

Introduced by: Ms. Durham
Date of introduction: August 25, 2020

ORDINANCE NO. 20-097

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
REGARDING ARTICLE 2 (“ESTABLISHMENT OF ZONING DISTRICTS”),
ARTICLE 4 (“DISTRICT INTENSITY AND BULK STANDARDS”), ARTICLE 18
 (“BYWAY PROTECTION OVERLAY DISTRICT”), ARTICLE 30 (“COUNTY
COUNCIL AND ADMINISTRATIVE BODIES”), ARTICLE 31 (“PROCEDURES AND
ADMINISTRATION”), ARTICLE 33 (“DEFINITIONS”), APPENDIX 1
 (“APPLICATION AND PLAN REQUIREMENTS”), APPENDIX 2 (“FEES”),
APPENDIX 6 (“MISCELLANEOUS ITEMS”) AND TO ESTABLISH APPENDIX 8
 (“BYWAY OVERLAY AREA RESOURCES”)**

WHEREAS, New Castle County (“County”) has long been a partner in various scenic byway efforts intended to recognize, plan for, protect, and enhance the intrinsic scenic, natural, historic, archeological, recreational, and cultural qualities that are integral components of byway character as established by the National Scenic Byways and Delaware Byways Programs; and

WHEREAS, the County has undertaken significant studies of certain roadways to secure County, State, and Federal recognition and designation of these roadways as scenic byways; and

WHEREAS, the County desires to provide a level of County regulatory protection to byways designated in the Brandywine and Red Clay Valleys, as well as a portion of the Harriet Tubman Underground Railroad Byway (north of Wilmington); and

WHEREAS, the County has engaged in a comprehensive review of the Unified Development Code (“UDC”) to identify opportunities for standards that make it possible for the County to protect the character of these byway through new standards and code revisions consistent with UDC standards for technical compliance and internal consistency; and

WHEREAS, the County has undertaken a robust public review process with a working group of stakeholders including County residents, developers and homebuilders, engineers, landscape architects, and a professional planning consultant, which included four stakeholder meetings and three public workshops; and

WHEREAS, based on a comprehensive review of the UDC by the professional staff in the County’s Department of Land Use, a professional planning consultant, and comments by stakeholders, applicants and local experts in land use issues, the County has created new zoning district standards that direct building placement, visible building height, landscaping and buffering in a manner that is sensitive to a scenic viewshed, while protecting property owner rights; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 2 (“Establishment of Zoning Districts”), Division 40.02.200 (“Statement of purpose and intent of districts”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.02.240. Special districts.

A. *Intensive uses.* Two (2) special districts ...

E. *Byway protection overlay districts (BPODs).* The BPOD establishes zoning regulations for an identified area based upon a set of guidelines, procedures, and permitted uses to preserve the intrinsic qualities along byways of the County. The requirements and regulations of the BPOD are in addition to the regulations of the base zoning district as identified in Table 40.02.248. Where conflicts arise between the requirements of the base zoning district and the BPOD, the BPOD requirements will apply.

...

Sec. 40.02.248. Byway protection overlay district (BPOD).

The Byway Protection Overlay District (BPOD) is intended to preserve, protect, and enhance the scenic resources of designated scenic byways within the County. This district places additional standards on uses to protect identified intrinsic qualities, scenic features, historic resources, and other characteristics of designated byways; reduce visual intrusions that are not compatible with such qualities and features; assure that new development, redevelopment or infill is compatible with the scenic resources and intrinsic qualities of the district; and encourage conservation design techniques and strategies that position buildings outside scenic viewsheds or minimize impacts to the viewsheds. Criteria for inclusion in the BPOD are set forth in Article 18.

<i>Table 40.02.248</i>	
Byway Protection Overlay District	
As applied to designated parcels	
<u><i>BPOD Zoning District</i></u>	<u><i>Reference Standards for Base Zoning Districts</i></u>
<u>BPOD-SE</u>	<u>SE (Suburban Estate)</u>
<u>BPOD-SR</u>	<u>SR (Suburban Reserve)</u>
<u>BPOD-ST</u>	<u>ST (Suburban Transition)</u>
<u>BPOD-S</u>	<u>S (Suburban)</u>
<u>BPOD-NC (5,6,5,10,15,21,40,2a,sd,ga,ap,th,mm)</u>	<u>NC (Neighborhood Conservation; 5,6,5,10,15,21,40,2a,sd,ga,ap,th,mm)</u>
<u>BPOD-CN</u>	<u>CN (Commercial Neighborhood)</u>
<u>BPOD-CR</u>	<u>CR (Commercial Regional)</u>

<u>Table 40.02.248</u> <u>Byway Protection Overlay District</u> <u>As applied to designated parcels</u>	
<u>BPOD-ON</u>	<u>ON (Office Neighborhood)</u>
<u>BPOD-OR</u>	<u>OR (Office Regional)</u>
<u>BPOD-BP</u>	<u>BP (Business Park)</u>
<u>BPOD-I</u>	<u>I (Industrial)</u>
<u>BPOD-HI</u>	<u>HI (Heavy Industrial)</u>
<u>BPOD-EX</u>	<u>EX (Extractive)</u>
<u>BPOD-TN</u>	<u>TN (Traditional Neighborhood)</u>

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 4 (“District Intensity and Bulk Standards”), Division 40.04.200 (“Landscaping”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.04.240. Scenic corridors.

Major subdivision and land development plans shall be required to provide a scenic corridor in accordance with this section. Scenic corridors shall be established along all arterial and collector roads in the Suburban Reserve (SR) District, in the Suburban (S) District land south of the C&D canal, and along roads designated as scenic in the Brandywine, Red Clay, and White Clay Scenic Rivers and Highway Studies, except where modified by Article 18. Scenic corridors shall be comprised of open space and shall meet the following criteria.

Scenic Corridor Standards	
Buffer Width	Landscape/Requirements
50'	Existing forest to be preserved
100' to 150'	6 plant units per 100 linear feet of street frontage
151' to 200'	5 plant units per 100 linear feet of street frontage
201' to 400'	3 plant units per 100 linear feet of street frontage
400' or greater	1 plant unit per 100 linear feet of street frontage
600' or greater	minimum 30 acres preserved for agricultural use (no landscaping required)

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 18 (“Reserved”), is hereby amended by adding the material that is underscored, as set forth below:

ARTICLE 18. [RESERVED] BYWAY PROTECTION OVERLAY DISTRICT (BPOD)

Division 40.18.000. Purpose.

This Article provides the principles, standards, general provisions and review criteria of the Byway Protection Overlay District (BPOD). The protection, preservation, and enhancement of designated scenic resources is critical to the County, and promotes and enhances the health, quality of life, prosperity and welfare of all citizens of the County. The BPOD is intended to preserve,

protect and enhance the intrinsic qualities of designated scenic byways within the County. The purpose of the BPOD is to:

- A. Ensure maximum preservation and enhancement of the district's outstanding and unique intrinsic qualities.
- B. Minimize grading, tree removal, signage and changes to the existing character of designated scenic byways, including the natural topography of areas along and adjoining such roads.
- C. Reduce visual intrusions into the district that are not compatible with the intrinsic qualities of the district.
- D. Ensure that the design and placement of buildings and other improvements preserve, complement, or enhance views from scenic byways.
- E. Ensure that new development, redevelopment, infill development and other changes within the district are compatible with the intrinsic qualities of the district, and consistent with the goals, objectives and management strategies of the Corridor Management Plans or other County studies related to scenic byways as set forth in Appendix 8, or the Design Guidelines established for the district's byways.
- F. Achieve scenic viewshed protection along county, state and federally designated scenic byways through the establishment of sub-districts that reasonably regulate building placement, visible building height, landscaping and buffering.
- G. Require the use of conservation design techniques, as defined in this Chapter, to minimize impact to the scenic viewshed or position buildings outside the scenic viewshed of any federal, state, or county designated scenic byway, while respecting the property rights of those who own property in a BPOD.
- H. Encourage design flexibility that permits modifications in mass, height, landscaping and open space configuration.
- I. Provide a review function by the Byway Protection Advisory Commission (BPAC) when variations to district standards are sought or when BPAC review can inform other Administrative Boards or Agents.

Division 40.18.100. Applicability.

A. The boundaries of the BPOD encompass the land area within the County identified on the Zoning Map.

B. All land use applications within the BPOD are subject to the requirements of this Article. Any application the Department determines to be in conflict with BPOD requirements will be subject to review by the BPAC for recommendation.

C. The requirements of the BPOD are in addition to the regulations of the base zoning district. Where conflicts arise between the requirements of the base zoning district and the BPOD, the BPOD requirements will apply.

D. Existing structures are exempt unless modifications to such structures are otherwise regulated in this Article. Nonconforming situations are subject to, and protected by, Article 8.

E. Structures and additions under 480 sq. ft. are exempt from the regulations of this Article.

Division 40.18.200. BPOD designation.

A. Prior to adoption of a BPOD by County Council, an area or road shall first be designated as a Scenic Byway by the Federal Government, State of Delaware, or County.

B. A separate ordinance is required to designate and establish regulations for an BPOD. A BPOD designation shall identify the boundaries and demonstrate consistency with the Comprehensive Development Plan.

C. All rezonings for BPOD designation shall be consistent with the objectives of applicable Corridor Management Plans, Design Guidelines Manuals, and other County studies related to scenic byways for the specific byway in which the application is located.

Division 40.18.300. Scenic byways, corridor management plans and design guidelines.

Sec. 40.18.310 Corridor management plans and other studies.

A. Designated scenic byways must be identified in the County's Comprehensive Plan and have an approved Corridor Management Plan (CMP) or other study prepared by the County. The CMP, or other study, shall include a detailed inventory of the character-defining features of the byway and specific recommendations regarding protection, preservation and enhancement of the scenic resources of the byway. See Appendix 8 for a list of studies applicable to this Article.

B. Applicants must consult the CMP or other study prepared by the County for the designated scenic byway, as referenced in Appendix 8, for design, regulatory and management guidance, in addition to the other requirements of this Article.

Sec. 40.18.320 Design guidelines.

A. Design guidelines provide general instructions to applicants regarding design approaches, alternative solutions, appropriate materials and elements that are compatible with the district, and other information to assist an applicant in achieving the goals and objectives of this Article.

B. The Department, with the advice of the BPAC, may adopt design guidelines for each designated scenic byway within the County, which will be adopted by County Council through resolution. Design guidelines shall be a reference document, providing guidance in implementing

this Article. Where design guidelines currently do not exist, Corridor Management Plans or other County Scenic Byway Planning Studies included in Appendix 8 will be referenced for design guidance.

Division 40.18.400. Development standards.

Sec. 40.18.410. General standards.

A. *Parking Standards.* To preserve and enhance the scenic viewshed and further environmental benefit:

1. Required parking may be reduced for non-residential uses within this district upon approval of a special study pursuant to Section 40.03.524.
2. The maximum number of parking spaces may not exceed 115% of the minimum parking requirements in this Chapter.
3. These parking standards do not apply for temporary or special events that have received approval under Section 40.03.330 of this Chapter.

B. *Grading.* Land disturbance must be performed in a manner that preserves any scenic viewshed or identified intrinsic quality.

Sec. 40.18.420. BPOD for the Brandywine Valley National Scenic Byway area, Red Clay Valley Scenic Byway area, and Harriet Tubman Underground Railroad Byway area (north of the City of Wilmington).

A. *Viewshed Composition.* The BPOD is composed of four (4) sub-districts as follows:

1. Sub-District 1 (SD-1): Those portions of the BPOD that are within the right-of-way as specified by Delaware Department of Transportation's (DelDOT) Functional Classification Map and are thereby under the jurisdiction of DelDOT.
2. Sub-District 2 (SD-2): Those portions of the BPOD that are within two-hundred (200) feet of either side of the right-of-way or property line, whichever is greater, of a designated scenic road (SD-1) and which are also within established scenic viewsheds or contain vista points as depicted on viewshed overlay maps contained in Appendix 8.
 - a. SD-2 are the protective areas immediately adjacent to the scenic road rights-of-way that require the highest degree of viewshed protection.
 - b. Unless otherwise permitted by this Article, all areas within SD-2 (with the exception of visual intrusions) must be protected, conserved and enhanced. Within SD-2, the visible building façade of a building's largest facade must not directly face the scenic viewshed along the scenic road, unless the viewshed plan

demonstrates that the proposed design and screening will reduce impact to the scenic byway.

- c. Visual intrusions into this sub-district must be in compliance with Table 40.18.420.A. Impacts must be minimized and mitigated in accordance with the findings of a Viewshed Plan prepared pursuant to Appendix 1. Where the Department determines that the proposed mitigation is equal to or exceeds the objectives for landscaping and buffering in Section 40.18.420, or where mitigation negates the need for such landscaping or buffering, the Department may waive some or all of the landscaping requirements of this Article.
 - d. The Department may modify the street yard setback established in this Article to be consistent with the goals and objectives of the applicable Corridor Management Plan, Design Guidelines Manuals or other County study listed in Appendix 8 to provide the least intrusion possible.
 - e. Existing structures in SD-2 shall be exempt from the standards contained in Table 40.18.420.A. Additions to or modification of such structures must mitigate impacts to viewsheds consistent with the objectives of this district.
3. Sub-District 3 (SD-3): Those portions of the BPOD that are between two-hundred (200) feet and one-thousand (1,000) feet of the right-of-way or property line, whichever is greater (SD-1), and which are also within established scenic viewsheds or contain vista points.
- a. Development permitted within this sub-district must maximize conservation design strategies and minimize impacts and visual intrusions into the viewshed, pursuant to Table 40.18.420.A.
 - b. Visual intrusions into this sub-district must be in compliance with Table 40.18.420.A. Impacts must be minimized and mitigated in accordance with the findings of a Viewshed Plan prepared pursuant to Appendix 1. The Department or applicant may request additional review by the BPAC. Where the Department determines that the proposed mitigation is equal to or exceeds the objectives for landscaping and buffering contained in in Section 40.18.420. below, or where such mitigation negates the need for such landscaping or buffering, the Department shall have the option to may waive some or all of the landscaping requirements of this Article.
 - c. Visual intrusions set back from the scenic roadway(s) within this sub-district are eligible for reduced landscaping, buffering, screening or other mitigation requirements, subject to Department approval. For example, utility structures located inside the BPOD will require less mitigation if placed towards the outer perimeter (beyond 600 feet) of this sub-district.
4. Other Areas subject to the Overlay District: Those other portions of the BPOD that are not within Scenic Districts 1, 2 or 3. In addition, areas of SD-2 and SD-3 that are not within

established scenic viewsheds or do not contain vista points are considered Other Areas. Regulation in these areas is limited to Visible Building Height restrictions contained in Table 40.18.420.A. All buildings within six hundred (600) feet of the right-of-way or property line (whichever is further from the center line) are subject to the requirements of this Table.

B. *Site Access.* Points of access must be carefully considered and minimized through the use of common driveway easements and new public roadways that avoid multiple individual driveways along scenic byways.

C. *Byway Protection Overlay District Standards Table.* The sub-district development standards contained in Table 40.18.420.A regulate street yard setbacks, visible building mass, landscaping and grading/earthwork for development within the BPOD. The purpose of these standards is to reduce the overall impact of development on the scenic resources and intrinsic qualities of the byways and, where feasible, complement or enhance views from scenic byways.

1. Street yard and paving setbacks reduce direct impacts to roadway visibility, provide for proper ingress and egress, reduce infringements on adjoining properties, provide room to buffer objectionable uses or soften the impact of such uses, and serve as filtration areas for storm water run-off.
 - a. Street yard and paving setbacks established by this Article may be reduced by the Department. Modification must mitigate impacts to viewsheds consistent with the objectives of this district. The Department will not grant modifications beyond the standards required for the base zone set forth in Article 4.
 - b. The applicant must document the mitigated impact on a viewshed plan, depicting the extent to which the modification reduces paving or shifts paving or buildings out of the viewshed.
2. Visible building mass standards reduce the overall impact of a building mass (height and width) on the scenic byway through selective screening or alternative building placement and architectural design. Visible Building Mass is determined by reference to architectural renderings and a Viewshed Plan.
3. Buildings located outside the scenic viewshed or scenic vistas are exempt from Visible Building Height requirements except where the Visible Building Height will affect the scenic viewshed or scenic vista. Under such circumstances, only the building height within 600 ft. of the right of way must be mitigated when the height would otherwise infringe upon the scenic viewshed or scenic vista and as viewed from a scenic byway. For example, for Other Areas that are within 100 to 150 feet from the right of way, only 20% of allowable building height may be visible.

Table 40.18.420.A

BPOD Standards for the Brandywine Valley National Scenic Byway Area, Red Clay Valley Scenic Byway Area, and Harriet Tubman Underground Railroad Byway Area (north of City of Wilmington).

	<u>Sub-District 2 (SD-2)</u> <u>(0-200 ft.)</u>	<u>Sub-District 3 (SD-3)</u> <u>(>200 ft. to 1,000 ft.)</u>	<u>Other Areas subject</u> <u>to the Overlay District</u>
<u>Street Yard & Paving Setback</u> <u>from ROW¹</u>			
<u>S, SE, SR</u>	<u>100-foot minimum</u>		<u>Per base zoning district</u>
<u>All other Districts</u>	<u>40-foot minimum</u>		<u>Per base zoning district</u>
<u>Visible Building Height² (as</u> <u>measured from ROW¹)</u>			
<u>Less than or equal to 100 ft.</u>	<u>20 percent</u>		<u>Not permitted</u>
<u>>100 – 150 ft.,</u>	<u>20 percent</u>		<u>20 percent</u>
<u>>150 – 200 ft.,</u>	<u>40 percent</u>		<u>40 percent</u>
<u>>200 – 400 ft.,</u>		<u>60 percent</u>	<u>60 percent</u>
<u>>400 – 600 ft.,</u>		<u>80 percent</u>	<u>80 percent</u>
<u>>600 ft.</u>		<u>100 percent</u>	<u>100 percent</u>
¹ Total right-of-way as established by DelDOT.			
² See the example in Appendix 8.			

D. Minimal Screening. The BPOD is intended to preserve scenic viewshed corridors with little or no screening or buffering.

1. Where proposed buildings or visual intrusions are sited in the viewshed area, applicants must use a combination of tools to minimize impact to the scenic viewshed or vista. Such mitigation may include changing rooflines, elevations, grading, reorienting the building mass and shifting building bulk from the side yards to the front or rear yards within the permitted building envelope.
2. Applicants must screen structures and visual intrusions by achieving an opacity standard pursuant to Table 40.18.420.B without the use of walls, fences, berms or hedges. Plant unit types 3 and 4, in accordance with Article 23, are preferred to provide adequate screening in a leaf-off condition.

Table 40.18.420.B

BPOD Screening Standards for the Brandywine Valley National Scenic Byway Area, Red Clay Valley Scenic Byway Area, and Harriet Tubman Underground Railroad Byway Area (north of City of Wilmington).

	<u>Sub-District 2 (SD-2)</u> <u>(0-200 ft.)</u>	<u>Sub-District 3 (SD-3)</u> <u>(>200 ft. to 1,000 ft.)</u>	<u>Other Areas subject</u> <u>to the Overlay District</u>
<u>Opacity² (as measured from</u> <u>ROW¹)</u>			

Table 40.18.420.B

BPOD Screening Standards for the Brandywine Valley National Scenic Byway Area, Red Clay Valley Scenic Byway Area, and Harriet Tubman Underground Railroad Byway Area (north of City of Wilmington).

Less than or equal to 100 ft.	0.5		Not permitted
>100 – 150 ft.,	0.5		0.2
>150 – 200 ft.,	0.4		0.1
>200 – 400 ft.,		0.2	
>400 – 600 ft.,		0.1	
>600 ft.			

¹ Total right-of-way as established by DelDOT.

² See the example in Appendix 8.

Figure 40.18.420. Examples of Viewshed Preservation Techniques

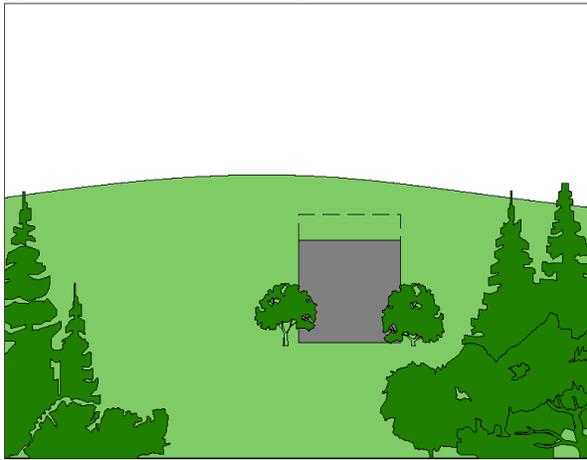


Figure 1 - Building height is reduced and building screened to minimize impact on the viewshed

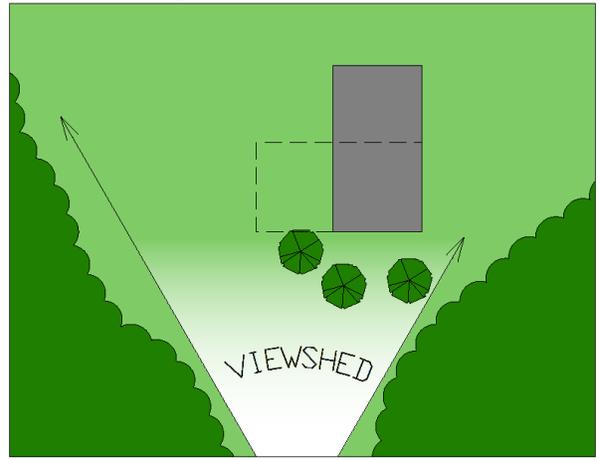


Figure 2 - Building in viewshed is reoriented and screened to reduce impact on viewshed

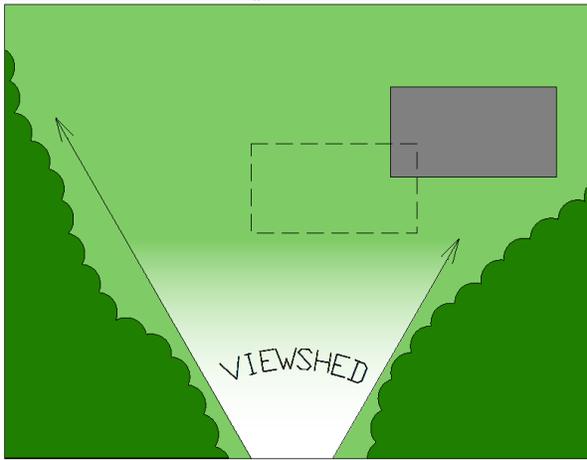


Figure 3 - Building is relocated to be partly outside the viewshed

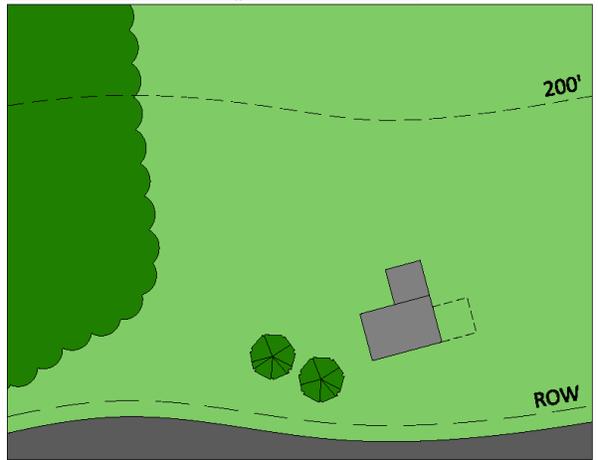


Figure 4 - Addition to existing structure is placed to the rear of the building rather than directly in the viewshed

Division 40.18.500. Byway Protection Advisory Commission (BPAC).

Neither the Board of Adjustment nor the Planning Board may consider any application for a variance from this Article until the BPAC has had an opportunity to review the application and has made a written recommendation to the respective board. Any application for a variance from this Article shall be transmitted to the BPAC, which shall have forty-five (45) days from the filing of the application to review and issue its recommendation unless another period is agreed to by the applicant and Department.

Division 40.18.600. Signs within the BPOD.

A. *Prohibited Signs.* The following signs are prohibited in the BPOD:

1. *Electronic Variable Message Signs (EVMS),*
2. *Marquee signs,*
3. *Projecting signs,*
4. *Roof signs,*
5. *Window signs,*
6. *Wall signs that project above a roofline, and*
7. *Off-premises advertising.*

C. *Size.* All signs requiring a permit in an BPOD will be limited to fifty (50) percent of the sign area permitted in the base zoning district.

D. *Height.* All signs requiring a permit in the BPOD will be limited in height to fifteen (15) feet, or one-half the height of the base zoning district, whichever is less.

E. *Lighting.* If lit, the light source must be exterior to the sign using shielded, low wattage, and diffuse white light. Back-lit and internally illuminated signs are prohibited.

F. *Signs that are made nonconforming by the adoption of this Article or any amendment to this Article are regulated by Article 8.*

Division 40.18.700. Scenic easements.

Intrinsic qualities identified in a Corridor Management Plan or other study identified in Appendix 8 must be protected with scenic easements that preserve the resources, pursuant to the following:

- A. Identified intrinsic qualities must be protected by an easement consistent with the purposes of this Article, the terms of which shall be approved by the County, with the County being a party to the easement.
- B. Historic resource (preservation) or conservation easements may be used to secure protection of intrinsic qualities, under such terms and conditions as approved by the County, provided the County is also a party to the easement. Parcels with historic resources may also be placed under H zoning as an alternative protection mechanism or in addition to a preservation easement. Pre-existing easements may be suitable for protection, provided the terms of which are acceptable to the County.
- C. Portions of lots that are protected by newly-created scenic easements will be credited as part of any required open space if needed to satisfy open space acreage requirements.

Division 40.18.800. Modifications.

Certain general requirements of the UDC may be modified in order to further the goals and objectives of scenic viewshed protection, subject to review and approval by the Department. The Department may allow a modification where it furthers the goals and objectives of this Article. The applicant must clearly articulate how modifications will further these goals and objectives. The Department will review any modification in accordance with a Viewshed Plan prepared pursuant to Appendix 1. Specifically, the requirements of the following sections may be modified in the BPOD:

A. ARTICLE 4 – DISTRICT INTENSITY AND BULK STANDARDS

- 1. Division 40.04.100 – District performance standards.
 - a. Sec. 40.04.110 – District and bulk standards.
 - i. Sec. 40.04.110.A. *Minimum open space ratio.* Natural resources already protected under NCC code, and others protected by conservation easements, may be credited toward minimum open space requirements.
 - ii. Sec. 40.04.110.D. *Minimum lot area.* Bufferyards and scenic corridors may occur on lots and be credited toward minimum lot area requirements.
- 2. Division 40.04.200. – Landscaping. Landscaping modifications are permitted where a revised planting scheme replicates the natural landscape and native plant species of the byway area and enhances scenic viewsheds. Landscape design should be in keeping with the context of the surrounding area, be that a natural landscape or formal garden, and be consistent with a byway’s design guidelines. The introduction of invasive species is not allowed, and the use of species non-native to Delaware is discouraged.

C. ARTICLE 20 – SUBDIVISION AND LAND DEVELOPMENT DESIGN PRINCIPLES

1. Division 40.20.200. Subdivision Layout.

a. Sec. 40.20.210. – Blocks. Modifications to block design shall be permitted if conservation design is utilized and scenic viewshed protection is achieved.

b. Sec. 40.20.220. – Lots. Modifications to lot design shall be permitted if conservation design is utilized and scenic viewshed protection is achieved. Applicants are encouraged to use conservation design techniques to site buildings outside the scenic viewshed and are permitted to use flexibility in configuring the size of lots and the placement of buildings on lots. Smaller lots, zero lot-lines and other flexible siting techniques are permissible provided the applicant demonstrates a logical configuration and contextually sensitive approach to lot sizes and setbacks.

D. ARTICLE 21 – IMPROVEMENT AND DESIGN STANDARDS

1. Division 40.22.500. – Other utilities.

Sec. 40.22.510. – Electric and communications utilities. Undergrounding of facilities is required for all land development in the BPOD except where it is demonstrated by the developer or the utility company that the underground installation required in this Section is not feasible. Where approved by the BPAC above-ground screening will be required so that it achieves the same or similar outcome to undergrounding facilities.

4. Division 40.22.600. – Parking and loading.

Sec.40.22.610.B. Waiver of parking lot design standards. Waivers are permitted in the BPOD in order to achieve district goals, preserve scenic viewsheds and to create parking facilities that are contextual and compatible with the scenic beauty in the district.

E. ARTICLE 23 – LANDSCAPING, TREES, AND EROSION. Modifications to this Chapter are permitted in order to achieve forest, landscaping and plantings that mimic the natural features and native plant species of the district and enhance scenic viewsheds. Bufferyard and byway corridor standards may be decreased where it can be shown that reductions in planting or buffering advance scenic viewshed protection and enhancement.

F. ARTICLE 26 – MODIFICATION OF STANDARDS

1. Division 40.26.200. Zoning modification. Minor modifications to construction envelopes, bufferyards, street yard setbacks and road frontage may be permitted by the Department, with BPOD approval, without the necessity of seeking a variance if scenic viewshed protection is maximized.

Division 40.18.900. Review procedures.

A. Applications for development within the BPOD must demonstrate compliance with the purpose, goals and objectives of this Article, and protect, conserve and enhance the district's resources identified in the Corridor Management Plan or other County study as set forth in Appendix 8.

B. In addition to the review requirements of Article 31, required applications within the BPOD must submit a Viewshed Plan, consistent with the requirements of Appendix 1.

C. If the Department determines an application does not protect or enhance the scenic viewshed, the applicant must include a 'Scenic' Environmental Impact Assessment Report (S-EIAR) with the application pursuant to Sec. 40.10.701. The S-EIAR must be certified by a landscape architect registered in the State of Delaware.

1. The S-EIAR must demonstrate how the application:
 - a. Avoids and minimizes visual intrusions to the scenic viewshed;
 - b. Sufficiently mitigates all visual intrusions with an appropriate level of compensating features as approved by the BPAC.
2. Any additions or mitigated visual intrusions within the scenic viewshed shall be context-sensitive and compatible with the character of the byway.

Division 40.18.1000. Definitions.

This Section provides definitions for terms in this Article that are technical in nature or that otherwise may not reflect a common usage of the term. All definitions appearing in Article 33 shall be applicable to this Article, except to the extent of inconsistency with any definitions appearing in this Section.

Byway. A public road having special scenic, historic, recreational, cultural, archeological, or natural qualities that has been recognized as such through official action.

Bulk. The qualitative readily visible composition and perceived shape of a structure's volume. Bulk is affected by variations in height, setbacks and stepbacks of upper stories.

Corridor. The road or highway right-of-way and the adjacent area that is visible from and extending along the road or highway. The distance the corridor extends from the road or highway could vary with the different intrinsic qualities as evaluated by the Department.

Corridor Management Plan (CMP). A document that specifies the, practices and strategies to maintain the archaeological, cultural, historic, natural, recreational, and scenic qualities that support a scenic byway's designation. A CMP is developed with community involvement, provides for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and other economic development, and provides an effective management strategy to

balance these concerns while providing for the users' enjoyment of the byway. The document should be generally consistent with the State of Delaware standards for such plans.

Façade. One exterior side of a building.

Features, character-defining. Elements and features within a scenic area or byway that, if lost or altered as a result of a transportation improvement or other action, would change the byway's character and value.

Features, contributing. Structures or other physical features, such as a historic building or designated public park, that can be easily identified and are often inventoried and categorized by agencies, organizations, or byway sponsors.

Features, visual. Observed elements or features in the landscape (without the aid of an instrument) that contribute to or detract from the character and nature of a scenic area and its intrinsic qualities.

Intrinsic Quality. Scenic, natural, historic, cultural, recreational, or archeological features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.

Mass(ing). The arrangement of a building's bulk, including relative openness and solidity.

Scale. Building elements and details as they proportionally relate to each other and to humans.

Scenic Byway. A public road having special scenic, historic, recreational, cultural, archeological, or natural qualities that has been recognized as such through official action.

Scenic Easement. A portion of a lot or parcel that is covered by an easement, running in favor of the County, state, or a nonprofit agency, providing protection or enhancement of the intrinsic qualities of the land. Permanent conservation easements, preservation (historic resource) easements, and agricultural preservation easements may be utilized to meet all or a portion of a required scenic easement.

Scenic Resource.

A. A general term of reference for viewsheds and intrinsic qualities. of a road or corridor that provide scenic beauty or character.

B. A scenic resource has a high degree of natural beauty and historic or cultural value, characterized by one or more of the following:

1. Size and dimension of landscape,
2. Characteristics of roadway (runs with topography, winds through landscape, changes with terrain, etc.),

3. Scenic accents or vistas along roads.
4. Historic characteristics of the landscape, of roads or along roads (historic bridges, houses, barns, mills, springhouses, stone walls, or other structures),
5. Natural resources or ecosystems in close proximity to, or visible from, roads (watercourses, wetlands, rock outcrops or other geologic formations, woodlands, wildlife habitat, etc.), and
6. Parkland or recreation along or adjacent to roadways.

Scenic Viewshed. The land area generally adjacent to and visible from a scenic byway or road. A scenic viewshed is identified using a motorist's line of sight, as measured from multiple observation points along the roadway, with a point of view approximately six (6) feet above the roadway pavement. The scenic viewshed includes all land area visible from the observation points in a winter, or leaf-off, condition.

Scenic Vista. A broad or expansive view of a landscape, the scenic boundary of which is primarily defined by forest cover or other buffering features within the public viewshed.

Visible Building Facade. The exterior side of a building that is visible from the scenic road. The visible building facade is identified using a motorist's line of sight, as measured from multiple observation points along the roadway, with a point of view located approximately six (6) feet above the roadway pavement. The visible building facade includes the building area visible from the observation points in a winter, or leaf-off, condition.

Visible Building Height. The percentage of the base zoning district's maximum building height permitted to be visible from the scenic road. The visible building height is identified using a motorist's line of sight, as measured from multiple observation points along the roadway, with a point of view located approximately six (6) feet above the roadway pavement. The visible building height includes all building area visible from the observation points in a winter, or leaf-off, condition. This measurement will not include the structures identified as exceptions to the height limits in Article 4.

Vista Points. Locations or vantage points along scenic byways and roadways from which scenic vistas are viewed. Vista points are further depicted in Corridor Management Plans and other County studies related to scenic byways as set forth in Appendix 8.

Visual Accents. Elements or improvements that are compatible with the character-defining features of a scenic byway and protect and/or enhance a byway's intrinsic qualities. Visual accents include visually significant landscapes, structures, and landforms within the public viewshed (i.e., visible from scenic roadways) that serve as indicators of natural, cultural, or historic processes, contain multiple resources that together form visually significant groupings, or are clear examples of superior features or characteristics. Visual accents can be natural or man-made.

Visual Intrusions. Elements or improvements that are not compatible with the character and nature of a scenic area and do not add to the protection or enhancement of a scenic area’s character-defining features or intrinsic qualities. Visual intrusions may be identified in applicable studies or may be comprised of new improvements and structures that affect the byway (e.g. transmission lines, new structures proposed in a scenic viewshed, opaque fences).

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.100 (“Administration”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Table 40.30.110 PROCEDURAL RESPONSIBILITIES								
<i>Type of Action</i>	<i>County Council</i>	<i>Administrative Boards</i>			<i>Administrative Agents</i>			
		<i>Planning Board</i>	<i>Board of Adjustment</i>	<i>Historic Review Board</i>	<i>Department of Land Use</i>	<i>PLUS</i>	<i>RPA - Technical Advisory Committee</i>	<i>Byway Protection Advisory Cmsn.</i>
General Reviews (see Division 40.31.400 for standards)								
Zoning text amendment	HD	HR			R			
Zoning map amendment	HD	HR			R	R		
<u>BPOD zoning map amendment</u>	<u>HD</u>	<u>HR</u>			<u>R</u>	<u>R</u>		<u>R</u>
Historic overlay zoning district map amendment	HD	HR		R	R	<u>R</u>		
Special use			HD		R			
Environmental impact assessment [and] report					D		R**	
<u>Scenic environmental impact assessment report</u>					<u>D</u>			<u>R****</u>
Demolition by neglect				HD	R			
Historic permit	A			HD	R			<u>R****</u>
Zoning variance			HD		R, D*		R**	<u>R****</u>
Use variance	C		HD		R		R**	<u>R****</u>

<p align="center">Table 40.30.110 PROCEDURAL RESPONSIBILITIES</p>								
Subdivision variance	A	HD			R		R**	<u>R****</u>
Deed restriction or easement change	HD	HR			R			<u>R****</u>
Design Reviews (see Division 40.31.700 for standards)								
Minor subdivision review		A			D			<u>R****</u>
Major subdivision review	C	H/A			D	R		<u>R****</u>
Administrative (see Division 40.31.200 for standards & Article 40.03 for limited uses)								
Limited use			A		D			<u>R****</u>
Zoning permit			A		D			<u>R****</u>
Other Reviews and Appeals (see Division 40.31.400 & 40.31.600 for standards and Article 40.11 for LOS waiver standards)								
Interpretation: Subdivision		A			D			
Interpretation: Zoning			A		D			
Beneficial use	A		HD		R		R**	<u>R****</u>
Level of service waiver	HD				R			
Zoning map correction***	C				R			
Appeal: zoning			HD		R			
Appeal: subdivision		HD			R			
<p>* Pursuant to 9 Del. C. § 1313 (f) (Jurisdiction of the Board of Adjustment), the Department may administratively grant a dimensional variance for existing conditions that do not exceed one (1) foot of the required dimension restrictions without the application being considered by the Board of Adjustment.</p> <p>** Only required if relief is sought from any regulation pertaining to an Article 10 protected resource issue.</p> <p>*** See Section 40.02.110 (for zoning map corrections) for standards and time limitation.</p> <p>**** Only required if relief is sought from any regulation or restriction pertaining to an Article 18 protected resource issue.</p>								

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.400 (“Administrative agents”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.30.460. Byway Protection Advisory Commission (BPAC).

A. The purposes and duties of the BPAC are to:

1. Provide technical support and recommendations to the Department concerning the technical definition, criteria, and standards contained in Article 18 or as otherwise referenced in the Code.
2. Provide technical support and recommendations to the Department, Board of Adjustment and Planning Board for any application concerning an Article 18 standard.
3. Advise the Department when the BPAC determines that Article 18, or any regulations, interpretations or policies promulgated pursuant to Article 18, should be amended.
4. Assist the Department as requested.
5. Upon the request of the Department, BPAC shall provide recommendations regarding application of the standards to rezoning, subdivision, and land development submissions relative to any issue involving Article 18 or a protected resource so identified in the Code that contributes to the intrinsic qualities of a BPOD.
6. Provide technical support and recommendations to the Department concerning the transfer of development rights that may impact BPOD areas.

B. The BPAC shall be comprised of the following members who shall each have voting privileges:

1. Designated Scenic Byway Representatives (3), one from each County-recognized Byway covered within the BPOD and nominated by the Byway Advisory Board
2. Cultural Resource Professional or Preservation Architect
3. Economic Development or Tourism Group Representative (e.g. Chamber of Commerce, Committee of 100, Greater Wilmington Convention and Visitors Bureau)
4. Environmental Advocacy Group Representative
5. Registered Landscape Architect or Licensed Forester or Arborist
6. Registered Civil or Environmental Engineer or Consulting Engineers' Council Member
7. Civic Association or Civic Umbrella Organization Representative
8. Two (2) Members from the General Public

C. The members shall be appointed by County Council with the advice and consent of the County Executive for four (4) year terms. The members may be reappointed, and each member shall serve until a successor is appointed. The chairman shall be designated by the County Executive.

D. The Commission shall adopt bylaws and rules in accordance with Article 30 and comply with the following:

1. All meetings shall be open to the public.
2. A majority of the Commission’s members shall constitute a quorum necessary to take action and transact business. All actions shall require a simple majority of the quorum.
3. In the event that any member is no longer a resident of the County; is convicted of a felony or an offense involving moral turpitude; violates rules of the board; or fails to attend any three (3) consecutive, regularly scheduled meetings except where such absence is deemed by the chairman to be due to illness, incapacity, or a family crises; that member shall forfeit his/her membership on the commission. The BPAC chairman shall forward a letter to the County Council stating that a vacancy exists on the board and the name of the member who held the forfeited position.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.110. Rezoning/major and minor plan review.

<i>Stage/Steps</i>	<i>Rezoning</i>	<i>Major Plan</i>	<i>Minor Plan</i>
Pre-application Sketch Plan Review			
Submission	Y	Optional, Y for major residential plans	Optional, <u>Y for BPOD</u>
Conference	Y	Optional, Y for major residential plans	Optional, <u>Y for BPOD</u>
Community Meeting	Optional	Optional	Optional

Sec. 40.31.112. Pre-application sketch plan review/conference.

A. *Applicability.* A pre-application sketch plan review conference is required for all rezoning requests, ~~and~~ major residential subdivisions, and all major and minor plans located within a BPOD. An applicant may request a pre-application sketch plan review conference for all other major or minor plans at any time. The pre-application sketch plan review conference may be waived by the Department when it is determined, after a review of the submission, that no departmental concerns exist.

B. *Submission requirements ...*

C. *Pre-application sketch plan review conference.* The purpose of the pre-application sketch plan review conference is to familiarize the applicant with principles of conservation design, departmental concerns and with the applicable provisions of this Chapter, as well as to permit the Department to assess the proposal and to identify any service problems or concerns in conjunction with the applicant's objectives. If additional studies and/or information are required for the proposed project, those studies and/or information must be provided to the Department prior to the exploratory plan approval

The Department shall use the pre-application sketch plan review conference to also identify conservation, open space and development areas. Site design and management practices shall also be examined to determine how minimal disturbance can be achieved while maintaining a high standard of community design. Discussion points will include:

1. Greenway linkages ...
2. Interconnectivity issues ...
3. Open space linkages ...
4. Article 10 resource ...
5. On-site, of regional scope ...
6. Soil associations ...
7. Farmland concentrations ...
8. Existence and location of historic ...
9. Scenic viewsheds ~~[or], corridors and scenic~~ vistas into or out of the site (including visual accents and vista points pursuant to [County Scenic River and Highway Studies]; Federal Government, State of Delaware, or County Scenic Byway designation);
10. Natural drainage patterns ...
11. Development options ...

D. *Community outreach ...*

E. *Subsequent submission.* For all rezonings, ~~[and]~~ major residential subdivisions, and major and minor plans located within the viewshed of an BPOD, the applicant shall have six (6) months from the date of the pre-application sketch plan review conference to submit an exploratory plan. The Department may require a new pre-application sketch plan review conference if an exploratory plan submission is not made within six (6) months.

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.300 (“Provisions of general applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.340. Notice of public hearings.

Except as required below, the Department shall be responsible for ensuring notice of a public hearing through newspapers, posted notice in public buildings as determined by the Department, and mailed notice for meetings of the Board of Adjustment, Planning Board, Resource Protection Area Technical Advisory Board, Byway Protection Advisory Commission, Historic Review Board and Design Review Advisory Committees.

A. *Text amendments and County-initiated comprehensive rezonings. Notice ...*

B. *Other applications.*

1. *Notice in newspaper.* The Department shall advertise all other applications (e.g., deed restriction changes; applicant rezonings; subdivision, area, use, and floodplain variance requests; beneficial use appeals; appeals of Departmental decisions; major land development plans; Historic Review Board applications; RPATAC applications [~~Resource Protection Area Technical Advisory Committee~~]; BPAC applications; Design Review Advisory Committee applications); and any other Planning Board and Board of Adjustment applications in the Saturday issue of the News Journal published in Delaware. Notice shall appear at least fourteen (14) calendar days prior to the public hearing date and shall contain the following information:

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.100 (“Word usage”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.33.130. Abbreviations.

The following abbreviations are used in this Chapter:

AASHTO	American Association ...
SFHA	Special Flood ...
<u>BPOD</u>	<u>Byway Protection Overlay District</u>
<u>BPAC</u>	<u>Byway Protection Advisory Commission</u>

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.33.300. General definitions.

This Division contains the definition of words used in this Chapter ...

Abandonment. That the use, structure ...

Sanitary sewer system. A central ...

Zoning Regulations. Articles 1—1[5]8, 30—33.

Section 10. New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Appendix 1 (“Application and Plan Requirements”), is hereby amended by adding the material that is underscored, as set forth below.

APPENDIX 1: APPLICATION AND PLAN REQUIREMENTS

1. Land development application submission requirements. . .

3. Other reports and applications.

A. *Floodplain permit application . . .*

O. *Viewshed Plan.* A Viewshed Plan is required where designated in Article 18. The plans must bear the seal of a registered landscape architect licensed in the State of Delaware. The viewshed plan must clearly indicate how the identified scenic resources are to be preserved and explain any efforts used to minimize disturbance to, and enhance the characteristics of, the scenic byway. Information must be submitted in the form of a written narrative with accompanying photographs, maps, and graphic representations in CAD format. The Viewshed Plan must include the following minimum information:

1. *Documentation*

a. *A written narrative of any scenic resources, visual features, scenic viewsheds or vista points including those identified in the respective Corridor Management Plan (CMP) or other County study related to scenic byways and included viewshed overlay maps referenced in Appendix 8. Any observable additions to, or deletions from, the scenic landscape must be explained in the plan narrative.*

b. *Photographic or video documentation of the subject property as viewed from the identified scenic byway. Documentation must be submitted for the entire length of frontage of the subject property and shall record multiple observable angles from each location. Photographs or video shall specifically identify the existence, where applicable, of the scenic viewsheds, vistas, and contributing features contained in Appendix 8. Photographs or videos shall be taken from the observed height of a vehicle*

window, approximately six (6) feet above ground level. Photographs shall be taken at no less than 20 foot intervals and video at a speed not to exceed the speed limit of the roadway in question.

2. If the Department determines the application will affect a scenic resource, the applicant must submit graphic or enhanced photographic representation of proposed buildings or other improvements, if any, in the setting of the scenic resources identified in the narrative above. The documentation must describe the impact on other character-defining resources, such as trees and shrubs, historic resources, or other resources that currently contribute to the property's overall scenic quality.

Section 11. New Castle County Code Chapter 40 (Unified Development Code or "UDC"), Appendix 2 ("Fees"), is hereby amended by adding the material that is underscored, as set forth below.

APPENDIX 2: FEES

1. Land Development and ...

4. Other

A. Zoning Permit...

Y. Viewshed Plan review - \$500.00

Z. Applications within BPOD areas requiring BPAC review - \$750.00

Section 12. New Castle County Code Chapter 40 (Unified Development Code or "UDC"), Appendix 8 ("Byway Overlay Area Resources"), is hereby established by adding the material that is underscored as set forth below.

APPENDIX 8: BYWAY OVERLAY AREA RESOURCES

A. This Appendix establishes general design principles and expectations for development along the designated scenic byways of New Castle County. It establishes guidelines for building design, site design, and amenities. These guidelines serve as an advisory supplement to the Unified Development Code (UDC) and do not supersede or negate those regulations. These guidelines offer a more detailed explanation of design when applying the UDC.

1. Goals and Objectives. This district is intended for the protection, preservation, and enhancement of the character-defining features, unique qualities and scenic resources of the scenic byway; including scenic, natural, cultural, historic, archeological, and recreational features. The primary protection and enhancement objective is scenic viewshed protection.

2. Conservation Design. To the greatest extent feasible, applications should use conservation design strategies, consistent with the goals and objectives encompassed in the term conservation design as defined in Division 40.33.300.
3. Context Sensitive Solutions (CSS). All applications should use context sensitive solutions, materials, and methods compatible with the character of the community's existing culture and landscape (e.g., the visible features of an area, its characteristics, historic improvements, landforms, and how they integrate with natural or man-made features). CSS is an approach to integrating land use and transportation decision-making and design that takes into consideration the communities and lands through which streets, roads, and highways pass ("the context"). A developer using CSS plans and designs streets, roads and highways so that they are more sensitive to local communities and lands. CSS recognizes that transportation projects can be an asset for communities and enhance the environment. CSS is a collaborative, interdisciplinary approach that leads to preserving and enhancing scenic, historic, community, and environmental resources. Characteristics of CSS include:
 - a. the project is in harmony with the community, and it preserves the environmental, scenic, aesthetic, historic, and natural resource values of the area;
 - b. the project is perceived as adding lasting value to the community as a whole; and
 - c. the project involves efficient and effective use of resources (time and budget) of all involved stakeholders.
4. Building Scale, Bulk and Mass. The scale and proportions of new construction on properties within this district should be compatible with buildings on adjacent properties.
 - a. Buildings should be designed to use scaling of architecture and material elements to reduce the appearance of the height and length of building facades through the use of changes in wall plane, height, and materials. The appearance of mass can be minimized through the use of design elements such as porches, porticos, bay windows, dormer windows, and pergolas.
 - b. Reduction of Visual Bulk: the effective visual bulk of development should be reduced so that structures do not create negative impacts on adjacent properties or "stand out" prominently when seen from a distance. The form, mass, profile, and architectural features of the buildings should be designed to be compatible with the scale and character of the visible community.
 - c. General Massing: Buildings should be divided into smaller parts, including detached buildings, to reduce effective visual bulk. This is especially important in visible hillside settings.
5. Enhanced Resource Protection. In addition to the protections and other standards of Article 10, applications within an BPOD should also preserve and protect the following natural, cultural,

and other character-defining features: mature forests, stone walls, old lanes, hedge rows, fence rows, historic vegetative plantings, and visible cultural remnants of past human settlement. These features should be integrated into the overall plan for the property.

6. *Minimal Impact to Byway.* Applications should avoid visual intrusions into the scenic viewshed. If visual intrusions are unavoidable, the nature, intensity, and quantity of the intrusion should be minimized. All unavoidable visual intrusions should be mitigated with an appropriate level of compensating features. Visual intrusions will be limited by the Scenic District Standards contained in Table 40.18.420.A.

7. *Open Space Design and Relationship to Scenic Byways.* Designs should support open space systems that protect scenic vistas, contributing visual features, resources areas, and other character-defining features. Designs should be configured to provide a contiguous and viable greenway and recreational system within the district.

8. *Curbs.* Curbs may not be required in BPODs, subject to plan review of specific applications. In general, curbs should be avoided, where possible, consistent with a naturalized open-section road capable of supporting disconnected runoff managed in above-ground stormwater best management practices. If roadway or other areas are intended to be dedicated to the State (DelDOT), DelDOT may determine curb need, pending proposed entrance, internal roadway intensity, and stormwater management requirements. Alternative materials may be used, subject to acceptability of design by County or State agencies.

9. *Sidewalks.* Sidewalks may be required in the BPOD, subject to plan review of specific applications. If sidewalks are required for public safety or accessibility purposes, trails and shared-use pathways, in lieu of sidewalks are also permitted. Alternative materials may be used, subject to acceptability of design by County or State agencies. Alignments may vary to adjust to existing topographic and natural features. Other forms of egress easements or agreements are encouraged to ensure public accessibility or connectivity to existing paths and trails. Sidewalks and shared-use pathways intended for public use or within the public right of way shall be compliant with applicable accessibility standards.

B. *Resources.* Below is list of maps and studies to be used while planning for development in the BPOD:

1. *Identified Intrinsic Qualities Map*
2. *Reference to Viewshed GIS Maps*
3. *Subdistricts Map*
4. *Illustrative Graphics related to Table 40.18.420.A.*
5. *Land section graphic showing subdistricts*

C. *Studies.* Applicable to Article 18: *Byway Protection Overlay District*

1. Brandywine Valley Scenic River and Highway Study (prepared by New Castle County)
2. Brandywine Valley National Scenic Byway Corridor Management Plan (prepared to fulfill the requirements of the Delaware State and National Scenic Byway Programs)
3. Red Clay Valley Scenic River and Highway Study (prepared by New Castle County)
4. Red Clay Valley Scenic Byway Corridor Management Plan (prepared to fulfill the requirements of the Delaware State Byway Program)
5. Harriet Tubman Underground Railroad Byway Corridor Management Plan (prepared to fulfill the requirements of the Delaware State and National Scenic Byway Programs)(2012)
6. Open Space and Historic Resources Preservation of the White Clay Valley (in conjunction with the Delaware State Greenspace Program)
7. Southern New Castle County Scenic River and Highway Study (prepared by New Castle County)
8. Delaware's Bayshore Byway Corridor Management Plan (prepared to fulfill the requirements of the Delaware State and National Scenic Byway Programs)

D. Application Steps for Byway Protection Overlay District (BPOD)

1. Applicant reviews code requirements, reviews CMP, and uses County on-line tools to determine existence/ approximate location of scenic viewshed, if any. Applications prepared in this District must adhere to the Review Procedure contained in Division 40.18.900, including but not limited to demonstrated compliance with the District and preparation of a Viewshed Plan in accordance with Appendix 1.3.O ("Viewshed Plan").

2. Applicant prepares the documentation portion (written narrative & photographic / video documentation) of the required Viewshed Plan. Applicant consults with Department staff about the findings of the Viewshed Plan.

a. If no scenic viewshed is indicated, the Viewshed Plan is complete. Provisions of 40.18.420.A.4 apply. Incorporate requirements for "Other Areas" and proceed to Step 9 below.

b. If a scenic viewshed is indicated, continue to Step 3.

3. When applicable, pre-application sketch plan submission and conference per Division 40.31.100.

4. Application Guidance. A BPOD is density neutral so the applicant is entitled to receive the same density permitted in the base zoning district (Table 40.02.248). To achieve full density and

adhere to the requirements of BPOD, the applicant may use the flexibility provided in this District to:

- a. Minimize impact on the viewshed through conservation design techniques;
 - b. Relocate or orient structures outside the scenic viewshed;
 - c. Minimize impact on the viewshed through the design flexibility authorized in the BPOD (including modification in massing and façade, height, streetyard setbacks, parking, lot area and design, block design, street and sidewalk design, buffering and landscaping, etc.);
 - d. Incorporate the undeveloped portions of lots into the scenic viewshed area (which are permitted to be credited towards open space requirements); and
 - e. Seek various modifications to UDC requirements to further the goals of this District pursuant to Division 40.18.800.
5. Applicant completes graphic or enhanced photographic representation of proposed buildings or other improvements required by the Viewshed Plan.
6. Applicant continues with plan submission requirements. Where the Department determines that an application does not protect or enhance the scenic viewshed, the applicant must prepare a Scenic Environmental Impact Assessment Report pursuant to Section 40.10.701 and 40.18.900.
7. Where the Department determines that an application does not meet the prescriptive requirements of Article 18, the application shall proceed to review by BPAC to discuss design details and techniques, or request relief from certain requirements.
8. Applicant may seek a variance through the Board of Adjustment for relief from the requirements of the BPOD.
9. Applicant continues with the plan approval process pursuant to the UDC.

NOTE: Applicant may seek clarification from Department staff during any step of the application process.

Section 13. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 14. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 15. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the

remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 16. This Ordinance shall become effective immediately upon passage by New Castle County Council and signature of the County Executive or as otherwise provided in 9 *Del. C* § 1156 and shall only apply to Land Use applications submitted after such date unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The purpose of this Ordinance is to revise Chapter 40 of the *New Castle County Code* to provide a level of County regulatory protection to the intrinsic qualities of the County's designated Byways. Development standards are herein initially created for areas designated along the Brandywine and Red Clay Valley Byways, as well as a portion of the Harriet Tubman Underground Railroad Byway (north of Wilmington). A separate ordinance will be required to designate subsequent BPOD areas. This Ordinance will allow the creation of zoning districts that are subject to standards that direct building placement, visible building height, landscaping and buffering in a manner that is sensitive to scenic viewsheds, while protecting property owner rights. As far back as the late 1980's the County has been working to identify the unique characteristics of its landscapes and features as seen from public roadways. Referred to as intrinsic qualities, these scenic, natural, cultural, historic, archeological, and recreational features are a testament to the beauty and natural processes that contribute to the quality of life in New Castle County.

FISCAL NOTE: