Minimum Parking Requirements Specific to the PCD District

Use	Required Off-Street Parking Spaces
All commercial and institutional uses permitted within the PCD	One off-street parking space per five hundred (500) square feet of gross floor area
Single-family, detached, Townhouse and Duplex dwellings	Two (2) off-street parking spaces per dwelling unit

D. Infrastructure Standards

1. Wastewater Facilities

Connection to a sanitary sewer collection and transmission system shall be required for each lot and each principal use within a PCD District.

2. Drinking Water Facilities

Connection to a community water supply and distribution system shall be required for each lot and each principal use within a PCD District. The source of supply may be municipal or private.

3. Public Utilities

a) General

- i. Provision shall be made for each lot and principal use in the PCD District to be connected to those utility services available in the Town of Odessa at the time of development or subdivision.
- ii. Developers shall provide required utilities at their expense and dedicate them to the Town or other entity as applicable.

- b) Location. The developer shall install underground service connections to the street property line of each platted lot at his/her expense.

- c) Easements
  - i. Easements shall be provided for public and private utilities.
  - ii. The developer and the applicable utility companies shall coordinate the establishment of utility easements established in adjoining properties.
  
- d) Electric and Telecommunications
  - i. Electrical and telephone wires and cables, both main and service lines, shall be placed underground in accord with the rules and specifications of the Public Service Commission laws on utility service in developments.
  - ii. All main underground cables that are within the right-of-way of a street shall be located as specified by the Town of Odessa or DelDOT, where they have jurisdiction. Underground electric and telephone lines may be located in front yards. Where alleys are used, the utilities should, if possible, be located in the alleys.
  
- e) Gas or Other Underground Utilities. Gas or other underground utilities should be planned in coordination with other utilities and easements for all utility locations.
  
- f) Lighting. Any lighting shall be directed towards the ground of the property it is intended to illuminate and shall not shine avoidable amounts of light on adjacent properties or create conditions of glare for adjacent properties.

## **86.6 Design Standards Manuals**

### A. Preliminary Master Design Standards Manual

To the extent possible, the Preliminary Master Design Standards Manual shall consist of a brief written and graphic description of the applicant's proposed approach to each of the development standards and design principles in section 86.3-D(1)(a) and those items listed in subsection 86.6-C. The architectural, lighting, signage and landscape examples may be vignettes of styles with graphic and narrative descriptions for this submission. The purpose of the Preliminary Master Design Standards Manual is to insure that the applicant gives adequate thought to the nature of a PCD designation and understands the impacts of such a designation on site development; and it provides a way for the Town to be involved early in the planning process to confirm that the purpose and intent of the PCD District regulations will be addressed.

### B. Final Master Design Standards Manual

The Final Master Design Standards Manual shall address the development standards and design principles in section 86.3 and those items listed in subsection 86.6-C through evidence of substantive research and physical guidelines. The extensive use of photographs, drawings and other graphic methods is strongly encouraged. The results of this work may be organized in a manner that best represents the applicant's intent as long as all the items are substantively addressed. The purpose of the Final Master Design Standards Manual is to substantively

demonstrate the design principles and physical guidelines that will govern the final development of the PCD site.

### C. Contents of Design Standards Manuals

The following items are required to be included in the Final Master Design Standards Manuals:

1. *Historical precedents* - a discussion and illustration of local and regional precedents in the design of the Town of Odessa's traditional neighborhoods, communities, buildings, and landscape and how they will be reflected in the proposed development.
2. *Buildings* - a classification of the full range of buildings, residential, commercial, office or mixed, to be constructed, including detailed guidelines addressing their architectural character and essential required elements, such as size, composition and massing, windows, doors, porches, roof design, fenestration, and all materials. A plan of their location by use type throughout the development shall be included.
3. *Accessory structures* - detailed design guidelines for accessory structures including, but not limited to, fences, sheds, pools, garages, gazebos shall be included and compatible with the PCD design principles.
4. *Landscape design* - a palette of hard (paving) and plant materials along with street furniture, major focal elements and ornamentation shall be provided. These shall be located on a plan of the development. Details of plant species and hard materials shall be included.
5. *Lighting design* - placement of public and private lighting throughout the development and design of the lighting fixtures, globes, illumination patterns and intensities.
6. *Signage* - provide the design, size, height and placement of all signs for public and private uses in the neighborhood. Include standards for street signs, parking signs, fire lanes, and signs for businesses in residential, office and commercial districts.
7. *Application and administration* - a presentation of the manner in which the Master Design Standards Manual requirements and guidelines will be administered and enforced on behalf of the developer. The roles and responsibilities of the developer, builders and homeowners and/or homeowners' association in overall administration of Master Design Standards Manual requirements shall be addressed.
8. *Architectural Design Principles* - Because of the higher density permitted within the PCD District, structures in such communities are expected to achieve a higher standard of community and architectural design. PCD districts should be designed with architectural diversity and character in mind to provide a high level of design quality in the built environment. Developers, architects, and designers are to be afforded flexibility to meet the challenge of designing attractive, higher density communities but are compelled to follow the design standards in this Section. The following standards apply to all buildings:
  - a) Building Orientation and Facade.
    - i. The principal building facade of proposed buildings should 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 should reflect a public facade on both street frontages.

- ii. In designing new buildings, consideration should be given to the dominant architectural features of existing buildings in the immediate vicinity, as applicable. However, strict adherence to existing architectural styles is not the predominant goal of this ordinance. Existing architecture should be utilized as a frame of reference for proposed architecture, but should not be the sole design template in every instance.
- iii. Large expanses of blank walls are to be avoided. The public façade shall incorporate windows and primary doorway entrance along the street frontage, as well as projecting elements such as eaves, cornices, canopies, projecting bays, shadow lines and overhangs.

b) General Architectural Characteristics.

- i. Building Proportions. Consideration should 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 and Scale. Facades of new buildings should incorporate, but not mimic, the sense of lightness or weight exhibited in the architecture of existing buildings on neighboring properties and should incorporate similar proportions of solids (i.e. siding, blank walls, etc.) to voids (i.e. windows, door openings, etc.).
- iii. Materials. The Plan shall incorporate durable exterior surface materials complementary with the color, texture, size, and scale of exterior materials reflected on existing buildings in the immediate vicinity.
- iv. Roofs. The general roof shape, ridge and eave heights, and material characteristics proposed shall be visually compatible with these same attributes expressed in existing buildings in the immediate vicinity.

ARTICLE IX  
EXCEPTIONS AND MODIFICATIONS

SECTION 90. LOT OF RECORD

Where the owner of a lot of official record in any district at the time of the adoption of this ordinance or his successor in title thereto does not have sufficient contiguous land to enable him to conform to the minimum lot size requirements of this ordinance, such lot may be used as a building site provided, however, that the requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

Notwithstanding the foregoing, whenever two (2) or more adjoining lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this ordinance for the district in which such lots are located.

SECTION 91. FRONT YARD SETBACKS FOR DWELLINGS

The front yard setback requirements of this ordinance for dwellings shall not apply to any lot where the average setback of existing buildings located wholly or partially within one hundred (100) feet on either side of the proposed dwelling and on the same side of the same block and use district and fronting on the same street as such lot is less than the minimum required front yard depth. In such case the setback on such lots may be less than the required setback, but not less than the average of the existing setbacks on the aforementioned lots, or a distance of ten (10) feet from the street right-of-way line, whichever is greater.

SECTION 92. HEIGHT LIMITATIONS

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, transmission towers, chimneys, smokestacks, flag poles, masts or aerials.

SECTION 93. GROUP PROJECTS

In the case of two (2) or more buildings to be constructed on a plot of ground of at least two (2) acres not subdivided into the customary streets and lots and which will not be so subdivided, the application of the terms of this ordinance may be varied by the Board of Adjustment in a manner that will be in harmony with the neighborhood, provided:

- 93.1 Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board of Adjustment authorize a use prohibited in the district in which the project is to be located;
- 93.2 The overall intensity of land use is no higher, and the standard of open space is no lower than that permitted in the district in which the project is located;
- 93.3 The distance of every building from the nearest property line shall meet the front yard setback and side yard requirements of the district in which the project is located;
- 93.4 The building heights do not exceed the height limits permitted in the district in which the project is located;
- 93.5 If the property lies within or abuts upon a residential district, and is to be used for a non-residential purpose, there shall be a densely planted buffer strip at least six (6) feet in height along the rear and/or side lot lines abutting the residential properties. No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.

ARTICLE X  
OFF-STREET PARKING AND LOADING

SECTION 100. OFF-STREET PARKING AND LOADING REQUIREMENTS

Off-street vehicle parking, loading, and/or storage space shall be provided on every lot on which any of the following uses are hereinafter established in all districts. The required parking space for any number of separate uses may be combined in one (1) lot, but the required space assigned to one (1) use may not be assigned to another use at the same time, except that one-half (1/2) of the parking space required for churches, theaters or assembly halls whose peak attendance will be at designated times, may be assigned to a use during off-peak times. Each automobile parking space shall be not less than two hundred (200) square feet in area exclusive of adequate egress and ingress drives, landscaping, and maneuvering space. Such space shall be provided with vehicular access to a street or alley; such use shall not thereafter be encroached upon or altered; and shall be equal in number to at least the minimum requirements for the specific use set forth below.

No building permit for new construction, alteration, or addition shall be issued unless the following off-street parking and loading requirements have been met:

OFF-STREET PARKING

<u>Use</u>	<u>Parking Space Requirement</u>
Single-family dwellings	2 spaces per dwelling unit
Bed and Breakfast	1 space plus residential requirement
Churches, libraries, social clubs, other places of public assembly	1 space per every four seats
Offices, banks	1 space for every 250 square feet of gross floor area.
Retail stores	1 space for every 250 square feet of gross floor area.
(Continued)	

<u>Use</u>	<u>Parking Space Requirement</u>
Professional Offices	2 parking spaces, plus residential requirements.
Schools	1 space for each employee plus one visitor space every twenty students.
Restaurants, including grills, cafes, lunch counters, diners and all similar establishments	1 space for each 4 fixed seats provided for patron use, plus 1 space for each 200 square feet of floor area provided for patron use, but not containing fixed seats.
Automobile sales and repair	1 space for each 2 employees at maximum employment on a single shift, plus 2 spaces for each 300 square feet of repair or maintenance space.

**SECTION 101. OFF-STREET LOADING AND UNLOADING SPACE**

Every building or structure used for business, trade or industry erected shall provide space as indicated herein for the loading and unloading and maneuvering space of vehicles off the street or public alley.

**OFF-STREET LOADING**

<u>Use</u>	<u>Number of Required Spaces</u>
Retail Stores	One
Offices, Restaurants	One

**SECTION 102. SUBMISSION OF PLANS OF REQUIRED PARKING AND LOADING AREAS**

Plans and specifications for the required off-street parking and loading area must be approved by the Building Inspector before a building permit will be issued.

### SECTION 103. SIZE OF OFF-STREET PARKING AND LOADING SPACES

An "automobile parking space" shall have a minimum width of 10 feet and a minimum length of 20 feet. An off-street "loading space" shall have a minimum width of 12 feet, a minimum length of 40 feet, and a minimum vertical clearance of 14 feet, exclusive of adequate access drives and maneuvering space.

### SECTION 104. CONNECTIONS TO STREETS OR ALLEYS

Each required parking space shall be connected with a street or alley by a driveway which affords ingress and egress for vehicles.

### SECTION 105. LOCATION

Where the Board of Adjustment determines that the provision of off-street parking facilities on the same lot as the principal use is impractical, a variance may be granted permitting the required off-street parking space to be provided within 400 feet of the principal use lot boundaries.

### SECTION 106. JOINT USE OF OFF-STREET PARKING AREAS

Nothing in this section shall be construed to prevent the combined use of off-street parking or loading areas by two or more buildings or uses provided the total number of spaces is not less than the requirements for each use computed separately in accordance with Section 100 of this Article. In no case shall off-street loading space be considered as meeting the off-street parking space requirements.

### SECTION 107. CONTINUING OBLIGATION

Off-street parking and loading space approved by the Building Inspector under this Article shall be maintained for the duration of the particular use for which the building permit has been issued and for any subsequent use that requires off-street parking or loading space, in accordance with Section 100 of this Article. Presently existing off-street parking and loading facilities may not be reduced below the requirements of this Article.

ARTICLE XI  
ADMINISTRATION

SECTION 110. ZONING ADMINISTRATOR

The provisions of this ordinance shall be administered and enforced by the Odessa Zoning Administrator, who shall be appointed by the Mayor with the approval of the Council. The Zoning Administrator shall be provided with the assistance of such other persons as the Mayor and Council shall direct. Duties shall include inspection of premises and review of site plans for compliance with the use and dimensional requirements of the Zoning Ordinance, and the issuing of certificates of zoning compliance for premises and plans meeting the zoning requirements and issuing notice of violation for breach of the ordinance herein.

SECTION 111. CERTIFICATE OF ZONING COMPLIANCE

No building, sign, fence, or other structure shall be erected, moved, extended or enlarged, or structurally altered, nor shall any excavation or filling of any lot for the construction of any building be done, nor shall any use of land or buildings be established until the Zoning Administrator has been notified and has issued an approved certificate of zoning compliance for the building, sign, fence, or other structure, site, or the use of the building or site.

EXCEPTION: In cases of emergency, such as roof repair, window repair or life-threatening conditions requiring repair, shall not require a certificate of zoning compliance, when an "Emergency Building Permit" is requested.

111.1 Documents Required

In applying to the Zoning Administrator for a certificate of zoning compliance, the applicant shall submit two (2) copies of a to-scale plan signed by the owner or the owner's authorized agent, indicating the location, shape and dimensions of the lot, the height, dimensions, use and location of the building, structure, fence, or sign to be erected, altered, extended or enlarged, the use of adjoining land and buildings, the setback lines of buildings on adjoining lots and such other information concerning the applicant's property or adjoining property as may be essential for determining compliance with the zoning ordinance.

### 111.2 Issuance or Refusal of a Certificate of Zoning Compliance

If the application is in order and the applicant's property complies with the requirements of the zoning ordinance, a certificate of zoning compliance, signed by the Zoning Administrator, shall be issued to the applicant along with one (1) copy of the applicant's plan. If the application is not in order or the zoning ordinance requirements are not complied with, the application for a certificate of zoning compliance shall be refused. The refusal shall be in writing and shall state the reasons therefore, and shall be signed by the Zoning Administrator. The refusal shall be sent to the applicant along with one (1) copy of the plan with notations indicating where the plan fails to meet zoning requirements.

The Zoning Administrator shall respond to requests for a certificate of zoning compliance within forty-five (45) days or the application shall be approved by default. In the event the forty-five (45) day period cannot be met, the applicant shall be advised of the reasons for delay and one forty-five (45) day extension shall be granted. If approval is required by the Historic District Commission, or if the Zoning Administrator desired to consult with the Planning Commission, requests should be submitted to the Commissions one (1) week before their regular meeting.

Copies of the completed certificate of zoning shall be returned to the Town Secretary and to the applicant as soon as acted upon.

## ARTICLE XII

### ENVIRONMENTAL STANDARDS

#### SECTION 120. WATER RESOURCE PROTECTION AREAS

##### A. Purpose

The intent of this section is to implement the Town's Comprehensive Plan and provide clarification on the constraints and requirements for development in environmentally sensitive areas.

##### B. Definitions

1. Wellhead Water Resource Protection Areas. Surface and subsurface areas that surround a water well or wellfield supplying a public drinking water system, through which contaminants are likely to reach such well or wellfield.
2. Public drinking water system. A “public drinking water system” as defined in § 6002, Chapter 60, Title 7 of the Delaware Code, as amended.
3. Recharge Water Resource Protection Areas. Areas designated as having the best potential for groundwater recharge. Recharge Areas possess high percentages of sand and gravel that have "excellent" potential for recharge as determined through a Stack Unit Mapping Analysis performed originally by the Delaware Geological Survey. Recharge areas were originally delineated using methodology described in a report prepared by the Delaware Geological Survey entitled "Delineation of Ground-Water Recharge Resources Protection Areas in the Coastal Plain of New Castle County, Delaware," dated January 1993.
4. Floodplain Water Resource Protection Areas. The area impacted by the 100 year flood as depicted on the most recent Flood Insurance Rate Maps (FIRMs) developed by the Federal Emergency Management Agency (FEMA) or as depicted on a more accurate topographic survey of a parcel or group of parcels which specifically identify the area impacted by the 100 year flood using the FEMA determined flood elevation.
5. Water Resource Protection Areas (WRPAs). The areas consisting of Wellhead Water Resource Protection Areas, Recharge Water Resource Protection Areas, and Floodplain Resource Protection Areas.

#### C. Boundary Determination for WRPA

1. All subdivision and land development plans depicting development or land disturbance submitted for Town review shall be evaluated for the existence of WRPAs by scaling for distances shown on the “Town of Odessa Water Resource Protection Area Map” located in Town Hall. Floodplain Water Resource Protection Areas are located as specified in Section 110.0, subsection B-4.
2. Where interpretation is needed concerning the exact location of Wellhead Water Resource Protection Areas and Excellent Recharge Water Resource Protection Areas, the Mayor and Council shall make the necessary and final interpretation, with the assistance of the technical advisory committee established in subsection D of this article. Any person contesting the location of these areas shall have the burden of establishing that such land does not lie within the areas as defined herein. To contest a location of a WRPA, the following information shall be submitted:
  - a) A detailed topographic survey of the location in question prepared by a registered professional land surveyor;

- b) Site specific geological and hydrogeological analyses shall be performed by a Delaware registered professional geologist and shall be based upon thorough site investigation and testing.
- c) Evidence derived from a pumping test(s) or a sufficient number of test borings, test pits, observation wells, and groundwater elevations to clearly demonstrate that the area in question does or does not meet the definition of a WRPA as defined in this article.

#### D. Technical Advisory Committee

A committee shall be established to assist in the interpretation of and/or revision of boundaries established in this article, the review of development plans within WRPAs, and other related matters that may arise in the administration of this article. The committee's membership shall be appointed by Mayor and Council and shall consist of at least one (1) registered professional engineer with a background in hydrogeology and one (1) registered professional geologist. Mayor and Council may appoint additional members to the committee that are qualified to provide technical advice on hydrogeology. The committee shall be advisory only; all final determinations shall be made by Mayor and Council.

#### E. Regulations Governing Development in Wellhead Water Resource Protection Areas

1. In areas within three hundred (300) feet of the well, impervious surfaces shall be limited to the buildings and access associated with the well and distribution and treatment facilities and their maintenance.
2. The natural runoff flowing into wellhead areas shall be allowed and all new stormwater runoff shall be diverted around the wellhead protection areas whenever possible.
3. The stormwater system's discharge to Wellhead Water Resource Protection Areas shall be by sheet through grassland or by discharge from a stormwater management facility having a wetland or aquatic bench. Stormwater runoff from all parking areas shall be directed to a stormwater management facility before it is discharged into a wellhead WRPA.
4. The minimum lot area for a proposed public water supply well and related facility drawing from a confined aquifer shall be 1 acre and the minimum lot area for a public well drawing from an unconfined aquifer shall be 2 acres.
5. Underground storage tanks containing petroleum or any hazardous substances listed in 40 CFR 116 in an aggregate quantity equal to or greater than a reportable quantity as defined in 40 CFR 117 shall not be permitted in a designated wellhead area.

F. Regulations Governing Development in Recharge Water Resource Protection Areas

1. Underground storage tanks containing petroleum or any hazardous substances listed in 40 CFR 116 in an aggregate quantity equal to or greater than a reportable quantity as defined in 40 CFR 117 shall not be permitted in Recharge Water Resource Protection Areas.

2. At least twenty-five percent (25%) of the gross area designated within a subject parcel as a Recharge Water Resource Protection Area shall be maintained as Open Space. Permitted uses within Open Space in a Recharge Water Resource Protection Area shall include Open Areas as defined in this Ordinance and other Open Space uses as permitted in the zoning district containing the subject parcel. Open Spaces uses in a Water Resource Protection Area should contain no impervious surfaces.

a) Optional Environmental Impact Assessment Report. New development in WRPAs may proceed with less than twenty-five percent (25%) Open Space within excellent recharge water resource protection areas, but must comply with all Open Space requirements of the Zoning district which the area resides in, provided the applicant submits an environmental assessment recommending a climatic water budget and facilities to augment recharge. The environmental assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis. Commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey relatively pure rooftop runoff for infiltration to ground water. If a proposed use requires an environmental impact assessment report, the applicant shall have such a report certified by a professional engineer, geologist or other certified professional in the applicable environmental discipline. The report shall contain the following criteria, given in order of preference:

- 1) Site character. The report shall identify all potential on-site sensitive environmental concerns.
- 2) Avoidance. Alternative sites or routes shall be identified that would not damage the resource or result in less resource damage. Reasons shall be provided explaining why using these sites is impossible or infeasible versus that proposed.
- 3) Minimization. The applicant shall demonstrate that the plan minimizes the impact of the activity, route, or use on the resource. The applicant shall also demonstrate that the areas impacted shall be lowest quality and result in the least damage to the resource.
- 4) Mitigation. A mitigation plan shall be submitted indicating mitigation activities. On-site replacement is the most acceptable form of mitigation. However, mitigation can include restoration and enhancement after the use is abandoned. Mitigation by replacement on another site shall be at a ratio of two to one (2:1). Mitigation may also include enhancement; this ratio shall be four to one (4:1). Final approval by Mayor and Council is required for all other forms of mitigation not consistent with this section.

G. Regulations Governing Development in Floodplain Water Resource Protection Areas

1. No new development shall occur within Floodplain Water Resource Protection Areas.

SECTION 121. DRAINAGE, STORMWATER MANAGEMENT, AND EROSION AND SEDIMENT CONTROL

A. Drainage

1. Natural Drainage System Utilized to Maximum Extent Feasible
  - a) To the extent practicable, all development shall conform to the natural contours of the land. Natural and preexisting man-made drainage ways shall remain undisturbed.
  - b) To the extent practicable, lot boundaries shall be made to coincide with the natural and preexisting man-made drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such drainage ways.
2. Proper Drainage Required
  - a) All developments, lots, and properties shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the site.
  - b) Surface water may not be channeled or directed into a sanitary sewer.
  - c) Whenever practicable, the drainage system of a development shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets.

B. Permanent Stormwater Management

1. Developments shall be constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such development.
  - a) No development or property may be constructed or maintained in a way that such development or property unreasonably hampers the natural flow of water from higher adjacent properties across the development or property thereby unreasonably causing substantial damage to the higher adjacent property.
  - b) No development or property may be constructed or maintained so that surface waters from such development or property are unreasonably collected and channeled onto lower adjacent properties at such locations at such volumes as to cause substantial damage to the lower properties.
2. Design and Construction
  - a) Stormwater drainage systems shall be separate from and independent of sanitary sewage systems.
  - b) Stormwater drainage systems shall be designed and constructed in accordance with standards and specifications of the New Castle Conservation District.

### 3. Off-Site Runoff

- a) Where subdivision and/or development results in increased quantities of stormwater runoff leaving the area to be developed, the developer shall demonstrate that off-site drainage improvements are adequate to handle the additional water and that all new or expanded swales, pipes or other off-site improvements are located in dedicated easements which permit efficient access for maintenance purposes.
- b) Standards for assessing the adequacy of off-site drainage systems shall be those established by the New Castle Conservation District or by the State Department of Transportation where it has jurisdiction.

### C. Erosion & Sediment Control

1. Development plans shall include adequate provision for controlling temporary flooding, soil erosion, and sediment during construction and after construction is completed.
2. Design and Construction
  - a) All development or land disturbing activity is subject to the requirements of the Delaware Erosion and Sediment Control Handbook.
  - b) No top soil shall be removed from a site or used as spoil. Top soil, moved during the course of construction, shall be redistributed so as to provide at least 6 inches of cover to all areas of the subdivision and shall be stabilized by seeding and planting.

## SECTION 122. RIPARIAN BUFFER AREAS (RBA)

### A. Definitions

1. Caliper Dimension. The outside diameter measurement of the trunk of a tree measured at a vertical distance of three (3) feet above grade.
2. Riparian Buffer Area (RBA). A natural area reserved along a lake, river, stream, waterway, or wetland area to preserve the bank, reduce sedimentation, filter nutrients out of stormwater, provide wildlife habitat, preserve existing natural corridors, and protect cultural and archeological resources. Riparian Buffer Areas should consist primarily of native, non-invasive natural vegetation.
3. Top of Bank. A point above the mean water surface of a watercourse that defines the maximum depth of channel flow in the watercourse. It is either determined visually or computed as an elevation using the peak rate of runoff from a two (2) year storm event.
4. Tree, Canopy. A tree whose leaves would occupy the intermediate level of a forest in a natural ecological situation. These trees are also called shade trees, and typically

5. Tree, Understory. A tree whose leaves would occupy the intermediate level of a forest in a natural ecological situation. These trees are also called ornamental trees.

B. Minimum Riparian Buffer Area Requirement

1. RBAs are to be established and permanently protected within all new development via dedication to the town, deed restriction or conservation easement.
2. The RBA shall extend a minimum of 100 feet past each top of bank of a lake, river, stream or waterway and/or 50 feet beyond any wetland, whichever is greater.
3. The RBA shall contain no lot lines, structures or infrastructure such as stormwater maintenance ponds. However, as appropriate, the riparian buffer may contain walking trails.
4. The RBA shall be demarked with permanent markers to ensure against encroachment.
5. The Planning Commission may consider and approve minor adjustments to these minimum standards and dimensions to accommodate for necessary road crossings, topography, existing structures and similar conditions on a parcel. Such adjustments shall not impact more than 10% of the riparian buffer area required under the minimum standards in this ordinance.

C. Establishment and Maintenance

1. Where native vegetation is not present, the RBA must be reforested with native species according to Table 12-1.
2. No vegetation shall be removed from the RBA, except for removal of invasive and exotic species and hazardous trees.
3. A transition zone, consisting of scrub/shrub vegetation or low maintenance warm or cool season grass is encouraged between forested RBA and lot lines.
4. A maintenance plan for the RBA shall be established at the time of subdivision and a responsible party designated to implement the plan.

**Table 12-1. RBA Reforestation Requirements per Acre**

<b>Number of Plants</b>	<b>Types of Plants</b>
1	4" caliper canopy tree
4	3" caliper canopy trees
10	1-1/2" caliper canopy trees

6	1-1/2" caliper understory trees
50	6" whip canopy trees
30	Bare root or 1 gallon pots

ARTICLE XIII  
PLANNING COMMISSION

SECTION 130. ESTABLISHMENT AND MEMBERSHIP

In accordance with 22 Del. Code 701, 7, "Planning Commissions", there is established the Odessa Planning Commission hereinafter referred to as the Commission:

- (a) The Commission shall be composed of five (5) members who are registered voters of the town and shall be appointed by the Mayor and confirmed by Council;
- (a) Initial terms of appointments shall be:
  1. Two (2) members shall be appointed to serve a three (3) year term;
  2. Two (2) members shall be appointed to serve a two (2) year term;
  3. One (1) member shall be appointed to serve a one (1) year term.

Thereafter, as each original term of membership expires, each newly appointed and confirmed member shall serve a three (3) year term.

- (c) The Commission shall elect annually a chairperson and a secretary from among it's own members.
- (d) The Commission may employ experts, clerical and other assistants as the Commission requires. If such assistance is to be employed at Town expense, the Commission must first secure approval of Mayor and Council for the amount and nature of the expense.
- (e) Members of the Commission shall serve without compensation.
- (f) In accordance with 22 Del. Code 701, any member of the Commission may be removed for cause after a public hearing by the Mayor with the approval of Council.

- (g) A vacancy occurring otherwise than by expiration of term shall be filled by appointment of a member to serve the unexpired term by the Mayor with approval by Council.

#### SECTION 131. DUTIES AND AUTHORITY

The Commission shall act in a strictly advisory capacity. The Council reserves the power to review and reverse decisions made by the Commission. Variances and special exceptions must be approved by the Board of Adjustments.

Duties to be performed by the Commission shall include:

- (a) Recommendation of boundaries for zoning districts.
- (b) Recommendation of changes in the Zoning Ordinance as needed or when requested by Town Council.
- (c) Assisting the Zoning Administrator in interpreting the Zoning Ordinance when requested.
- (d) Advising Town Council or Board of Adjustment, when requested, on any zoning matters including recommendations regarding amendments to the Zoning Ordinance and applications for variances.
- (e) The Commission shall evaluate and recommend modification of the Comprehensive Development Plan; such change shall be by majority vote of the Commission and shall be a matter of public record;
- (f) The Commission shall have full power and authority to make such investigations, maps and reports of the resources, possibilities and needs of the Town as it deems desirable; upon completion of such reports, the Commission shall submit same to Council with its recommendations;
- (g) The Commission shall report annually to Mayor and Council regarding its activities during the preceding year;
- (h) The Commission shall have responsibility for preparation and/or amendment of an official town map in accordance with 22 Del. C, 7 704-709.

ARTICLE XIV  
BOARD OF ADJUSTMENT

SECTION 140. MEMBERSHIP, TERMS, REMOVALS, VACANCIES

The Board of Adjustment of Odessa shall consist of an advisor who is the town solicitor (without vote), plus one council member and four other members who are registered voters of the town, who shall be appointed by the Mayor and approved by the Council.

Initial terms of appointments shall be as follows:

One (1) member for three (3) years;

One (1) member for two (2) years;

Two (2) members for one (1) year.

Thereafter, as each original term of membership expires, each newly appointed and confirmed member shall serve a three (3) year term.

Other members' appointments shall run concurrently with their terms as members of their organizations. The Board of Adjustment shall elect annually a chairperson from it's own members. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

SECTION 141. PROCEDURE

The Board of Adjustment shall adopt rules necessary to the conduct of it's affairs, and in keeping with the provisions of this ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Adjustment shall keep minutes of it's proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of it's examinations and other official actions, all of which shall be a public record and be immediately filed in the town office.

SECTION 142. APPEALS, HEARINGS AND NOTICE

An appeal from the decision of the Zoning Administrator or Historic Commission may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within forty-five (45) days by filing with the Zoning Administrator and/or the Historic Commission and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator or Historic Commission shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

SECTION 143. STAY OF PROCEEDINGS

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court having jurisdiction on application, on notice to the Zoning Administrator and on due cause shown.

SECTION 144. EXPLANATION OF DECISIONS

The Board shall inform all parties in writing of it's decision and reasons therefore for all appeals, applications or other matters made to or brought before the Board.

SECTION 145. POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT

The Board of Adjustment shall have the following powers and duties:

- 145.1 Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Historic Commission in the enforcement of this ordinance.

145.2 Special Exception. To hear and decide only such special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; and grant special exceptions with such additional conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the intent of this ordinance. A special exception shall not be granted by the Board of Adjustment unless and until:

- (a) A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested.
- (b) A public hearing shall be held. Notice of such a hearing shall be posted on the property for which the special exception is sought, at the Town Hall, and in one other public place at least fifteen (15) days prior to the public hearing. The owner of the property for which a special exception is sought or his agency shall be notified by mail.

#### SECTION 146. VARIANCES

To authorize, upon appeal in specific cases, such variances from the terms of this ordinance, which where owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in practical difficulty or unnecessary hardship. Any variance granted shall not be contrary to the public interest as set forth in this ordinance, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The existence of a non-conforming use of neighboring land, buildings, or structures in the same district or of a permitted or non-conforming use in other districts shall not constitute a reason for the requested variance.

The fact that property may be utilized more profitably will not be considered adequate to justify the Board in granting a variance. Variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

- 146.1 There are no extraordinary and exceptional conditions pertaining to the particular piece of property in question because of it's size, shape, or topography that are not applicable to other lands or structures in the same district.

- 146.2 Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- 146.3 A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- 146.4 The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- 146.5 The special circumstances are not the result of the actions of the applicant.
- 146.6 The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure.
- 146.7 The variance is not a request to permit use of land, building, or structure which is not permitted by right or by Special Exception in the district involved.

#### SECTION 147. USE VARIANCE

No variance may be granted which would change the use of land or a building in any district.

- 147.1 Procedures for Requesting a Variance. Requests for a variance shall be filed in writing with the Zoning Administrator. Within ten (10) days after receiving a request for a variance, the Zoning Administrator shall send the request with any relevant comments, to the Chairman of the Board of Adjustment.
- 147.2 Public Hearing for Variance Request. A public hearing shall be held and notice given for date, time and place of the hearing.

SECTION 148. APPEALS FROM THE BOARD OF ADJUSTMENT DECISIONS

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board or bureau of the Town of Odessa may, within thirty (30) days after the filing of the decision in the office of the Board of Adjustment, but not thereafter, present to the Superior Court a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by appeal in accordance with 22 Delaware Code, Section 328.

ARTICLE XV  
HISTORIC COMMISSION

SECTION 150. HISTORIC COMMISSION

SECTION 150.1 Composition of Historic Commission

The Historic Commission shall be appointed by the Mayor with the approval of Council and consist of five (5) members, at least two of which shall be residents of the town:

- ~~a. an architect, holding membership in the AIA and having interest and knowledge of preservation techniques and philosophy; (See ord. 2011-02, passed 9/6/11)~~
- ~~b. two persons having a professional interest and knowledge of preservation techniques and philosophy; (See ord. 2011-02, passed 9/6/11)~~
- ~~c. two residents having municipal voting privileges; (See ord. 2011-02, passed 9/6/11)~~
- a. Three professional persons having interest and knowledge of preservation techniques and philosophy (recommend that 1 professional be an architect). (See ord. 2011-02, passed 9/6/11)
- b. Two residents having municipal voting privileges and have interest in and knowledge of historic preservation. (See ord. 2011-02, passed 9/6/11)

SECTION 150.2 Terms of Office

The terms of office for members appointed to fill (a) and (c) above shall be for three (3) years. The terms of the others (b) shall be for two (2) years.

SECTION 150.3 Removal of Commission Members

Members may, after a public hearing, be removed from the commission by the Mayor, with approval of Council, for inefficiency, neglect, or malfeasance in office.

SECTION 150.4 Commission Vacancies

A vacancy occurring otherwise than by expiration of term shall be filled by the appointment of a member to serve the unexpired term by the Mayor and approval by Council.

SECTION 150.5 Conflict of Interest

In cases where there is a conflict of interest, the member deemed to have a conflict shall

not be allowed to vote on the issue in conflict.

SECTION 151 Proceedings of the Historic Commission

The Historic Commission shall organize itself, make and adopt written rules necessary in the conduct of its' affairs, and in keeping with provisions of this ordinance. All meetings shall be open to the public. The Commission shall keep minutes of all its' meetings and publish them comparable to Council practice. The Commission shall give public notice of all its' hearings and meetings as required by State Law, naming the subject and parties involved in each meeting.

SECTION 151.1 Powers and Duties of the Historic Commission

- A. For matters concerning the physical appearance for properties in the area recognized as the "Odessa Historic District" by the National Register of Historic Places, or a vacant lot anywhere in Town, the powers of the Commission shall be limited to the exterior of the building as can be seen from the street in front of or adjacent to the side of the building.
- B. For matters concerning business uses in the Restricted Downtown Commercial District, the Non-profit Estate District, and the Planned Neighborhood Development District, the Commission shall review the proposed use for its appropriateness within the District.

SECTION 151.2 Function of the Historic Commission

The Commission shall review and act upon requests for a review certificate by Council and residents as outlined below:

- A. For matters concerning the physical appearance of any property in Town, the Commission shall use drawings, elevations, and other information pertaining to the outer appearance of the building to evaluate the requested certificates for compliance with the guidelines that apply to the district in which the property lies.
- B. For matters concerning business uses within the Districts listed in Section 151.1.B., the Commission shall consider the proposed use along with other information pertaining to the request to evaluate the requested certificates.

SECTION 151.3 Historic Review, Recommendation and Report

A Historic review, recommendation and report are required for:

- (a) All exterior changes and repairs to a building that can be seen from the street, as described in Section 151.1;
- (b) Demolition of all or part(s) of buildings, accessory buildings, porches and all other architectural features;
- (c) Additions to buildings;
- (d) Added architectural features (such as porches, windows, lighting, doors, shutters and signage);
- (e) New structures;
- (f) Changes to surface treatments (siding, stucco, brick facing);
- (g) The determination of appropriateness of any business in the Odessa Historic District, Restricted Downtown Commercial District, the Non-profit Estate District, and the Planned Neighborhood Development Districts.

SECTION 151.4 Criteria

- A. Positive Historic review recommendation shall be granted provided the proposed renovation/addition/structure meets the following criteria:
  - (a) The change is appropriate for the district
  - (b) The change is in keeping with the character of the neighborhood in which it rests.
  - (c) Is in compliance with the Historic District Design Guidelines (for properties in the area recognized as the "Odessa Historic District" by the National Register of Historic Places).
  - (d) Is in compliance with the Architectural Guidelines (for new construction on a vacant lot anywhere in town).
- B. Positive Historic review recommendation shall be granted provided the proposed business use meets the following criteria:
  - (a) The proposed use is listed as a permitted use for the district in which it lies.
  - (b) The proposed use contributes positively to the development of the overall character and needs of the community.
  - (c) The proposed use does not threaten the health, safety and welfare of the

town, its residents, workers or visitors.

- (d) The proposed use will not be detrimental to the use, character, peaceful enjoyment, economic value or development of surrounding properties.
- (e) Will have no detrimental effect on vehicular or pedestrian traffic.
- (f) Will not cause objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

#### SECTION 151.5 Exceptions

In emergency situations in which there is a threat to persons or property, an owner may make those repairs required to offset the threat by obtaining an emergency permit from the Mayor or Zoning Administrator. The following items are conditions of the emergency permit:

- A. Such repairs shall be executed in such a way that the existing structure is affected as minimally as possible, and may be restored to the pre-emergency condition.
- B. Within five days of the issuance of an emergency permit, an application must be made to the Historic Commission for permanent repair or replacement.
- C. The Historic Commission may hold an emergency meeting, as soon as possible, in order to review the formal proposed repairs/renovations and provide its recommendation.

#### SECTION 151.6 Resubmission

In the event a permit does not include sufficient information to act upon, the permit may be returned to the applicant for additional information.

#### SECTION 151.7 Approval by the Historic Commission

Upon approval of an application, the Historic Commission shall transmit a report to the Zoning Administrator stating the conditions upon which approval was granted, and cause a historic review certificate to be issued. Final action shall be taken within sixty (60) days after filing of the request; if not, the application shall be deemed to be approved, except when mutual agreement between the Commission and the applicant has been made for an extension of the time limit.

#### SECTION 151.8 Disapproval by the Board

Upon disapproval of any application, the Historic Commission shall forward a written statement containing the reasons therefore to the applicant. (Recommendations of changes necessary to make approval of an application possible, if approval indeed is possible also, shall

be forwarded to the applicant.) Notice of such disapproval and a copy of the written statement shall be transmitted to the Zoning Administrator.

ARTICLE XVI  
AMENDMENTS

SECTION 160. AUTHORITY

The regulations, restrictions, boundaries, and provisions of this ordinance may from time to time be amended, supplemented, changed, modified, or repealed by the Mayor and Council of the Town of Odessa.

SECTION 161. PROCEDURE FOR AMENDMENTS

The zoning ordinance shall only be amended by an ordinance initiated by a petition for zoning amendment. A petition for a zoning amendment may be initiated by the Mayor, Council, the Planning Commission, any department or agency of the Town of Odessa, or by the owner of any property.

Any petition for an amendment to the zoning ordinance shall be filed with the Town Secretary at least ten (10) days prior to the date on which it is to be introduced to the Mayor and Council. The Town Secretary shall be responsible for presenting the application to the Mayor and Council. The cost of the required legal notice shall be paid by the applicant seeking the zoning amendment. Each application shall be signed, be in duplicate, and shall contain at least the following information:

- 161.1 The applicant's name in full; applicant's address; address or description of the property to be rezoned.
- 161.2 Applicant's interest in the property and the type of rezoning requested.
- 161.3 If the proposed change would require a change in the zoning map, an accurate diagram of the property proposed for rezoning showing the following is required:
  - (a) All property lines with dimensions including north arrow.
  - (b) Adjoining streets with rights-of-way and paving widths.
  - (c) The location of all structures; the use of all land.
  - (d) The zoning classification of all abutting zoning districts.

- (e) Comprehensive site plan if the application is for commercial, industrial, or multi-family development.

161.4 A statement regarding the changing conditions, if any, in the area or in the town generally, that made the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.

Unless initiated by Odessa's Planning Commission, all proposed amendments to the zoning ordinance shall be submitted to the Planning Commission for review and recommendation. The Planning Commission shall have forty-five (45) days within which to submit its report. If the Planning Commission fails to submit a report within the above period, it shall be deemed to have approved the proposed amendment.

#### SECTION 162. WITHDRAWAL OF PETITION AND PROTESTS AGAINST CHANGES

Any petition for an amendment to this ordinance may be withdrawn at any time at the discretion of the person initiating such a request, upon written notice to the Town Secretary.

When the Mayor and Council shall have denied any application for the change of any zoning district, it shall not thereafter accept any other application for the same change of zoning district affecting the same property, or any portion thereof, until the expiration of six (6) months from the date of such previous denial.

A protest against any amendment, supplement, change, modification, or repeal of zoning may be raised by a written petition of protest filed by a citizen of the Town of Odessa. The petition of protest must set out the amendment, supplement, change, modification, or repeal of zoning to which the protest is raised and reasons therefore. The petition of protest must be filed if such a protest against an amendment, supplement, change, modification or repeal signed by the owners of twenty percent (20%) or more of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Mayor and Council.

**SECTION 163. PUBLIC HEARINGS**

No such amendment, supplement, change, modification or repeal shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notices of such a hearing shall be posted at the Odessa Town Office and other areas throughout the town, and published in a newspaper for two (2) successive calendar weeks in a newspaper of general circulation in the Town of Odessa; said notice to be published the first time not less than fifteen (15) days prior to the date established for such public hearing.

ARTICLE XVII  
SCHEDULE OF FEES

SECTION 170. AUTHORITY

The Mayor and Council shall establish a schedule of fees, charges, and expenses, and a collection procedure for building permits, certificates of use, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the Town Office, and may be altered or amended only by resolution by the Mayor and Council.

No permit, certificate, special exception, or variance shall be issued unless or until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment unless or until preliminary charges and fees have been paid in full.

ARTICLE XVIII  
VIOLATIONS AND PENALTIES

SECTION 180. PENALTIES FOR VIOLATIONS

Violation of the provisions of this ordinance, or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements, shall upon conviction thereof be liable to a fine not exceeding \$100.00 for each and every offense as is authorized by the Charter of the Town of Odessa; and in default in the payment thereof, shall be imprisoned for a period not exceeding 30 days as is authorized by the Charter of the Town of Odessa. When such person shall have been notified by the Zoning Administrator, or by service of a warrant in a prosecution, or in any other way, that he is committing such violation of this ordinance, each day that he shall continue shall constitute a separate offense punishable herein provided.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violations may each be charged of a separate offense and suffer the penalties herein provided.

The Zoning Administrator or other authority authorized by the Charter of the Town of

Odessa may institute appropriate action to prevent or abate the violation of this ordinance or of any ordinance or other regulation made under authority conferred thereby.

#### 180.1 Signs

In case any sign shall be installed, erected or constructed in violation of any of the terms of this ordinance, the Zoning Administrator shall notify the owner or lessee thereof by written notice by registered mail to alter such sign so as to comply with this ordinance and to secure the necessary permit therefore, or to remove the sign. If such an order is not complied with within ten (10) days, the Zoning Administrator may issue a notice of violation or cause to have issued or issue a citation under Section 140 of this Article or remove such sign at the expense of the owner or lessee thereof. In the event that a sign or wall bulletin should become insecure, or in danger of falling, the person maintaining the same shall, upon written notice from the Zoning Administrator, forthwith, in case of immediate danger, and in any case, within ten (10) days, secure the same in a manner approved by the Zoning Administrator. Failure to comply may result in the Zoning Administrator issuing or cause to issue a notice of violation or remove the sign at owner's expense.

ARTICLE XIX  
LEGAL STATUS PROVISIONS

SECTION 190. CONFLICT WITH OTHER REGULATIONS

Whenever the regulations of this ordinance require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statute or local ordinance or regulations, the regulations and requirements of this ordinance shall govern.

Whenever the provisions of any other statute, local ordinance or regulation require more restrictive standards than are required by this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

SECTION 191. REPEAL OF CONFLICTING ORDINANCES

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Nothing in this ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending, and/or which may heretofore have been instituted or prosecuted.

SECTION 192. SEPARABILITY

Should any section or provision of this ordinance or application of a provision under this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than that part so declared to be unconstitutional or invalid.

SECTION 193. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after adoption by the Mayor and Council of the Town of Odessa this the 7<sup>th</sup> day of April, 2008.

**(ZONING) ORDINANCE 97-1**

1<sup>st</sup> Reading September 4, 1997  
By Councilperson Ruth Laws

Motion for Acceptance October 6, 1997  
By Councilperson Ruth Laws

Vote: Unanimous

Accepted: October 6, 1997

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James F. Grant  
Mayor

ATTESTED: \_\_\_\_\_  
Janet L. Keskemety  
Secretary