

Draft 3.0 – May 18, 2016

Attachment 1.

Proposed changes to the UDC for the proposed:

Scenic Byway (SB) Overlay District

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ARTICLE 16. – OVERLAY DISTRICTS

DIVISION 40.16.100 SCENIC BYWAY (SB) OVERLAY DISTRICT.

SECTION 40.16.110 PURPOSE.

- A.** <This section may be located in Art. 3 in final draft>
- B.** The purpose of this Division is to provide the principles, standards, general provisions, and review criteria of the Scenic Byway (SB) Overlay) District.
- C.** The protection, preservation, and enhancement of designated scenic resources is critical to the County, and promotes the health, prosperity and welfare of all citizens of the County and enhances the quality of life for all. The SB Overlay District is intended to preserve, protect and enhance the scenic resources of designated scenic byways within the County.
- D.** The purpose of the SB Overlay District is as follows:
1. To assure maximum preservation and enhancement of the district’s outstanding and unique scenic features and resources,
 2. To minimize grading, tree removal, signage and changes to the existing character of roadways and the natural topography of areas along and adjoining designated scenic byways,
 3. To reduce, to the maximum extent feasible, visual intrusions into the district that are not compatible with the scenic qualities, features and resources of the district,
 4. To assure that the design and placement of buildings and other improvements preserve, complement, and/or enhance views from scenic byways and other roadways,
 5. To assure that new development, redevelopment, infill development and other changes within the district are compatible with the scenic resources and intrinsic qualities of the district, and consistent with:
 - a. The goals, objectives and management strategies of Corridor Management Plans for designated scenic byways; and/or
 - b. The Design Guidelines established for the district.

SECTION 40.16.111 APPLICABILITY.

- A. The boundaries of an SB Overlay District encompass the land area within the unincorporated areas of the County as identified and delineated on the New Castle County Zoning Map.
- B. Major and minor applications and sign permits are subject to the requirements of the SB Overlay District. All other application types are exempt.
- C. The SB Overlay District shall be in addition to, and shall overlay all other zoning districts within established SB District, so that any parcel of land lying in the SB Overlay District shall also lie in one or more of the other zoning districts provided for by this Code.
- D. The requirements and regulations of the SB Overlay District are in addition to the regulations of the underlying district. Where conflicts arise between the standards and/or requirements of the underlying zoning district and the SB Overlay District, the SB Overlay District requirements will apply.
- E. Uses shall be permitted in accordance with the underlying zoning district(s), except as modified by this Division.
- F. All applications subject to the requirements of this Division should also satisfy the objectives of the applicable Corridor Management Plan and the guidance of the Design Guidelines Manual for the specific overlay district in which the application is located..

SECTION 40.16.112 DESIGNATION.

- A. Prior to adoption of a Scenic Byway (SB) Overlay District, an area or road must first be designated as a Scenic Byway by the federal government or the State of Delaware.
- B. Adoption of an SB Overlay District shall amend the Comprehensive Development Plan and thereby be consistent with the Plan, including a district's Corridor Management Plan.

SECTION 40.16.113 SCENIC BYWAYS AND CORRIDOR MANAGEMENT PLANS.

- A. Designated scenic byways must have a duly approved Corridor Management Plan (CMP). The CMP includes 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.
- B. The CMP must be consulted for design, regulatory, and management guidance, in addition to the other requirements of this Division..

SECTION 40.16.114 GUIDING PRINCIPLES.

- A.** Goals and Objectives. Protection, preservation, and enhancement of the character-defining features, unique qualities and scenic resources of the byway; including scenic, natural, cultural, historic, archeological, and recreational features.
- B.** Scenic Viewshed Protection. The primary protection and enhancement objective is scenic viewshed protection.
- C.** Conservation Design. To the maximum extent feasible, applications must utilize conservation design strategies, consistent with the goals and objectives of the district and the definition found in 40.33.300.
- D.** Context Sensitive Solutions. To the maximum extent feasible, applications must utilize context sensitive solutions, materials, and methods compatible with the character of the surrounding landscape.
- E.** Enhanced Resource Protection. In addition to the protections and other standards of Article 10, applications within SB Overlay Districts should also preserve and protect additional natural, cultural, and other character-defining site features, including but not necessarily limited to, stone walls, old lanes, fence rows, and cultural remnants of past human settlement. These features should be integrated into the overall plan for the property.
- F.** Minimal Impact. Applications must avoid visual intrusions into the scenic viewshed to the maximum extent feasible. If intrusions are unavoidable, the nature, intensity and quantity of the intrusion must be minimized. All unavoidable intrusions must be mitigated with an appropriate level of compensating features.
- G.** Open Space. Designs should support district-wide open space systems that protect scenic vistas, resource areas, and other character-defining features; and should be configured to provide a contiguous and viable greenway and recreational system within the district.

SECTION 40.16.115 DEVELOPMENT STANDARDS.

- A.** ..
- B.** Scenic Byway (SB) Overlay Districts are composed of four (4) elements: roadways, corridors, viewsheds, and other areas. For the purposes of this Article these elements are referred to as Sub-districts as follows:
- 1.** Sub-district 1 (SD-1): Those portions of the SB Overlay District that are within the public road right-of-way and are thereby under the jurisdiction of the Delaware Department of Transportation (DelDOT).
 - 2.** Sub-district 2 (SD-2): Those portions of the SB Overlay District that are within two-hundred (200) feet of both sides of the public road right-of-way of a designated scenic road (SD-1) and which are also within the established viewshed. SD-2 may also be referred to as the Inner Corridor.
 - a.** SD-2 are the protective areas immediately adjacent to scenic road rights-of-way that require the highest degree of viewshed protection.
 - b.** Unless otherwise permitted by this Division, existing landscapes and features within SD-2 must be protected, conserved and enhanced.
 - c.** Development must avoid intrusions into this sub-district. Where intrusions are unavoidable, impacts must be minimized and mitigated with a sufficient level of compensating features.
 - d.** Buildings should not be constructed in this sub-district, however, in unavoidable situations, a street yard setback will be established to provide the least intrusion possible, but in no case shall there be a street yard setback of less than one-hundred (100) feet in a scenic corridor.
 - e.** Scenic corridors shall be protected with conservation easements.
 - 3.** Sub-district 3 (SD-3): Those portions of the SB Overlay District that are between two-hundred (200) feet and one-thousand (1,000) feet of the public road right-of-way (SD-1) and which are also within the established viewshed. SD-3 may also be referred to as the Outer Corridor.
 - a.** Development within this sub-district should be avoided to the maximum extent feasible.
 - b.** Development permitted with this sub-district must harmonize with the natural and scenic environment, maximize conservation design strategies, and minimize impacts and intrusions into the viewshed.
 - c.** If intrusions are proposed within the sub-district, the visual impacts must be mitigated.
 - d.** Intrusions that maximize distances from the scenic roadway(s) shall have reduced mitigation requirements.
 - 4.** Other Areas, Sub-district 4 (SD-4): All other portions of the SB Overlay District that are not within Sub-districts 1, 2 or 3. Developments within SD-4 are not subject to the requirements of this Division. Areas of SD-2 or SD-3 that are not within the established viewshed are considered part of SD-4.
- C.** Access. Changes to the scenic roadway shall be minimized. Points of access must be carefully considered and minimized through the use of common driveway easements, private roadways, and new public roadways that avoid multiple and individual driveways along scenic roadways.
- D.** Other sub-district development standards are listed in Table 40.16.115.

Table 40.16.115. Sub-district standards.

	Sub-district 2 (0 to 200')	Sub-district 3 (>200' to 1,000')¹	Sub-district 4
Street Yard Setbacks	100-foot minimum	Per underlying district	Per underlying district
Visible Building Height ²			
--- 0 to 100', as measured from r/w of SD-1	Not permitted	n/a	Not permitted
--- 100 to 150', "	20 percent	n/a	20 percent
--- 150 to 200', "	40 percent	n/a	40 percent
--- 200 to 400', "	n/a	60 percent	60 percent
--- 400' to 600', "	n/a	80 percent	80 percent
--- 600' or greater, "	n/a	100 percent	n/a
Landscaping ³	Per 40.04.240	Per 40.04.240	n/a
Grading and Earthwork	Limit to 3-foot maximum cut or fill	Limit to 6-foot maximum cut or fill	n/a

SECTION 40.16.116 DESIGN REVIEW ADVISORY COMMITTEE (DRAC).

A Design Review Advisory Committee shall be established for each SB Overlay District pursuant to Section 40.30.450.

SECTION 40.16.117 DESIGN GUIDELINES MANUAL.

- A.** In addition to the standards set forth herein, each SB Overlay District will adopt design guidelines as part of the establishment of the SB Overlay District.
- B.** Design guidelines will be a reference document, providing guidance in implementing this Division.
- C.** Design guidelines will 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 the district.

¹ If located within the established viewshed.

² If located within the established viewshed, the portion of the underlying district's permitted height that is allowed to be seen from a scenic roadway without screening. Does not apply to structures outside of the viewshed or structures within the viewshed that are determined to be visual accents.

³ See recommendations for Sec. 40.04.240 landscape standards.

SECTION 40.16.118 SIGNS WITHIN SCENIC OVERLAY DISTRICTS.

In addition to other requirements of this Article <Article 6 in the final draft>, signs within Scenic Overlay Districts must comply with the following:

- A. General. The practice of ‘least control’ should be utilized so to avoid sign clutter inconsistent with the visual character of the SB Overlay District and to minimize, to the greatest extent practicable, the amount of signage within the district.
- B. Prohibited Signs. In addition to the prohibitions outlined in Sub-sec. 40.06.040, the following signs are prohibited:
 - 1. Marquee signs,
 - 2. Projecting signs,
 - 3. Roof signs.
 - 4. Other signs that are considered incompatible with the district standards.
- C. Placement. Signs shall not be located within scenic corridors or designated scenic viewsheds, unless a variance is approved.⁴ Signs shall be located at the greatest distance practical for the intended use.
- D. Size. Generally signs shall be of the minimum size necessary for the intended use.
- E. Height. Signs shall be limited to the lowest height necessary for the intended use..
- F. Material and Color. Only materials and colors that are compatible with the scenic and natural qualities of the district will be permitted.
- G. For the purposes of off-premises advertising, billboards and other off-premises signage, Scenic Byway Overlay Districts are considered ‘greenways’ pursuant to Sec. 40.06.070.
- H. Nonconforming signs. All signs legally existing within the district that were rendered nonconforming on <insert adoption date> shall be removed or brought into conformity by <insert date>. See Sub-sec. 40.06.050.E.2. for additional standards.

SECTION 40.16.119 SCENIC EASEMENTS.

- A. Protected scenic resources require an easement.
- B. Historic and conservation easements may be used to secure protection of scenic resources.
- C. Portions of lots that are protected by easements shall be credited as part of any required open space.

SECTION 40.16.120 MODIFICATIONS

<Modifications to standards may be located in 40.26.500 in the final draft>

The following modifications are permitted in the Scenic Byway (SB) Overlay District:

⁴ Granting of a subdivision variance is by the Planning Board pursuant to the standards and processes of Section 40.31.452 through 40.31.455. Dimensional variance requests are considered a zoning variance and heard and decided by the Board of Adjustment. See Article 31 for clarification.

- A.** The requirements of the following divisions and/or sections may be modified in a Scenic Byway (SB) Overlay District if the goal of protecting, conserving or enhancing the byway is achieved.
- 1. ARTICLE 3. – USE REGULATIONS**
 - a.** Division 40.03.500. – Loading and parking standards.
 - i.** Sec. 40.03.522. – Off-street parking. Off-street parking may be reduced for cause, provided public safety is satisfied.
 - 2. ARTICLE 4. – DISTRICT INTENSITY AND BULK STANDARDS**
 - a.** Division 40.04.100. District performance standards.
 - i.** Sec. 40.04.110. – District and bulk standards.
 - (1)** Sec. 40.04.110.A. *Minimum open space ratio.* Protected resources may be preserved by scenic easements on lots and credited toward minimum open space requirements..
 - (2)** Sec. 40.04.110.D. *Minimum lot area.* Bufferyards and scenic corridors may occur on lots.
 - b.** Division 40.04.200. – Landscaping.
 - i.** Sec. 40.04.240. Scenic corridors. Scenic corridors may be permitted on private lots if a protective easement is provided.
 - c.** Division 40.04.300. – Bufferyard performance standards.
 - i.** Sec. 40.04.302. In Scenic Byway Overlay Districts bufferyards are also required in minor land development and minor subdivisions applications.
 - 3. ARTICLE 20. – SUBDIVISION AND LAND DEVELOPMENT DESIGN PRINCIPLES**
 - a.** Division 40.20.200. Subdivision layout.
 - i.** Sec. 40.20.210. – Blocks. Modifications to block design shall be permitted if conservation design is utilized and scenic viewshed protection is achieved.
 - ii.** Sec. 40.20.220. – Lots. Modifications to lot design shall be permitted if conservation design is utilized and scenic viewshed protection is achieved.
 - iii.** Sec. 40.20.230.G. – Private Streets. Private streets are permitted in Scenic Byway Overlay Districts.
 - 4. ARTICLE 21. – IMPROVEMENT AND DESIGN STANDARDS**
 - a.** Division 40.21.100. Streets.
 - i.** Sec. 40.21.140. – Private Streets. Private streets are permitted in Scenic Byway Overlay Districts.
 - ii.** Sec. 40.21.161. – Curbs. Curbs are not required in Scenic Overlay Districts. All improvements to roadways must be compatible with the scenic resources of the district.
 - iii.** Sec. 40.21.162. – Sidewalks.. If sidewalks are required for public safety purposes, trails and pathways, in lieu of sidewalks are permitted. Alternative material may be utilized, and alignments may vary to adjust to existing topographic and natural features.
 - b.** Division 40.22.210. – Grading and drainage.

SECTION 40.16.121 EXEMPTIONS AND VARIANCES.

- A. Exemptions. Any project with a duly approved plan as of the date of adoption of these standards, shall be exempt from these standards for a period of three (3) years.
- B. Modifications. Where applications are in strict conformity to the goals, objectives, and standards of the SB Overlay district, and where the Department has discretionary authority, strict adherence to the design and development criteria of the underlying base zoning district may be waived and/or modified.
- C. Subdivisions Variances.⁵ Modifications to subdivision standards in addition to those permitted by Article 26 may be considered by the Planning Board, as required by Sec. 40.31.452 through 40.31.455.
- D. Zoning Variances. Dimensional variances to zoning standards will be considered by the Board of Adjustment, as required by Sec. 40.31.140.
- E. Deprivation Standards. If application of the standards of the SB Overlay District would render a property under the deprivation standards of Sec. 40.31.620 without use, then the applicant will be permitted to construct one (1) single-family house.

SECTION 40.16.122 REVIEW PROCEDURES.

- A. Applications must demonstrate compliance with the purpose, goals and objectives of the district, and conform to the guidance of the district's Design Guidelines Manual.
- B. Any proposed land development application within a Scenic Byway (SB) Overlay District shall follow the procedures of Article 31, except as modified by this Division.
- C. In addition to the review requirements of Article 31, required applications within the SB Overlay District shall submit a Site Analysis Plan pursuant to Appendix 1, sub-section 3.K.
- D. Applications shall protect and/or enhance the scenic viewshed as specified in this Division. If an application does not fully protect and/or enhance the scenic viewshed, it must include a 'Scenic' Environmental Impact Assessment Report (S-EIAR) with the application pursuant to Sec. 40.10.701. If an S-EIAR is provided, the Site Analysis Plan is not required.
 - 1. The S-EIAR must demonstrate how the application has:
 - a. Avoided intrusions to the scenic viewshed to the maximum extent feasible;
 - b. Minimized intrusions into the scenic viewshed to the maximum extent feasible; and
 - c. Sufficiently mitigated unavoidable intrusions with an appropriate level of compensating features.
 - 2. Any accents and/or mitigated intrusions within the scenic viewshed shall be context-sensitive and compatible with the scenic and natural character of the byway.

⁵ Granting of a subdivision variance is by the Planning Board pursuant to the standards and processes of Section 40.31.452 through 40.31.455. Dimensional variance requests are considered a zoning variance and heard and decided by the Board of Adjustment. See Article 31 for clarification.

SECTION 40.16.123 DEFINITIONS.

This Section contains the definition of words used in this Division and is supplemental to other definitions used in this Chapter found in Section 40.33.300.

Corridor. The road or highway right-of-way and the adjacent area that is visible from and extending along the highway. The distance the corridor extends from the highway could vary with the different intrinsic qualities.⁶

Corridor Management Plan or CMP. A corridor management plan is a written document that specifies the actions, procedures, controls, operational practices, and strategies to maintain the archaeological, cultural, historic, natural, recreational, and scenic qualities that support a scenic byway's designation. The plan should be developed with community involvement, provide for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and other economic development, and provide an effective management strategy to balance these concerns while providing for the users' enjoyment of the byway.

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.

Greenway. A linked system of open spaces, parklands, historic and cultural sites, wildlife management areas and natural preserves. Connection corridors between such resources generally will be linear in nature and can include such features as natural areas, hiking trails, bike paths, city sidewalks, stream corridors, rivers abandoned railroad rights-of-way, or scenic roads. <GREENWAY IS ALREADY USED IN THE CODE AND DEFINED IN 40.33.300, AND REFERENCES SCENIC ROADS. HOWEVER, THE DEFINITION, AND ITS USE IN ARTICLE 6-SIGNAGE IS NOT CONSISTENT. IT IS PLACED HERE FOR REFERENCE ONLY, THIS NEEDS COORDINATION AND CLARIFICATION>

Intrinsic quality. Scenic, natural, historic, cultural, recreational, or archeological features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.⁷

Scenic byway. A public road having special scenic, historic, recreational, cultural, archeological, and/or natural qualities that have been recognized as such through legislation or some other official declaration.⁸

State scenic byway. A road or highway under State, Federal, or local ownership that has been designated by the State through legislation or some other official declaration for its scenic, historic, recreational, cultural, archeological, or natural qualities.⁹ The Red Clay Valley Scenic Byway is a State Scenic Byway.

Scenic corridor. A scenic corridor is a specific term referenced in Sec. 40.04.240 of the UDC that generally refers to landscaping and buffering requirements along certain roads. Tthe dimensions of a

⁶ As defined in the National Scenic Byways Program; FHWA Docket No. 95-15, Federal Register / Volume 60 No. 96 / May 18, 1995.

⁷ FHWA Docket No. 95-15.

⁸ Ibid.

⁹ Ibid.

scenic corridor vary and as defined in Sec. 40.04.240. The Scenic Byway Overlay District has specific and unique scenic corridor requirements.

Scenic easement. A portion of a lot or parcel that is covered by an easement, running in favor of the County, or a nonprofit agency, providing protection and/or enhancement of the scenic qualities of such land. Conservation easements, historic easements and permanent agricultural easements may be utilized to meet all or a portion of a required scenic easement.

Scenic landmark. <THIS TERM IS USED IN ARTICLE 15 OF THE CODE BUT MAY BE TOO GENERAL FOR ADDITIONAL USE OR IN CONFLICT WITH OTHER DEFINITIONS> INCLUDE AND DEFINE?.>

Scenic resource. A general term of reference for elements, features, viewsheds, intrinsic qualities, physical improvements, etc. of a road or corridor that provide scenic beauty and/or character.

Scenic view. <THIS TERM IS ALREADY USED IN THE CODE BUT MAY BE TOO GENERAL FOR ADDITIONAL USE OR DEFINITION> RECOMMEND NOT INCLUDING OR CHANGING TO VIEWSHED.>

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 located between three (3) and four (4) 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. <USED IN CODE TODAY, BUT NOT DEFINED, KEEP OR CHANGE?>

Vista points. Vista points designate broad, expansive views, the scenic boundary of which are primarily defined by forest cover within the public viewshed (i.e. visible from scenic roadways).

Visual accents. Visual accents include visually significant landscapes and landforms within the public viewshed (i.e. visible from scenic roadways) that serve as indicators of natural, cultural, and/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 features which enhance or contribute to the landscape.

Visible Building Height. That portion of a building that is permitted to be viewed from the scenic road, unless the structure is determined to be a visual accent.

Visual intrusions. Elements and/or improvements that are not compatible with the character and nature of a scenic area and do not add to the protection, nor enhancement of, a scenic area's character-defining features and/or intrinsic qualities.