

Ordinance 535

An Ordinance to amend Sections 213-5, 213-7 of the City Code to revise certain definitions; to amend Section 230-21 to clarify special exception requirements in the Downtown Gateway district and remove redundant language; and to amend Section 230-46 to revise site plan requirements and procedures.

WHEREAS, Section 213-5 contains a definition of a “minor subdivision” that no longer reflects the intent of the City Council in administering that section; and

WHEREAS, Section 213-7 contains procedural inconsistencies that rely on the outdated definition of a minor subdivision contained in 213-5; and

WHEREAS, the City Council wishes to revise Sections 213-5 and 213-7 to ensure consistency with the Council’s intent for the benefit of the City and welfare of its citizens; and

WHEREAS, Section 230-21 contains language regarding special exceptions that is redundant due to recent revisions to Section 230-57; and

WHEREAS, the City Council believes Section 230-21 requires further clarification of conditions to certain uses permitted by special exception; and

WHEREAS, the City Council wishes to revise section 230-21 to remove said redundancies and ensure clarity regarding conditions which apply by default to certain uses permitted by special exception; and

WHEREAS, the City Council believes it is in the best interests of the City to revise the site plan requirements and related procedures contained in Section 230-46 for more efficient and effective administration of the site plan review and approval process.

NOW, THEREFORE, be it ordained by the Council of the City of New Castle, as follows:

SECTION 1: The definition of “Subdivision, Minor” contained in Section 213-5 of the City Code is hereby deleted in its entirety and a definition for the term “resubdivision” added to such Section as follows:

§213-5. Definitions.

RESUBDIVISION

A modification, division, addition, deletion, or correction to a previously recorded lot or lots that does not create a new building lot and that does not alter a public right-of-way or conflict with the Official Map of the City. Examples of a re-subdivision include but are not limited to a lot line adjustment where no new building lots are created or the extinguishment of an existing lot line whereby two existing lots are combined into one lot.

SECTION 2: Sections 213-7 C (3)-(4) are hereby deleted in their entirety and replaced with the following:

§213-7 Plan processing procedure.

C. Approval of final plat.

(3) When the final plat includes establishment of new streets or dedication of land for streets, public ways or public facilities, approval will be by ordinance of City Council, on the recommendation of the Planning Commission, with the advice of the Building Official. The ordinance, upon approval by the Mayor, will constitute approval of the final plat, establishment of the new streets on the City Map or Plan, and acceptance of the dedications provided for in the final plat; provided, however, that acceptance of the dedications shall not expose the city to a liability or obligation for maintenance or repair of streets, but such liability or obligation shall arise only following the Building Official's written acceptance of completion.

(4) When the final plat does not include site improvements or establishment of new streets or public ways or dedication of land for public purposes, approval will be by resolution of City Council on the recommendation of the Planning Commission.

SECTION 3: A new Section 213-7 D is added to the City Code which section shall read, in its entirety, as follows:

§213-7.D. Approval of Resubdivision Plat

- (1) Resubdivision plats shall be reviewed and approved by the Building Official.
- (2) Resubdivision plats shall not create a violation of the Schedule of Zone Regulations contained in Chapter 230 or increase an existing non-conforming situation relative to the Schedule of Zone Regulations.

(3) Resubdivision plats shall contain the same information as a final plat as determined by the Building Official and shall contain a note clearly stating the purpose and intent of the subject resubdivision.

(4) Resubdivision plats approved by the Building Official shall be forwarded to the City Council for approval by Resolution.

(5) The subdivider will promptly file the approved resubdivision plat and accompanying documents with the Recorder of Deeds for New Castle County, and inform the Building Official of the exact place of recordation within that office.

SECTION 4: Section 213-9 A is hereby amended to delete the word “major” from subsection (1); to delete existing subsection (2); and to renumber subsequent, unaffected subsection numbers accordingly as follows:

§213-9 General Requirements.

A. Utilities.

(1) All subdivision utilities shall be below ground.

(2) All utilities shall be installed according to the approval granted and shall be installed prior to completion of the paved area. The full intent of this subsection is to avoid installation of utilities after streets have been completed and accepted for maintenance by the City.

(3) When easements are required for utilities, they must be a minimum width of 10 feet along rear lot lines and 10 feet alongside lot lines and should be adjacent to, or centered on, the respective lot lines. Electric, telephone and cable lines should be along rear lot lines wherever possible.

(4) All trenches, storm, utility, etc., under roadway within the public dedicated right-of-way shall be backfilled with approved materials and properly compacted in accordance with the city specifications.

(5) The subdivider shall obtain all necessary approvals and permits from each utility prior to the installation of that utility within any right-of-way which is intended to become part of the New Castle street system. These permits or approvals shall be drawn up in the form as established by the city and shall ensure that the utilities will be installed according to the standards, plans, specifications, rules and regulations of the city and that the installation of utilities will not interfere with necessary construction, operation or maintenance of the roadway after it has been accepted as part of the New Castle roads system.

(6) No part of the cost of construction of utilities shall be borne by the City.

SECTION 5: Section 230-21.1 C is hereby deleted in its entirety, retitled “Conditions for certain uses permitted by special exception” and replaced with the following:

§ 230-21.1 Downtown Gateway District (DG).

C. Conditions for certain uses permitted by special exception.

(1) Nonresidential, mixed, and multi-family uses

(a) The building footprint shall not exceed 40,000 square feet.

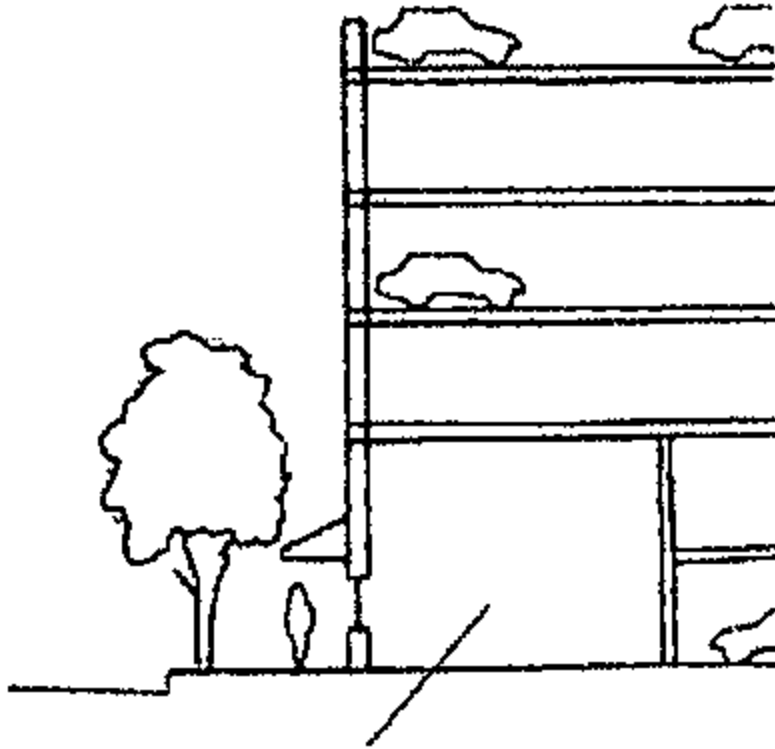
(b) Buildings, driveways, parking areas/loading areas, outdoor activity areas, light sources, and refuse areas shall be located and designed to minimize adverse impacts on abutting residential properties. Alternative site layouts including increased setbacks from residential property lines; different locations of buildings, parking areas, and driveways, incorporating loading and trash collection areas as part of the principal building design; and increased screening for light sources and outdoor activity areas, may be prescribed by the Board of Adjustment, in order to limit the adverse impact of a proposed use as well as fulfill the legislative intent of the Downtown Gateway Zoning District.

(2) Residential uses, including single-family dwellings and two-family dwellings: see lot size, bulk and yard requirements in Chapter 230, Attachment 1, Schedule of District Regulations for R-3-Residential.

(3) Parking garages

(a) Retail store fronts or other active uses at the street level are required on front facades of parking garages. (See Table 2.)

Table 2: Cross Section of Parking Garage with Ground Floor Retail Space



Retail store front within a parking garage

(b) Utilitarian appearances of parking structures, such as sloping levels and untreated concrete levels, are not permitted. Structures shall have design treatments such as colonnades, arcades, awnings, landscaping, street furniture, and other public amenities to create the appearance of an occupied building. Blank walls are not permitted.

(c) Cars shall be visually screened from adjacent buildings and the street and such screening shall be in keeping with the rest of the building's architectural style and materials.

(d) Vehicular access to parking garages shall be accessed to the side or rear of the building.

SECTION 6: Sections 230-46 is hereby deleted in its entirety and replaced with the following:

§ 230-46. Site Plan Review and Approval

A. Development applications involving a multi-family or non-residential use shall be accompanied by a site plan for review and approval by the Planning Commission.

B. The purpose of a site plan is to ensure detailed compliance with applicable provisions of enacted regulations and to prescribe standards for the design and construction of site improvements. Development requiring site plan approval shall be

permitted only in accordance with all specifications contained on an approved site plan and shall not be undertaken until the site plan is approved and all required construction permits have been obtained subsequent to such approval.

C. Site plan applications shall include the information listed in Attachment 2 to Chapter 230 of the City Code (hereinafter, "Attachment 2"). The Planning Commission may waive any information required in Attachment 2 if it deems the information unnecessary to confirm compliance with this Chapter or other Federal, State, County or City regulations.

D. Incomplete site plans shall be returned to the applicant at the discretion of the Building Official.

E. The Planning Commission's review of the site plan shall include, but is not limited to the following considerations:

(1) Adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access.

(2) Location, arrangement, appearance and sufficiency of off-street parking and loading.

(3) Location, arrangement, size and design of buildings, lighting and signs.

(4) Relationship of the various uses to one another and their scale.

(5) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands.

(6) Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding or erosion.

(7) Compatibility of development with natural features of the site and with surrounding land uses.

(8) Adequacy of flood proofing and flood prevention measures consistent with the flood hazard prevention regulations of the City and the Federal Emergency Management Agency.

(9) Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.

(10) Adequacy of pedestrian access.

(11) Adequacy of public utilities serving the proposed development, including but not limited to water, sanitary sewer, electric, storm drainage.

F. The Planning Commission may require additional information that they deem necessary for a complete assessment of the project.

G. Site plans shall be prepared and certified by an engineer, architect, landscape architect, or land surveyor duly registered to practice in the State of Delaware.

H. Upon receipt of the site plan, the Planning Commission shall review the site plan, soliciting comments from other departments, agencies, and officials as may be appropriate. The site plan shall be approved if it meets the requirements of this section, Attachment 2, other requirements of this Chapter and all other Federal, State, County and City regulations. Notice of approval or disapproval of the site plan shall be given in writing to the applicant.

I. Submission of Concept Plan

(1) The purpose of a concept plan is for the Planning Commission to informally review the development proposal prior to the substantial commitment of time and expense on the part of the applicant in preparing a site plan. The concept plan shall contain the information contained in Attachment 2 to Chapter 230 of the City Code.

(2) Except as provided in Section §230-46.I.(3) below, the submission of a concept plan shall be voluntary.

(3) For developments that require a Pre-Application Review per Chapter 92 of Title 29 of the Delaware Code, the applicant shall submit a concept plan to the Planning Commission prior to the Pre-Application Review.

(4) A site plan requiring a Pre-Application Review shall only be submitted to the Planning Commission once the Pre-Application Review is completed and comments provided by State agencies.

J. For a nonresidential use subject to the requirements of § 230-36 of this Chapter, the plan shall also include a description of the proposed machinery, operations and products. The applicant shall submit specifications for the mechanisms and techniques to be used in restricting the elements mentioned in § 230-36 of this chapter. The applicant shall submit a written statement acknowledging their understanding of the performance standards at all times. Submitted data will be treated confidentially if the applicant so desires.

K. Construction of required improvements

(1) Upon approval of a site plan, the applicant shall then secure the necessary construction permits from appropriate agencies before commencing work. The

applicant may construct only such improvements as have been approved by the Planning Commission or appropriate City review and approval agencies.

(2) After construction has been completed, inspection of site improvements shall be made by the departments or agencies certifying to the applicable requirements as shown on the site plan.

L. Expiration and Extension

(1) Approval of site plans shall be valid for a one (1) year period from the date of Planning Commission approval and shall expire at the end of such period unless building construction has begun.

(2) Upon written request by the applicant, within thirty (30) days prior to the expiration of said approval, a one (1) year extension may be given by the Planning Commission.

M. Prior to the Planning Commission taking any action on any site plan application or performance standard submission, the City may require the applicant to execute a written undertaking in form and substance satisfactory to the City, guaranteeing the payment in full of all costs and fees incurred by the City for consultant and professional review of the submitted plans and performance standards. In appropriate cases, the City Administrator may require that the applicant also make a deposit payment or post a surety bond to ensure payment of such costs and fees. The City may withhold issuance of building permits or certificates of occupancy for any multifamily or nonresidential use until such costs and fees of plan performance standard review have been paid in full to the City.

N. Approval by City Council of Site Plans

(1) When the site plan includes establishment of new streets or dedication of land for streets, public ways or public facilities, approval will be by ordinance of City Council, on the recommendation of the Planning Commission, with the advice of the Building Official. The ordinance, upon approval by the Mayor, will constitute approval of the site plan, establishment of the new streets on the City Map or Plan, and acceptance of the dedications provided for in the site plan; provided, however, that acceptance of the dedications shall not expose the City to a liability or obligation for maintenance or repair of streets, but such liability or obligation shall arise only following the Building Official's written acceptance of completion.

(2) When the site plan does not include establishment of new streets or public ways or dedication of land for public purposes, approval will be by resolution of City Council on the recommendation of the Planning Commission.

(3) When considering approval of a Site Plan, the City Council may refer the plan back to the Planning Commission, no more than twice, with specific questions relating to technical compliance with this Chapter, State or federal constitutional requirements, or any other statute or ordinance for which compliance is required. Upon receipt of the Planning Commission's recommendation reaffirming

approval of the plan, City Council shall approve the Site Plan, unless a second referral is made because of additional questions or concerns. Upon receipt of the Planning Commission's recommendation reaffirming approval of the plan after review of any additional concerns raised by City Council, Council shall approve the Site Plan.

(4) The site plan applicant will promptly file the approved site plan and accompanying documents with the Recorder of Deeds for New Castle County, and inform the Building Official of the exact place of recordation within that office.

O. Inspection and Supervision During Installation

(1) Unless specifically provided in this Chapter, the construction standards for all off-site improvements and on-site improvements required by this Article shall conform to the approved site plan and City design and construction standards. Appropriate City authorities or designee shall approve the plans and specifications for all required improvements and shall inspect the construction of such improvements to assure conformity thereto.

(2) Inspection during the installation of the off-site improvements shall be made by the department or designee responsible for such improvements as required to certify compliance with the approved site plan and applicable standards.

(3) The owner shall notify the Building Official in writing 3 days prior to the beginning of any work shown to be constructed on approved plans.

(4) The owner shall provide adequate supervision on the site during the installation of all required improvements and have a responsible superintendent together with one set of approved plans and specifications available at all times when work is being performed.

(5) The installation of improvements as required in this Article shall in no case serve to bind the City to accept such improvement for the maintenance, repair, or operation thereof.

(6) The City Council may require that the expense of independent inspection and supervision services during installation be borne by the applicant.

P. Upon satisfactory completion of required improvements as shown on the approved site plan or a section thereof, the developer shall submit to the Building Official four (4) copies of the "as built" site plan, certified by the engineer before occupancy of any building, for the review and approval for conformity with the approved site plan. The as-built site plan shall indicate any deviations from site improvements shown on the final approved site plan.

SECTION 7: The following new table is hereby appended to of Chapter 230 of the Zoning Code as Attachment 2:

CITY OF NEW CASTLE			
Basic Information Required for Site Plan Submission Pursuant to City Code § 230-46			
Notes	All plans must be clear and legible.		
	See Subdivision Regulations, City Code Chapter 213, for Subdivision Plan requirements.		
Item #	DESCRIPTION	Concept Plan	Site Plan
PLAN INFORMATION			
1	Name, address of owner, applicant and developer, date of application.	X	X
2	Name and address of engineer, land surveyor architect, planner, and/or landscape architect, as applicable, involved in document preparation.	X	X
3	Date of survey.		X
4	Seal, signature and license number of engineer, land surveyor, architect, and/or landscape architect, as applicable, involved in document preparation. Each sheet must have a surveyor's seal.		X
5	Title block denoting name and type of application, parcel ID and street location	X	X
6	A vicinity map at a specified scale (no smaller than 1" = 200') showing location of the tract with reference to surrounding properties, streets, landmarks, streams, etc. Show all of the property owned according to the Tax Map(s) if only part of the property is to be developed.	X	X
7	Purpose of Plan - Brief description of proposed development.	X	X
8	Existing zoning of tract and adjacent property.	X	X
9	Adjacent property owners, names and parcel ID.	X	X
10	Title, north arrow and scale (minimum 1" = 50' or otherwise approved by City).	X	X
11	Appropriate signature block for Planning Commission Chair and City Building Official		X
12	Owner certification block and signature.		X
13	Monumentation, location and description.		X
14	Standardized sheets 24"x 36".		X
15	Metes and bounds of parcel boundary.		X
16	Acreage of tract to the nearest thousandth of an acre.	X	X
17	Date of original and all revisions.		X

18	Size, location and height of any existing or proposed buildings and structures with all setbacks dimensioned. Include storm drains, culverts, retaining walls, fences and stormwater management facilities.		X
19	Number of dwelling units in multi-family developments.	X	X
20	Location, dimensions, bearings, names of any existing or proposed roads or streets. The location of pedestrian ways, driveways, right of way widths.	X	X
21	Summary of required and proposed Schedule of District Regulations. (See City Code Chapter 230 - Attachment 1)		X
22	Location and type of utilities (water, sewer, gas, electric and telecommunications) and names of providers.		X
23	References to protective covenants governing the maintenance of undedicated public spaces or reservations.		X
24	Location and size of proposed open space, play grounds and other public areas.	X	X
25	Location of existing or proposed easement (drainage and utility) or land reserved for or dedicated to public use.		X
26	Statement of owner dedicating streets, right-of-way, and any sites for public use if applicable.		X
27	Location and total number of required and provided off-street parking spaces.	X	X
28	List of required regulatory approvals/permits.	X	X
29	List of zoning variances required, requested and/or obtained.	X	X
30	Requested or obtained design waivers or exceptions.	X	X
31	Total area of the site that will be temporarily and/or permanently disturbed.		X
32	Description of deed restrictions or covenants.		X
II.	SETTING-ENVIRONMENTAL INFORMATION		
33	All existing streams, water courses, floodplains, wetlands, or other environmentally sensitive areas on or adjacent to the site. National Wetland Inventory (NWI) maps acceptable for Concept Plan. Field-delineation of non-tidal wetlands required for Site Plans.	X	X
34	Water Resource Protection Areas - Wellhead Protection Areas, Recharge Areas.		X
35	Existing rights-of-way and/or easements on or immediately adjacent to the tract.		X
36	Field delineated topography and proposed grades.		X
37	Existing system of drainage of subject site and adjacent sites and of any larger tract or basin of which it is a part.		X

38	Location of 100-year floodplain, base flood elevation and FIRM Number. Other floodplain designations as applicable.	X	X
39	Soil types based on NRCS	X	X
40	Mean high waterline and landward edge of tidal wetlands.	X	X
41	Location of and acreage of existing wooded areas and trees (greater than 6" in diameter) to be disturbed by construction.		X
42	Lighting Plan indicating location and cut sheet of fixtures and illumination levels with isometric lines		X
43	Landscape Plans indicating number, location and types of the plantings, planting details and specifications.		X
44	Comments from State Agencies if submitted for Pre-Application review.		X

SECTION 8: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 9: In the event any existing Ordinances or parts of Ordinances are in conflict herewith, the provisions of this Ordinance shall control.

SECTION 10: This Ordinance shall become effective immediately upon passage.

[No further text. Signature page follows.]

[SIGNATURE PAGE TO ORDINANCE 535]

First Reading	February 8, 2022
Second Reading	March 8, 2022

Signed this _____ day of _____, 2022

Michael M. Platt, President of Council

Attest: _____
Kathleen M. Walls, City Clerk

Approved: _____
Michael J. Quaranta, Mayor